

Genocide committed by the Russian Federation in Ukraine:

legal reasoning and historical context

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Abstract

A new wave of Russia's aggression against Ukraine that began on 24 February 2022, and the intensification of the armed conflict accompanied by grave breaches of international humanitarian law, received significant scholarly attention during recent months. Most of the academic interventions examined the developments in Ukraine in the framework of *jus ad bellum* and *jus in bello*. Some, however, applied a genocide lens to make sense of reported numerous and widespread violations of international humanitarian and human rights law. This article contributes to the latter stream of scholarship by contextualizing the arguments for the existence of genocidal intent behind the seemingly unrelated crimes committed by the armed forces of the Russian Federation all over Ukraine. The authors pay particular attention to the language and pseudo-historical references used by Russia's leaders as a justification of the invasion of Ukraine, and explain that these statements and expressions indicate the existence of genocidal intent. The article also reflects on the issue of the systematic destruction of the cultural heritage of Ukraine as another evidence of intent to destroy the Ukrainian nation in whole or in part. Finally, the authors turn to the analysis of the genocidal acts such as forcible transfer and russification of Ukrainian children, deliberate inflicting conditions of life aimed at the physical destruction of the Ukrainian nation, killings and causing serious bodily or mental harm. It is stressed that there is reasonable ground to believe that the destruction of the Ukrainian nation by Russia has been pursued through commission of these prohibited acts. Indeed, their nature and large-scale character serve as another evidence of genocidal intent to destroy the Ukrainian nation.

Keywords: genocide – genocidal intent – atrocity crimes – Russian aggression – Ukrainian nation

1. Introduction

Genocide is a crime of such gravity that almost every good lawyer specializing in international criminal law would instinctively doubt its applicability to a certain situation. Even more so, if the situation concerns his or her own country, nation, religious, ethnic, or racial group. But what also characterizes a good lawyer is the skill of self-restraint that allows one not to inject one's own personal preferences into judgments on legal matters. The effect is twofold. On the one hand, it keeps the lawyers aware of their own prejudices and may prevent them from reaching partial legal conclusions. On the other, it helps to overcome natural hesitation to deal with the legal matters that may relate to the social or other groups that the lawyer belongs to only because of the fact of belonging.

This type of logic enabled the authors of this article to engage in, first of all, drafting the Declaration of the Verkhovna Rada of Ukraine (Ukrainian parliament) on the genocide committed by the Russian Federation in Ukraine, and, second of all, reflecting on the Declaration in this paper.

The declaration of the Verkhovna Rada of Ukraine "On the Genocide Committed by the Russian Federation in Ukraine" was adopted without any significant divergence from the text proposed by the authors of this paper on 14 April 2022, with 363 votes in favour and no MP voting against or abstaining. It was followed by similar declarations that were pronounced by the parliaments of Canada, Czech Republic, Estonia, Ireland, Latvia, Lithuania, and Poland. With differing degrees of detail, these declarations express the respective parliaments' take on the situation in Ukraine.

While taking note of other parliamentary declarations that condemn the crimes in Ukraine, this paper aims to explain the legal argumentation behind the Ukrainian Declaration. It will mainly focus on deciphering the Declaration's reasoning regarding the special intent of the crime of

genocide. If there is a single function that political declarations on genocide may perform from the legal standpoint, it is undoubtedly highlighting the embedded into culture and history notions, symbols, and tendencies that may be easily overlooked by scholars from outside. The authors believe that the comprehension of the context of the criminal acts that may constitute a crime of genocide is impossible without diving into the world of multi-layered historic and cultural evidence which the Declaration reflects. Therefore, the article unwraps the circumstances of the crime of genocide as encompassed by the Declaration and provides what the anthropologist Clifford Geertz would call a thick description¹ of the crime of genocide allegedly committed in Ukraine.

This being said, the authors do not doubt the value of the contributions of outsiders on the situation in Ukraine. However, we stand on the position that the analyses of the potentially genocidal situation cannot be based only on accounts detached from the Ukrainian context. Not least because of the dangers of the much-debated lately west(s)plaining and limits it imposes on the research of the legal issues related to Ukraine.² That is why we see this article as a crucial

¹ Geertz defined thick description as an explanation that takes into consideration "cultural context and meaning that people place on actions, words, things, etc. Thick descriptions provide enough context so that a person outside the culture can make meaning of the behavior." For more information see, for instance: Keith Ray, The thick and thin of it (The Cynefin Co, 26 May 2011) <<https://thecynefin.co/the-thick-and-thin-of-it/>> accessed on 25 July 2022

² Patryk I. Labuda, 'On Eastern Europe, 'Whataboutism' and 'West(s)plaining': Some Thoughts on International Lawyers' Responses to Ukraine' (EJIL Talk!, 12 April 2022) <<https://www.ejiltalk.org/on-eastern-europe-whataboutism-and-westsplaining-some-thoughts-on-international-lawyers-responses-to-ukraine/>> accessed 19 June 2022; See also the debate on the Amnesty International report on Ukraine: Amnesty Ukraine office not involved in preparing scandalous report on Ukrainian Armed Forces (Ukrainska Pravda, 4 August 2022) <<https://www.pravda.com.ua/eng/news/2022/08/4/7361910/>> accessed 25 August 2022

but not the only required contribution to the discussion on the crimes being committed in Ukraine.

2. Background: from annexation of Crimea to full-scale invasion

While 24 February 2022 became a turning point in the armed conflict between the Russian Federation and Ukraine, a point that made it practically impossible for Russia to hide in the shadow of its propaganda about the self-determination of Russian-speaking regions in Ukraine, the armed conflict itself began eight years earlier in 2014 with the occupation of Crimea.³ Since then, the Russian Federation has engaged in systematic suppression of the Ukrainian and Crimean Tatar language, religion, and cultural life in the occupied territories.

Since late February the quantity and gravity of crimes allegedly committed by the Russian Federation armed forces and occupation authorities, and whose sole cause was Russia's aggressive invasion, spiked dramatically. By 10 May 2022, 35.2 million square meters of residential buildings were damaged, 208 industrial units were at least partly destroyed, and 508 health institutions suffered from the attacks, and became partially unusable.⁴ Cases of enforced disappearances, rape, torture, killings, and deportation of the civilian population count in thousands.⁵

³ See for instance Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Provisional Measures, Order of 15 October 2008 [83]

⁴ Infrastructure damage from war up by \$2.4 bln in week, oil depots destroyed for \$227 mln – study (Interfax Ukraine, 12 May 2022) <<https://interfax.com.ua/news/general/831622.html>> accessed 25 July 2022

⁵ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes And Crimes Against

In international criminal law terms, the first eight years of the armed conflict were usually described with references to the alleged war crimes and crimes against humanity in Crimea and in parts of the Donetsk and Luhansk regions. The new wave of the Russian Federation's aggression against Ukraine pressed scholars and politicians to consider looking at the situation in Ukraine through a completely different lens, a lens of the crime of genocide. On 14 April 2022 the Verkhovna Rada of Ukraine adopted a declaration calling the crimes committed by the Russian Federation armed forces a genocide. Other states and individual politicians followed the path.⁶ The academic community was not silent either. Several commentators applied the genocide framework in connecting the dots of the numerous crimes committed in Ukraine since Russia's full-scale invasion.⁷

The crime of genocide, by its nature, is a denial of the right to existence of the human group. In accordance with Article 2 of the UN Convention on the Prevention and Punishment of the

Humanity Committed in Ukraine Since 24 February 2022'

<<https://www.osce.org/files/f/documents/f/a/515868.pdf>>

⁶ Elizabeth Whatcott, 'Compilation of Countries' Statements Calling Russian Actions in Ukraine "Genocide" (Just Talk, 20 May 2022) <<https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/>> accessed 25 August 2022

⁷ See for instance Ivana Kottasová, 'Leading experts accuse Russia of inciting genocide in Ukraine and intending to 'destroy' Ukrainian people' CNN (May 27, 2022) <<https://edition.cnn.com/2022/05/27/europe/russia-ukraine-genocide-warning-intl/index.html>> accessed 11 July 2022; Azeem Ibrahim, 'Russia's War in Ukraine Could Become Genocide Moscow is already carrying out ethnic cleansing' Foreign Policy Magazine <<https://foreignpolicy.com/2022/05/27/russia-war-ukraine-genocide/>> accessed 11 July 2022; Norman M. Naimark, 'Ukraine And The Cloud Of Genocide' (2022) <<https://www.hoover.org/research/ukraine-and-cloud-genocide>> accessed 11 July 2022; Douglas Irvin-Erickson, 'Is Russia Committing Genocide in Ukraine?' (Opinio Juris 21.04.22) <<https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>> accessed 11 July 2022

Crime of Genocide (hereinafter the Convention) and Article 6 of the Rome Statute of the International Criminal Court (hereinafter the Statute) the ultimate aim of the crime of genocide may be achieved through any of the following acts committed with the special intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Many acts committed by Russia during the most recent phase of its armed aggression against Ukraine amounts to genocidal acts as defined in the Genocide Convention and the Rome Statute. As it will be shown further, there are reasonable grounds to believe that those acts were committed with intent to destroy in part the Ukrainian nation and therefore constitute a crime of genocide.

3. Ukrainians as a protected national group

Russia's political leadership has repeatedly denied Ukraine's right to exist as a separate state and a nation.⁸ Statements to this effect have also accompanied Russia's full-scale invasion of

⁸ Владимир Путин, 'Об историческом единстве русских и украинцев' (Vladimir Putin, 'On the Historical Unity of Russians and Ukrainians') (President of Russia, 12 July 2021)

<<http://kremlin.ru/events/president/news/66181>> accessed 18 June 2022. The English version of the article which may not however fully reflect the original meaning is available at

<<http://en.kremlin.ru/events/president/news/66181>> accessed 17 July 2022. See also : Maria Mäklsoo (2022):

The Postcolonial Moment in Russia's War Against Ukraine, *Journal of Genocide Research*, DOI:

10.1080/14623528.2022.2074947

Ukraine on 24 February 2022.⁹ Ukrainians are being attacked, murdered, tortured, forcibly displaced, and subjected to russification because of their membership in the Ukrainian nation, a distinct nation entitled to form its own separate state and to exist independently from Russia. Ukrainians as a nation are the subject of Russian atrocities.

The term “nation” is defined as “a large body of people united by common descent, history, culture, or language, inhabiting a particular state or territory.”¹⁰ A nation is a distinct entity united by common traits, be it history, culture, traditions, language, ethnicity, or race.

Different understandings of the term “national group” for the purpose of crime of genocide exist. Some believe that the meaning of the term “national group” as used in the Genocide Convention is national minority, and that the term should essentially be interpreted synonymously with the terms ethnic, racial and religious groups.¹¹ Such understanding, however, denies the term “national” a distinct meaning, which is contrary to the basic canon of treaty interpretation that each term of the treaty ought to be interpreted to have a distinct meaning.¹²

⁹ ‘Обращение Президента Российской Федерации’ (Address by the President of the Russian Federation) (21 February 2022) <<http://kremlin.ru/events/president/news/67828>> accessed 26 July 2022. The English version of the text of the address is available at <<http://en.kremlin.ru/events/president/news/67828>> accessed 17 July 2022. Note that the translation may not fully reflect the original meaning of the text.

¹⁰ Angus Stevenson (ed), *Oxford Dictionary of English* (OUP, 3edn, 2015)

¹¹ William A. Schabas, *Genocide in International Law* (CUP, 2nd, 2009) 136-137

¹² Claus Kress, 'The Crime of Genocide under International Law' (2006) 6 *International Criminal Law Review* 461, 475

A different approach suggests that a modern nation does not necessarily coincide with the same race and ethnicity; indeed it may encompass several different ethnic, racial or religious groups.¹³ More recently, the ICTR defined the national group to mean “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.”¹⁴ This definition builds on the understanding of nationality as an expression of a legal bond between an individual and the state. At the same time, a nation is more than a group of people that hold the same formal nationality.¹⁵ A nation “is characterized by a common wish to live together, a common ideal, a common goal and common aspirations.”¹⁶ In international criminal law, at least in the context of war crimes, a broader understanding of a nation is now emerging. It is the effective allegiance, rather than a formal legal bond, to a party to an armed conflict that determines an individual's nationality.¹⁷

Modern Ukraine is diverse. It comprises different ethnic, religious and language groups. All these groups are united into one nation – Ukrainians – by the allegiance to the Ukrainian state

¹³ 'Fourth report on the draft code of offences against the peace and security of mankind, by Mr. Doudou Thiam, Special Rapporteur' (11 March 1986) UN Doc A/CN.4/398, § 57

¹⁴ *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998) § 512

¹⁵ Claus Kress, 'The Crime of Genocide under International Law' (2006) 6 *International Criminal Law Review* 461, 467

¹⁶ 'Fourth report on the draft code of offences against the peace and security of mankind, by Mr. Doudou Thiam, Special Rapporteur' (11 March 1986) UN Doc A/CN.4/398, § 57

¹⁷ *Prosecutor v Katanga and Ngujolo Chui* (Decision on the confirmation of charges) ICC-01/04-01/07-717, PT Ch I (30 September 2008) § 291 with further references to the ICTY jurisprudence

and the shared belief in the independence of their state and nation.¹⁸ The Constitution of Ukraine similarly defines the Ukrainian nation as citizens of Ukraine of *all nationalities*, nationality here used in the sense of ethnic origin, residing in Ukraine.¹⁹ That Ukrainians responded to the attack on their right to existence in a consolidated manner clearly shows that they constitute a united nation and perceive themselves as such.

In addition to constituting a national group based on objective characteristics and self-perception, Ukrainians are also perceived as a distinct group by the attacker. It is precisely the characteristic of Ukrainians as a separate nation that the attacker seeks to annihilate by means of physical destruction of members of the group, forced removal and russification of Ukrainian children, ruination of the country's basic infrastructure and erasure of the Ukrainian culture.

Finally, it must be noted the Declaration of the Verkhovna Rada of Ukraine "On the Genocide Committed by the Russian Federation in Ukraine" use the term "*Український народ*" – [Ukrainiskyi narod], in the original Ukrainian-language version, when referring to the Ukrainian nation as protected group. The same term is used in the Constitution of Ukraine, and it is sometimes translated into English as "Ukrainian people". However, the term "*народ*" – [narod] which is Ukrainian word for "people", especially as used in the Constitution and the Declaration, corresponds to the term "nation", meaning the collection of all the citizens and population of a state whatever their ethnic origin. Conversely, Ukrainian terms "natsiya" (*нація*) and "natsionalnist" (*національність*), literally translated into English as nation and nationality respectively, refer first and foremost to ethnicity and ethnic origin. For this reason,

¹⁸ "'Rating': The number of supporters of independence in Ukraine reached almost 100%", Babel (24 August 2022) <<https://babel.ua/en/news/83378-rating-the-number-of-supporters-of-independence-in-ukraine-reached-almost-100>> accessed 24 August 2022

¹⁹ Constitution of Ukraine (28 June 1996), Preamble, paragraph 1

the original Ukrainian text of the Declaration uses the Constitutional term ‘*Український народ*’ – [Ukrainiskyi narod], while its translated version refers to ‘Ukrainian nation’ as a protected national group for the purposes of the crime of genocide within the meaning of the Genocide Convention and the Rome Statute.²⁰

4. The intent to destroy the Ukrainian nation

Establishing intent to destroy a protected group in part or in whole is a challenging aspect of proving the crime of genocide. The genocidal intent can be manifested in direct and explicit statements of the perpetrators.²¹ But it can also be disguised in the terms and ideology created and propagated by the perpetrators. In addition, genocidal intent can be inferred from the general context and the nature of the acts committed by the perpetrators.²²

For this reason, we explore the context of Russia’s full-scale aggression of Ukraine and demonstrate that it is fuelled by the language of dehumanization and demonization of the Ukrainian nation. We also demonstrate that the true purpose of Russia’s campaign of ‘denazification’ of the Ukrainian nation is in fact its destruction, which among other things is carried out through the destruction of Ukraine’s cultural heritage.

4.1. Dehumanization of the Ukrainian nation

²⁰ The English-language version of the Declaration is available at the official website of the Verkhovna Rada of Ukraine < <https://zakon.rada.gov.ua/laws/file/text/97/f515139n154.pdf> > accessed 25 July 2022. For the English translation of Explanatory Note to the Declaration see

< <https://zakon.rada.gov.ua/laws/file/text/97/f515139n152.pdf> > accessed 25 July

²¹ *Prosecutor v Karadžić* (Judgment) IT-95-5/18-T (24 March 2016) § 550

²² *Prosecutor v Karadžić* (Judgment) IT-95-5/18-T (24 March 2016) § 550

In her essay for The Atlantic on the comparison of the Holodomor and today's Russian assault on Ukraine, Anne Applebaum rightly stresses that "while not every use of genocidal hate speech leads to genocide, all genocides have been preceded by genocidal hate speech".²³ This observation of a historian is corroborated by the courts' commentaries on international crimes. The District Court of Jerusalem acknowledged the power of hate speech and dehumanization in the Eichmann case saying that "[o]ut of this soil of hatred for the Jews grew the actions of the Accused."²⁴ The hatred was expressed among others through the particular terms that the Nazis used to refer to Jews, such as "rats" or "lice".

In Rwanda, the Tutsi, the ethnic group that suffered from the genocidal attacks, were labelled Inyenzi, which literally means cockroaches. The International Criminal Tribunal for Rwanda (ICTR) from the very first genocide cases paid significant attention to the use of this term, which had "negative, even abusive connotations," as a tool of dehumanization.²⁵ The Tribunal looked at the historic transformation of the word, used in 1960s for mostly Tutsi anti-revolutionary insurgents and 30 years later applied as a derogatory term for the whole ethnic group of Tutsi. This transformation became infamously described in the local publication in a form of a rule suggesting that "a cockroach cannot give birth to a butterfly".²⁶ In *Nahimana, Barayagwiza and Ngeze* the ICTR stressed on the importance of considering the "context in which the statement is made... A statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal

²³ <https://www.theatlantic.com/magazine/archive/2022/06/ukraine-mass-murder-hate-speech-soviet/629629/>

²⁴ Cited by: Wibke Timmermann, Counteracting Hate Speech as a Way of Preventing Genocidal Violence, *Genocide Studies and Prevention: An International Genocide Studies and Prevention: An International Journal*, Volume 3, Issue 3, Article 8, 2008, p. 354

²⁵ See for instance *Prosecutor v Akayesu* (Judgement) ICTR-96-4-T, T Ch I (2 September 1998) [148]-[149]

²⁶ *Prosecutor v Nahimana et al.* (Judgment and sentence) ICTR-99-52-T (3 December 2003) [179]

environment. It would be more likely to lead to violence. At the same time the environment would be an indicator that incitement to violence was the intent of the statement.”²⁷ In *Muhimana* the ICTR explicitly named the use of derogatory language as a factor from which the specific genocidal intent may be inferred.²⁸

ICTY's practice on derogatory language is not uniform.²⁹ This being said, in *Tolimir* the Tribunal pronounced that permitting the use of and using the dehumanizing terms, such as “Turks” or “Balijas” (may be roughly translated as dirty Muslims), may testify to the existence of the genocidal intent.³⁰

In her separate and partly dissenting opinion in *al-Bashir*, judge Anita Usacka reiterated that the use of derogatory language, like, in the case of the Fur, Massalit and Zaghawa tribes, terms *nuba* (blacks) and *zurga* (blacks or slaves), may signal the existence of the genocidal intent.³¹ Simultaneously, it may attest to the fact that the perpetrators see the group as a unitary entity.³²

²⁷ *Prosecutor v Nahimana, Barayagwiza and Ngeze* (Judgement and Sentence), ICTR-99-52-T (3 December 2003) [1022]

²⁸ *Prosecutor v Muhimana* (Judgement) ICTR-95-1B-T (28 April 2005) [496]

²⁹ See, for instance, *Prosecutor v Krstić* (Appeals Judgment) IT-98-33-A (19 April 2004) [130]; *Prosecutor v Popović et al* (Judgment) IT-05-88-T (10 June 2010) [1399]; see also the critical comments concerning those judgements: Predrag Dojčinović, *Propaganda and International Criminal Law: From Cognition to Criminality* (Taylor and Francis 2021-06-30, London)

³⁰ *Prosecutor v Tolimir* (Judgment) IT-95-14-T (3 March 2000) [1168]-[1169].

³¹ *Prosecutor v Omar Hassan Ahmad Al Bashir* (Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir) ICC-02/05-01/09-3 (04 March 2009) [Separate and Partly Dissenting Opinion, 53]

³² *Ibid* [25]

The derogatory nature of some terms used in genocidal campaigns is more intuitively comprehensible than others, such as use of the terms rats or cockroaches. These derogatory words aim to dehumanize and humiliate. It's not that obvious when the hate-speech expressions are camouflaged by seemingly normal designations. ICTY struggled to see the derogatory nature of the term "balijas", which indeed somewhen was used without the negative connotation. The ICC also required consultations from the victims to catch the derogatory tones in the words "nuba" and "zurga".

The situation is even more complex in Ukraine where the representatives of the Russian Federation label Ukrainians as "Nazis". Nazism, without doubt, was a criminal ideology that enabled the most brutal and largescale crimes in human history. Probably because of the negative connotations of this word the use of the word "Nazi" by the Russian Federation creates a trap that aims at preventing intellectuals and politicians worldwide from seeing the pretext and character of the criminal acts that have been committed by Russian armed forces on the territory of Ukraine since 24 February 2022.

The historical misuse of the term "Nazi" and "Nazism" by the Soviet Union and later Russia did not begin in 2022. Right after the World War II, while negotiating the text of the Universal Declaration of Human Rights, USSR and its satellites tried to insert the condemnation of Nazism into the provisions of the Declaration and primarily to the article 19 and 20 dealing with the freedoms of opinion and association. The reason for such condemnation was twofold. On the one hand, the USSR as many other states wanted to blame the Nazis for their onslaught on human dignity. On the other, they wanted to advance a limited, positivist, and state-controlled understanding of human rights.³³ Therefore, "Nazism" as a concept got

³³ Johannes Morsink, *The Universal Declaration of Human Rights. Origins, Drafting & Intent* (University of Pennsylvania Press 1999) 23

instrumentalized by the USSR. It became nothing more than an excuse to add a backdoor to the international human rights instruments that could allow the USSR and its satellite regimes to silence opponents and strengthen totalitarian regimes.

In a sense, nothing has changed since the first post-WWII years. Russian appeal to fight Nazism in the 21 century is a reinvented attempt to find a seemingly decent explanation for the indecent and dishonourable impulse to control the political discourse on the territories that were somewhen a part of the Russian empire. On top of that, since 2014 and more explicitly since 2022 Russia is referring to Nazism to demonize the Ukrainian nation and create a picture of an enemy that deserves neither a place at the negotiating table nor a right to decide its future.

4.2. “Denazification” as a disguise for genocidal intent

The imperialistic rhetoric of Russia's political elite, Putin's first of all, is not only a way to demonize and dehumanize the Ukrainian nation. Putin's article *On the Historical Unity of Russians and Ukrainians*, the texts of his public speeches dated 21 and 24 February 2022 and transcripts of his press-conferences give grounds to assume that this rhetoric is an independent and fundamental evidence of the existence of the motive, goal and general intent to destroy the Ukrainian nation at least in part, so as to have Ukraine under the undivided power of Russia, as it used to be in Soviet Union. Therefore, Putin's rhetoric deserves to be analysed in detail and explained taking into account the historical and political context.

Putin made a number of key statements which may seem unrelated to the genocidal character of the Russian military aggression. However, upon a closer reading they confirm the existence of genocidal intent. Their content and logical interconnection therefore need deciphering, especially for a Western reader. The following statements merit particular attention:

1. Putin stated that ‘Russians and Ukrainians are one nation, they are one whole’ and that Ukrainian territories are historically Russian territories.³⁴ By this he implies that the Ukrainian nation does not even exist.
2. According to Putin, “Ukraine was created by Lenin, when he established the Soviet Union in 1922.”³⁵ It means that in Putin’s mind Ukraine had not existed before that moment.
3. In Putin’s view, the right of a nation for self-determination and its right to secede from the USSR were included in the Declaration on the Creation of the USSR in 1922³⁶ as a concession to the nationalists made by the Bolsheviks to keep the power at any rate. Putin calls it “not only a mistake, it was, so to say, worse than

³⁴ Владимир Путин, ‘Об историческом единстве русских и украинцев’ (Vladimir Putin, ‘On the Historical Unity of Russians and Ukrainians’) (President of Russia, 12 July 2021)

<<http://kremlin.ru/events/president/news/66181>> accessed 18 June 2022. The English version of the article which may not however fully reflect the original meaning is available at <<http://en.kremlin.ru/events/president/news/66181>> accessed 17 July 2022.

³⁵ ‘Большая пресс-конференция Владимира Путина’ (Vladimir Putin’s annual news conference) (President of Russia, 23 December 2021) <<http://kremlin.ru/events/president/news/67438>> accessed 15 June 2022. The English version is available at <<http://en.kremlin.ru/events/president/news/67438>> accessed 15 June 2022. Note that the translation may not fully reflect the original meaning of the text.

³⁶ Декларация об образовании Союза Советских Социалистических Республик (The Declaration on the USSR Creation, 30 December 1922) in *Постановления первого съезда советов Союза Советских Социалистических Республик* (Издание ЦИК СССР 1923) 4.

a mistake” and believes that these rights are “utopian” fantasies and their existence is “repulsive”.³⁷

4. He reproaches Ukrainians for being unthankful to Lenin for “creating Ukraine” and for Ukraine to have maintained “a national state formation” within the USSR and was not integrated in Russia as an administrative unit: “Now ‘the thankful descendants’ have demolished the monuments of Lenin. They call it decommunization.”³⁸
5. Putin threatens Ukrainians with a “real” decommunization: “Do you want decommunization? We are totally fine with it. But one should not stop halfway. We are ready to show you what real decommunization of Ukraine means”. Within this context, talking about the “halfway” Putin must have meant that together with the monuments of Lenin they will “demolish” the approach of the USSR to the formal status of republics, the declarative right for self-identification and the right to leave the USSR.³⁹
6. Apart from the “real decommunization”, he mentions Stalin’s dictatorship and the Red Terror that managed to correct Lenin’s “mistake” and create the USSR as a

³⁷ ‘Обращение Президента Российской Федерации’ (Address by the President of the Russian Federation) (21 February 2022) <<http://kremlin.ru/events/president/news/67828>> accessed 26 July 2022. The English version of the text of the address is available at <<http://en.kremlin.ru/events/president/news/67828>> accessed 17 July 2022. Note that the translation may not fully reflect the original meaning of the text.

³⁸ ‘Обращение Президента Российской Федерации’ (Address by the President of the Russian Federation) (21 February 2022) <<http://kremlin.ru/events/president/news/67828>> accessed 26 July 2022. The English version of the text of the address is available at <<http://en.kremlin.ru/events/president/news/67828>> accessed 17 July 2022. Note that the translation may not fully reflect the original meaning of the text.

³⁹ *ibid.*

“strictly centralized state, absolutely Unitarian by its character.”⁴⁰ It is worth mentioning that it was under Stalin’s rule that the genocide of the Ukrainian people, i.e. Holodomor of 1932-1933,⁴¹ and the deportation of the Crimean Tatars of 1944⁴² were organized.

7. Putin emphasizes that nationalism was the main cause of the collapse of the Soviet Union: “Bacilli of nationalistic ambitions have not disappeared, and the mine planted initially was only waiting for its time to explode. This mine was, I say it again, the right to leave the USSR”. This demonstrates Putin’s attitude to the phenomenon of nationalism which, in his belief, prevented the USSR from keeping different nations within the USSR by force. Putin calls the right of nations for self-determination “a destructive fantasy for any normal nation.”⁴³ In Putin’s and the Soviet-and-Russian understanding, nationalism boils down to the exercise of the right of nations to self-determination.

8. Putin claims that “the Ukrainian society faced a growth of extreme nationalism which gained features of aggressive Russophobia and neo-Nazi movement.”⁴⁴ He

⁴⁰ *ibid.*

⁴¹ Holodomor Museum, ‘Holodomor History’ <<https://holodomormuseum.org.ua/en/the-history-of-the-holodomor/>> accessed 23 July 2022.

⁴² Human Rights Watch, “*Punished peoples*” of the Soviet Union: *The continuing legacy of Stalin's deportations*. (September 1991) 33.

⁴³ ‘Обращение Президента Российской Федерации’ (Address by the President of the Russian Federation) (21 February 2022) <<http://kremlin.ru/events/president/news/67828>> accessed 26 July 2022. The English version of the text of the address is available at <<http://en.kremlin.ru/events/president/news/67828>> accessed 17 July 2022. Note that the translation may not fully reflect the original meaning of the text.

⁴⁴ *ibid.*

claims, providing no arguments or evidence whatsoever, that “the leading nations of the NATO support extreme Ukrainian nationalists and neo-Nazi to reach their own goals.”⁴⁵

9. Finally, immediately after the full-scale aggression against Ukraine had begun, Putin declared “denazification and demilitarization” of Ukraine⁴⁶ the goal of the so-called “special military operation”.

The above-mentioned statements in their totality provide evidence that Russia’s political leadership do not recognize the existence of the Ukrainian nation, its right to self-determination and statehood, and that they consider Ukraine as Russian territory. Medvedev – the former president (2008-2012), former Prime Minister of Russia (2012-2020) and today’s vice Chairman of the Security Council of the Russian Federation – writes straightforwardly that “the Ukrainian nation and its identity is one big fake, the phenomenon never existed in the history, and does not exist now.”⁴⁷ Such a world view resulted in the aim to return Ukrainian territories under Russia’s control, which is impossible without what Putin called “denazification”. The statement about the “denazification” of Ukraine by carrying out a so-called special military operation, which in reality is an open military aggression against

⁴⁵ *ibid.*

⁴⁶ Обращение Президента Российской Федерации от 24 февраля 2022 года (Address by the President of the Russian Federation (24 February 2022) <<http://kremlin.ru/events/president/news/67843>> accessed 3 May 2022.

The English version of the text of the address is available at

<<http://en.kremlin.ru/events/president/news/67843>> accessed 3 May 2022. Note that the translation may not fully reflect the original meaning of the text.

⁴⁷ Дмитрий Медведев, ‘О фейках и настоящей истории’ (Dmitriy Medvedev, ‘On the Fakes and Real History’) (Telegram channel, 5 April 2022) <https://t.me/medvedev_telegram/34> accessed 23 July 2022.

Ukraine, we consider to be one of the main proofs of the genocidal intent of the military and political leadership of the Russian Federation.

The use of the term 'denazification' surprised a lot of researchers and journalists in the West. A number of historians (Timothy Snyder, Jeffrey Veidlinger, Omer Bartov) expressed an opinion about the misuse of the term and explained that it could be applied only to certain processes that had taken place in Germany after World War II.⁴⁸

This mode of inquiry was expanded by a group of interdisciplinary experts in *An Independent Legal Analysis of the Russian Federations Breaches of the Genocide Convention in Ukraine and the Duty to Prevent*, who found that the denazification/nazi terminology purveyed by top Russian officials and State media as pretext for the aggressive invasion is accompanied by dehumanizing terms, which are historically recurring forms of incitement to mass atrocities and genocide.⁴⁹

However, the use of the term "denazification" is not only a linguistic means of dehumanization or a "rhetorical device to justify unprovoked war and genocidal policies."⁵⁰ The use of this term has many more hidden senses.

⁴⁸ Olivia B Waxman, 'Historians on What Putin Gets Wrong About 'Denazification' in Ukraine' (*Time* 3 March 2022) <<https://time.com/6154493/denazification-putin-ukraine-history-context/>> accessed 30 April 2022

⁴⁹ New Lines Institute and The Raoul Wallenberg Centre for Human Rights, 'An Independent Legal Analysis of the Russian Federations Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) 15–18 <<https://newlinesinstitute.org/russia/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>> accessed 30 May 2022

⁵⁰ Timothy Snyder, 'Russia's genocide handbook' (*Substack* 8 April 2022) <<https://snyder.substack.com/p/russias-genocide-handbook>> accessed 3 May 2022

Timothy Snyder comes to a generally correct conclusion regarding “the special Russian definition of “Nazi”: a Nazi is a Ukrainian who refuses to admit being a Russian.”⁵¹ It is the approach that is found in the Explanatory Note for the draft project of the Ukrainian Parliament’s Declaration “On the Genocide Committed by the Russian Federation in Ukraine”⁵² which we submitted to the Verkhovna Rada of Ukraine on 6 April 2022. The Explanatory Note provides arguments supporting this approach. However, to show that “denazification” proves the existence of genocidal intent, it is necessary to take account of the historical context, just as *ad hoc* tribunals did when establishing special intent for the purposes of crime of genocide.⁵³

Russia has been distorting and appropriating Ukraine’s history, engaging in destruction and stealing of Ukrainian national heritage artifacts, and suppressing and prohibiting the Ukrainian language for the past 400 years.⁵⁴ However, it is in the past 100 years that the concept of “denazification” of Ukrainians emerged and was being developed by Russia.

⁵¹ *ibid.* See also Maria Mälksoo (2022): The Postcolonial Moment in Russia’s War Against Ukraine, *Journal of Genocide Research*, DOI: 10.1080/14623528.2022.2074947

⁵² Про Заяву Верховної Ради України “Про вчинення Російською Федерацією геноциду в Україні”: Постанова Верховної Ради України від 14 квітня 2022 року № 2188-IX (On the Genocide Committed by the Russian Federation in Ukraine, Declaration of the Verkhovna Rada of Ukraine, 14 April 2022) <<https://zakon.rada.gov.ua/laws/show/2188-20>> accessed 16 April 2022

⁵³ See section *Dehumanization of the Ukrainian nation* above

⁵⁴ See for instance Yaroslav Dashkevych, ‘How Moscow hijacked the history of Kyivan Rus’ (Euromaidan Press 14 May 2014) <<https://euromaidanpress.com/2014/05/14/how-moscow-hijacked-the-history-of-kyivan-rus>> accessed 23 July 2022; ‘A short guide to the linguicide of the Ukrainian language’ (Euromaidan Press 22 February 2017) <<https://euromaidanpress.com/2017/02/22/a-short-guide-to-the-linguicide-of-the-ukrainian-language-infographics>> accessed 23 July 2022

In our opinion, the use of the term “denazification” has two goals. On the one hand, it is a propaganda tactic to give Russians a reason to attack the Ukrainian people whom they consider to be a part of the one whole with the Russian nation. This term is for propaganda within Russia, to say that Russia is not fighting against Ukraine, but is liberating a “brotherly” Ukrainian nation from the part of it that are Nazi nationalists. On the other hand, emphasis on the nationalism and Nazi ideology was aimed at demonisation of the Ukrainian patriotism and desire to be independent. Russia has been calling Ukrainian patriots that have been striving for independence as nationalists for about a hundred years. After the World War II, Russia actually began to identify them with Nazis.

Here is the logic that the Russian state propaganda follows: Ukrainian patriot equals nationalist equals Nazi. A key notion of this chain is “nationalism”. It is a bridge for the Russian logic to turn the Ukrainian patriots into Nazis. At the same time, the understanding of the Russian interpretation of the so-called “Ukrainian nationalism” makes it possible to see the real goals of aggression and consequently the existence of the genocidal intent.

There exist different understandings of the concept of “nationalism”. Experts from various fields consider it from three different perspectives: in doctrine, in politics, and in human sentiments.⁵⁵ The lack of an unambiguous definition of the term is convenient for politicians who can adjust it for their own needs and goals they want to achieve. Some draw a distinction between patriotism and nationalism suggesting that the latter is the complete opposite of the former.⁵⁶

⁵⁵ John Breuilly ‘Approaches to nationalism’ in Gopal Balakrishnan (ed), *Mapping the Nation* (Verso 1996) 146

⁵⁶ Speech by Mr. Emmanuel Macron, President of the Republic (Commemoration of the centenary of the Armistice - Arc de Triomphe) (Élysée 12 november 2018) <<https://www.elysee.fr/en/emmanuel->

There are a number of researchers who would not agree with such an understanding of nationalism. For instance, J. Breuilly suggests that there is “little analytic value in distinguishing ‘patriotism’ from ‘nationalism’”. The first tends to become a term of praise; the second a term of abuse.”⁵⁷ The tradition of Ukrainian nationalism of the modern era is mainly connected not with the assertion of national exceptionalism, but with the desire for national liberation, the creation of an independent Ukrainian state, that is, in a certain sense, with the national emancipation of Ukrainians.⁵⁸ However, identifying the true meaning of the term “nationalism”, if such one universal definition exists at all, is not relevant for the purposes of this article. What is crucial is to determine how Russians understand and Russian propaganda uses this term, in particular when portraying Ukrainians.

The false ideologue “Ukrainian patriot equals nationalist equals Nazi” was created by Russia a long time ago. The Russian Federation, who claims to be the “continuator” of the USSR, continues using this Soviet ideologue reflected in now unclassified KGB’s textbooks which have actually shaped the imperial worldview of today’s czar of Russia: “The nationalism is striving to set the superiority and privileges of one nation by suppressing other nations. Nationalism rejects friendly collaboration and mutual help between nations.”⁵⁹ In fact, Putin’s

[macron/2018/11/12/speech-by-mr-emmanuel-macron-president-of-the-republic-commemoration-of-the-centenary-of-the-armistice-arc-de-triomphe](https://www.kyivpost.com/article/opinion/op-ed/serhiy-kvit-ukraine-in-the-struggle-for-independence-in-the-age-of-post-truth.html)> accessed 23 July 2022.

⁵⁷ *ibid* (n 51) 148

⁵⁸ Serhiy Kvit, 'Ukraine in the struggle for independence in the age of post-truth' (Kyiv Post 13 June 2019) <<https://www.kyivpost.com/article/opinion/op-ed/serhiy-kvit-ukraine-in-the-struggle-for-independence-in-the-age-of-post-truth.html>> accessed 25 July 2022

⁵⁹ Б С Шульженко, И В Хамазюк, В Т Данько, *Украинские буржуазные националисты* (B S Shuljenko, I V Khamaziuk, V T Danko *Ukrainian Bourgeois Nationalists*) (Высшая школа КГБ при Совете Министров СССР им. Ф. Э. Дзержинского, Москва, 1963) 83

rhetoric actually communicates the above-mentioned textbooks, except he does not use epithets, such as “bourgeois”, “capitalistic”, “socialistic”, and “Soviet”. It is important that Russians choose to call nationalists only those people who fight for the existence of independent national states, independent from Russia (or the Soviet Union) and see a threat in strong “friendship between peoples” in their KGB understanding: “The target of the nationalists attacking the Soviet state is within the relations between nationalities, they are trying to undermine the integrity and unity of the Soviet people by artificially warming up the nationalistic feelings.”⁶⁰ It should be noted that they considered nationalists only representatives of *certain* peoples within the USSR, first of all Ukrainians, Lithuanians, Latvians, Estonians,⁶¹ and Belarussians.⁶²

Russia has always viewed Ukrainian desire for independence as a threat to the empire in a broad sense of the word, including the Soviet Union. Given that Ukrainian national movement was a significant factor that led to the collapse of the USSR, the Kremlin has systemically and insistently tried to cast a shade on the Ukrainian nationalist movement spreading a distorted

⁶⁰ Я И Оловянников и другие, *Особенности борьбы советской контрразведки с идеологической диверсией зарубежных буржуазно-националистических организаций и подрывной деятельностью враждебных националистических элементов* (Y I Oloviannikov and others, *Specific Features of the Struggle of the Soviet Counter-Intelligence with Ideological sabotage of Foreign Bourgeois Nationalistic Organizations and the Acts of Subversion of Enemy Nationalistic Elements*) (Высшая краснознамённая школа КГБ при Совете Министров СССР им. Ф. Э. Дзержинского, Москва, 1978) 63.

⁶¹ М И Гришунов и другие, *Литовские, латышские и эстонские буржуазные националисты* (M I Grishunov and others, *Lithuanian, Latvian, and Estonian Bourgeois Nationalists*) (Высшая школа КГБ при Совете Министров СССР, Москва, 1961).

⁶² В М Бойченко, П П Ерёмин Белорусские буржуазные националисты (V M Boychenko, P P Yeregin, *Belorussian Bourgeois Nationalists*) (Высшая краснознамённая школа КГБ при Совете Министров СССР, Москва, 1957).

concept of it as if it was the Nazi movement. Actually, the Soviet propaganda blamed the Ukrainian patriots for being Nazis. The logic is as follows: a person who is a Ukrainian patriot and wants Ukraine to be an independent state is a nationalist, and nationalists are Nazis. Propagandists do not care that “nationalist” and “the Nazi” are totally different notions, taking advantage of the similarity of the words which sound almost identical in Russian: ‘nazionalizm’ and ‘nazizm’. For Russians the root of these words is the same: ‘nazi’.

Several days after Bucha had been liberated, while the whole world saw the atrocities that the Russian army committed there, in Russia the article entitled *What Russia Must Do with Ukraine* was published. It explicitly says that the Ukrainian nationalists is the Nazi movement, and “the burden of the war” is the punishment for it.⁶³ This article was published in one of the main Russian governmental media, which indicates that the publication represents the politics of the Russian state.

In Putin’s speeches one can see his final aim of subduing Ukraine, take it back under full control of Russia and then correct “Lenin’s mistake” and deprive Ukraine of any signs of statehood. Just as Stalin corrected this “mistake” in the first half of the 20th century, Putin under the disguise of “denazification” aims to destroy the nationally conscious, patriotic people of Ukraine who are fighting for their right of self-determination, and independence of the Ukrainian state. In fact, “denazification” of Ukraine is its “depatriotization” with further “destatification”.

⁶³ Тимофей Сергейцев, ‘Что Россия должна сделать с Украиной’ (Timofey Sergeutsev, ‘What Russia Must Do with Ukraine’ (РИА Новости 03 April 2022) <<https://ria.ru/20220403/ukraina-1781469605.html>> accessed 3 May 2022

In Putin's mind only a small number of Ukrainians may have been ready to fight against Russia's invasion. However, he was wrong, and the Ukrainian nation, including people of various origins and backgrounds, many of whom are Russian speakers, rose to defend the Ukrainian state. Having understood this, the Russian leadership did not stop, but broadened their goals. They now aim to destroy all those Ukrainians who do not want to be a part of the Russian world.

4.3. Destruction of cultural heritage as evidence of intent to destroy the nation

Raphael Lemkin, the author of the term genocide, years before he coined the name for the crime against groups, urged the Fifth International Conference for the Unification of Criminal Law, convened under the auspices of the League of Nations, to criminalize crimes of barbarity and vandalism. The latter, as the reference to the name of the German tribe from ancient times suggests, was a crime against cultural heritage belonging to a specific group of people. A decade after the Conference, Lemkin made vandalism an integral part of his concept of genocide. Thus, while enumerating the domains in which genocide may occur, he mentioned the cultural field, commenting that it may take the form of "prohibiting or destroying cultural institutions and cultural activities."⁶⁴ Lemkin believed that education in the liberal arts was purposefully substituted with vocational education "in order to prevent humanistic thinking" which was feared by the occupants because it promoted "national thinking".⁶⁵

⁶⁴ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, and Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944), p. xii, cited by Edward C. Luck, *Cultural Genocide and the Protection of Cultural Heritage*, available at: <https://www.getty.edu/publications/occasional-papers-2/>

⁶⁵ Ibid.

The Convention on the Prevention and Punishment of the Crime of Genocide does not embrace Lemkin's concept in its entirety. It omits to mention the cultural dimension of genocide and instead sets the premises for the narrow interpretation of the term. Therefore, only acts that are aimed at the physical destruction of the group may qualify as a crime of genocide.

International criminal courts and their statutes mostly followed the restrictive, Convention-based reading of the term genocide. However, even accepting that paradigm, the international courts found space for taking into account the attacks on cultural heritage, though not as acts of genocide per se. In *Krstic* the ICTY observed that "where there is physical or biological destruction there are often simultaneous attacks on the cultural and religious property and symbols of the targeted group as well, attacks which may legitimately be considered as evidence of an intent to physically destroy the group."⁶⁶ This conclusion was later endorsed by the ICJ in *Bosnia and Herzegovina v. Serbia and Montenegro*⁶⁷ and *Croatia v. Serbia*⁶⁸.

The Office of the Prosecutor of the ICC in its Policy on Cultural Heritage also took note of the significance of the attacks on cultural heritage as evidence of genocidal intent.⁶⁹ The Policy stresses that encroachments on cultural heritage may take the form of the attacks on buildings that hold cultural significance for the targeted group "occurring simultaneously with other acts targeting protected groups."⁷⁰ This brings us back to Lemkin who neatly pointed out that

⁶⁶ *Prosecutor v Krstic* (Judgment) IT-98-33-T (2 August 2001) [580]

⁶⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) Judgment 26 February 2007 [344]

⁶⁸ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*) Judgment 3 February 2015 [390].

⁶⁹ Policy on Cultural Heritage (Office of the Prosecutor of the International Criminal Court) <<https://www.icc-cpi.int/sites/default/files/itemsDocuments/2021-03-22-otp-draft-policy-cultural-heritage-eng.pdf>> [79]

⁷⁰ *Ibid* [78]

“genocide has two phases: one, the destruction of the national pattern of the oppressed group, the other, the imposition of the national pattern of the oppressor.”⁷¹ Destruction of cultural heritage is phase one. It is often followed by cultural assimilation and denial of the cultural distinctiveness of the oppressed group.

The first months of the full-fledged Russian war against Ukraine accommodated both phases of the cultural dimension of genocide. As it's highlighted in the Explanatory Note to the Declaration of the Verkhovna Rada, Ukrainian historical and fiction literature which does not fit the Kremlin vision of Ukraine was confiscated in the libraries of the temporarily occupied territories of Luhansk, Donetsk, Chernihiv and Sumy regions. It was reported that the Russian military police had a list of author's names, among them are Mazepa, Petliura, Bandera, Shukhevych, Chornovil, whose books should have been confiscated or immediately destroyed.

During the armed conflict, the Russian Federation's armed forces targeted Ukrainian museums, historical monuments, and places of worship that are of special significance for the self-image of the Ukrainian nation. On 20 August 2022, UNESCO stated that 179 cultural objects including 77 religious sites, 34 historical buildings, 13 museums and 17 monuments, and 9 libraries were completely or partially destroyed as a result of war. This list is not full as some data is not verified yet.⁷² According to the preliminary estimates of the Ukrainian Cultural

⁷¹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, and Proposals for Redress* (Washington, DC: Carnegie Endowment for International Peace, 1944) 79 cited by Edward C. Luck, *Cultural Genocide and the Protection of Cultural Heritage* (J. Paul Getty Trust Occasional Papers in Cultural Heritage Policy Number 2 2018) <<https://www.getty.edu/publications/occasional-papers-2/>>

⁷² UNESCO, 'Damaged cultural sites in Ukraine verified by UNESCO' <<https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>> accessed 19 June 2022

Foundation, 150 cultural objects were damaged or destroyed as of this date.⁷³ On 18 April 2022, the Ukrainian Ministry of Culture stated that the number of damaged cultural objects is more than 200.⁷⁴ Many of them, like Hryhoriy Skovoroda Literary Memorial Museum, Sviatohir Lavra Church, Memorial for the Victims of Totalitarianism, historic buildings in the ancient city of Chernihiv to name a few, were targeted without any visible military necessity.

Switching to Lemkin's second phase, the Russian Federation occupying forces replace the signs with the names of the cities written in Ukrainian with the Russian ones; ban the use of the Ukrainian language and Ukrainian-language books in education in favour of the Russian language and Russian books; pressure schoolteachers to stick to the Russian educational program and ignore such subjects from the schools' curriculum as Ukrainian language, literature and history altogether; and bring Russian teachers to the occupied territories⁷⁵.

These actions vividly evidence the existence of the discriminatory intent of targeting artifacts and practices that attest to the existence of the distinct Ukrainian culture, language, and history. As it was commented by international courts, the existence of such discriminatory intent against the tangible cultural heritage of the national group may evince genocidal intent. The embracement of Lemkin's idea about the cultural domain of genocide, however, must go even

⁷³ Ukrainian Cultural Fund, 'Mapa kul'turnykh vtrat' (The map of cultural losses) <<https://uaculture.org/culture-loss/>> accessed 19 June 2022

⁷⁴ Ministry of Culture website, 'Destroyed Cultural Heritage of Ukraine' <<https://culturecrimes.mkip.gov.ua/>> accessed 19 June 2022

⁷⁵ Русифікація українських дітей. РФ планує звозити до Херсонської та Запорізької областей вчителів із Новосибірська (Russification of Ukrainian children. The Russian Federation plans to bring teachers from Novosibirsk to Kherson and Zaporizhzhia regions) (Novoie Vremia, 20 June 2022) <<https://nv.ua/ukr/world/geopolitics/rosiya-hoche-zvoziti-do-hersonskoj-ta-zaporizkoji-oblastey-vchiteliv-iz-novosibirska-ostanni-novini-50250965.html>> accessed on 28 July 2022

further. Discriminatory attacks on the intangible heritage of the group, which includes language, history, education traditions, etc., should be equally regarded as a manifestation of genocidal intent. The enumerated above policy of suppression of Ukrainian culture on the occupied territories attests to the existence of the genocidal intent in equal measure to attacks on Ukrainian cultural institutions.

5. Genocidal acts and further evidence of intent to destroy

The destruction of the Ukrainian nation by Russia has been pursued through commission of such prohibited acts within the meaning of the crime of genocide as killing; causing serious bodily or mental harm; deliberately inflicting conditions of life aimed at physical destruction of Ukrainians; and forcibly transferring Ukrainian children to Russia or territories occupied by it.

The deliberate, systematic and largescale character of these acts committed by Russian forces in Ukraine, coupled with the general context, the public statements of Russian leadership, and broadcasts and publications by Russian state-owned media, display the genocidal intent to physically destroy Ukrainians as a national group.

According to the ICJ, “the characterization of the [material] acts [of the crime of genocide] and their mutual relationship can contribute to an inference of intent.”⁷⁶ Indeed, in *Karadzic*, the ICTY confirmed that the genocidal intent can be inferred from “the general context, the scale of atrocities, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or

⁷⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), Judgment, I.C.J. Reports 2015, para. 130

policy.”⁷⁷ As W. Schabas, the prominent expert on the crime of genocide notes, “[genocidal] intent is a logical deduction that flows from evidence of the material acts.”⁷⁸

In assessing whether the intent to destroy a protected group is present, all the available evidence must be taken together “instead of considering separately whether an accused intended to destroy a protected group through each of the prohibited acts of genocide.”⁷⁹ Finally, individual war crimes and crimes against humanity can, taken together, amount to a crime of genocide “if they are part of a wider pattern of attack that is aimed at destroying a [protected] group.”⁸⁰

5.1. Killings and causing serious bodily or mental harm

The acts constitutive of the crime of genocide are not limited to physical extermination of the members of the protected group by killing. Genocide can also be committed by inflicting serious bodily or mental harm, in particular through torture, inhuman treatment and rape. In *Gacumbitsi*, the ICTR confirmed that evidence of genocidal intent can be inferred from “the physical targeting of the group or their property; the use of derogatory language toward members of the targeted group; the weapons employed and the extent of bodily injury; the methodical way of planning, the systematic manner of killing.”⁸¹

Since the very first hours of Russia’s full-scale invasion in Ukraine, Russian military forces engaged in a campaign of wilful killings and deliberate targeting of Ukrainians. UN reports alleged hundreds of intentional and arbitrary killings of civilians by the Russian forces in

⁷⁷ *Prosecutor v Karadžić* (Judgment) IT-95-5/18-T (24 March 2016) § 550

⁷⁸ William A. Schabas, *Genocide in International Law* (CUP, 2nd, 2009) 264

⁷⁹ *Prosecutor v Stakić* (Judgment) IT-97-24-A (22 March 2006) § 55

⁸⁰ Elisa von Joeden-Forgey, 'The Ten Patterns of Genocide', Lemkin Institute for Genocide Prevention (2022) <https://www.lemkininstitute.com/_files/ugd/9bc553_dae7246a234442b69519064ac19853a8.pdf> accessed 15 July 2022

⁸¹ *Prosecutor v Gacumbitsi* (Judgment) ICTR-2001-64-A (7 July 2006) § 40

Ukraine.⁸² The large number of victims, the gravity of the inflicted violence, the deliberate and repetitive character of killings accompanied by hate speech indicate the existence of genocidal intent.

Bucha, Borodyanka, Hostomel, Irpin, and Vorzel located in the Kyiv region are only some of the settlements that witnessed mass executions, enforced disappearance, torture and rape of Ukrainians.⁸³ As of mid-April, the Ukrainian authorities identified 900 civilians killed during Russian occupation of the settlements in the Kyiv region in March 2022.⁸⁴ 95% of the victims were shot with sniper rifles or small arms⁸⁵ which suggests deliberate targeting and wilful killing.

A month later, it was reported that more than 1,000 bodies of civilians were recovered in Bucha district alone.⁸⁶ A Ukrainian senior police officer stated that 650 civilians were executed by

⁸² UNCHR, 'The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022' (29 June 2022) § 80

<<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>> accessed 15 July 2022

⁸³ Amnesty International, 'Ukraine: Russian forces extrajudicially executing civilians in apparent war crimes – new testimony' (7 April 2022) <<https://www.amnesty.org/en/latest/news/2022/04/ukraine-russian-forces-extrajudicially-executing-civilians-in-apparent-war-crimes-new-testimony/>> accessed 15 July 2022

⁸⁴ 'Russian military killed about 900 civilians in Kyiv region - police' UKRINFORM (15 April 2022) <<https://web.archive.org/web/20220421062235/https://www.ukrinform.net/rubric-ato/3458498-russian-military-killed-about-900-civilians-in-kyiv-region-police.html>> accessed 15 July 2022

⁸⁵ 'Russian military killed about 900 civilians in Kyiv region - police' UKRINFORM (15 April 2022) <<https://web.archive.org/web/20220421062235/https://www.ukrinform.net/rubric-ato/3458498-russian-military-killed-about-900-civilians-in-kyiv-region-police.html>> accessed 15 July 2022

⁸⁶ Sarah Rainsford, 'Ukraine: The children's camp that became an execution ground' BBC (16 May 2022) <<https://www.bbc.com/news/world-europe-61442387>> accessed 15 July 2022

shooting.⁸⁷ Many bodies bore signs of torture and bullet wounds.⁸⁸ Some bodies found in Bucha were found kneeling with heads down and hands bound behind their backs,⁸⁹ which also indicates wilful killing and executions. Human Rights Watch reports that in Bucha Russian forces went door to door “hunting Nazis”.⁹⁰ Given that Russian propaganda uses the label “Nazi” to refer to any Ukrainian who identifies himself or herself as Ukrainian and supports the cause of the Ukrainian state,⁹¹ the Russian forces were targeting civilians in Bucha precisely for their belonging to the Ukrainian nation. According to the US intelligence, before the invasion, Russian authorities drew lists of Ukrainian activists who were supposed “to be killed or sent to camps”,⁹² which suggests the pre-planned character of Russia’s persecution of Ukrainians.

⁸⁷ Sarah Rainsford, 'Ukraine: The children's camp that became an execution ground' BBC (16 May 2022)

<<https://www.bbc.com/news/world-europe-61442387>> accessed 15 July 2022

⁸⁸ Human Rights Watch, 'Ukraine: Russian Forces' Trail of Death in Bucha' (21 April 2022)

<<https://web.archive.org/web/20220421062141/https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>> accessed 15 July 2022

⁸⁹ Sarah Rainsford, 'Ukraine: The children's camp that became an execution ground' BBC (16 May 2022)

<<https://www.bbc.com/news/world-europe-61442387>> accessed 15 July 2022

⁹⁰ Human Rights Watch, 'Ukraine: Russian Forces' Trail of Death in Bucha' (21 April 2022)

<<https://web.archive.org/web/20220421062141/https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>> accessed 15 July 2022

⁹¹ See “*Denazification*” as a disguise for genocidal intent above.

⁹² ‘Russia is creating lists of Ukrainians ‘to be killed or sent to camps’, US claims’ (21 April 2022)

<https://www.theguardian.com/world/2022/feb/21/us-claims-russia-creating-lists-of-ukrainians-to-be-killed-or-sent-to-camps-report>

According to independent experts, executions of civilians in Bucha may indicate a pattern of atrocities committed by Russian forces in occupied territories.⁹³ It is reported that most of the victims of murder and executions by Russian forces are Ukrainian civilian men,⁹⁴ while Ukrainian women are subjected to rape and sexual violence.⁹⁵ In July 2022, the Special Representative of the UN Secretary General on Sexual Violence in Conflict, Pramila Patten, stated that the UN had received reports about 150 cases of sexual violence allegedly committed by the Russian military forces in Ukraine, which according to her was only “extreme tip of the iceberg.”⁹⁶ According to the Lemkin Institute for Prevention of Genocide, mass murder of

⁹³ New Lines Institute for Strategy and Policy, Raoul Wallenberg Centre for Human Rights, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) at 22 <<https://newlinesinstitute.org/wp-content/uploads/An-Independent-Legal-Analysis-of-the-Russian-Federations-Breaches-of-the-Genocide-Convention-in-Ukraine-and-the-Duty-to-Prevent-1-2.pdf>> 15 July 2022

⁹⁴ Human Rights Watch, 'Ukraine: Russian Forces' Trail of Death in Bucha' (21 April 2022) <<https://web.archive.org/web/20220421062141/https://www.hrw.org/news/2022/04/21/ukraine-russian-forces-trail-death-bucha>> accessed 15 July 2022; UNCHR, 'The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022' (29 June 2022) § 80 <<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>> accessed 15 July 2022

⁹⁵ Melanie O'Brien and Noelle Quenivet, 'Sexual and Gender-Based Violence against Women in the Russia-Ukraine Conflict' (EJIL: Talk! 8 June 2022) <<https://www.ejiltalk.org/sexual-and-gender-based-violence-against-women-in-the-russia-ukraine-conflict/>> accessed 15 July 2022; Laurel Wamsley, 'Rape has reportedly become a weapon in Ukraine. Finding justice may be difficult' *NPR* (30 April 2022) <<https://www.npr.org/2022/04/30/1093339262/ukraine-russia-rape-war-crimes?t=1657916477400>>

⁹⁶ 'UN receives over 150 reports of rape committed by Russian troops in Ukraine - envoy', UKRINFORM <<https://www.ukrinform.net/rubric-ato/3535542-un-receives-over-150-reports-of-rape-committed-by-russian-troops-in-ukraine-envoy.html>> accessed 25 July 2022. For a more detailed report on conflict-related sexual

military-aged men in combination with atrocities committed against women and children represent the most common form of genocide.⁹⁷ Indeed, the ICTY found in *Krstić* that mass execution of military-aged Bosnian Muslim men by Bosnian Serb forces against the backdrop of forced transfer of Bosnian Muslim women, children and elderly amount to a crime of genocide.⁹⁸

In addition to executions and killings, the evidence of torture, inhuman and degrading treatment and of enforced disappearance were found in at least 17 villages and small towns of Kyiv and Chernihiv regions.⁹⁹ It is likely that the same, if not more serious, situation persists in the territories occupied by the Russian forces. Indeed, numerous cases of torture and ill-treatment are reported to be committed by Russian forces in the southern regions of Ukraine occupied by Russian.¹⁰⁰ According to the World Organisation Against Torture, the torture methods

violence in Ukraine, see UNCHR, 'The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022' (29 June 2022) §§ 96-102

⁹⁷ Elisa von Joeden-Forgey, 'The Ten Patterns of Genocide', Lemkin Institute for Genocide Prevention (2022) <https://www.lemkininstitute.com/_files/ugd/9bc553_dae7246a234442b69519064ac19853a8.pdf> accessed 15 July 2022

⁹⁸ *Prosecutor v Krstić* (Judgment) IT-98-33-T (2 August 2001) § 595

⁹⁹ Human Rights Watch, 'Ukraine: Executions, Torture During Russian Occupation' (18 May 2022) <<https://www.hrw.org/news/2022/05/18/ukraine-executions-torture-during-russian-occupation>> 15 July 2022; World Organisation Against Torture, 'Ukraine: killings, kidnappings and torture of civilians in territories under Russian control' (6 May 2022) <<https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>> accessed 15 July 2022

¹⁰⁰ Human Rights Watch, 'Ukraine: Torture, Disappearance in Occupied South' (22 July 2022) <<https://www.hrw.org/news/2022/07/22/ukraine-torture-disappearances-occupied-south>> accessed 25 July 2022

employed are “severe beatings, disproportionate and punitive use of tasers, threats of executions and mock executions.”¹⁰¹

These acts of torture are apparently carried out with a discriminatory intent to punish those suspected of simple allegiance to Ukraine, support for its territorial integrity, and past affiliation with Ukrainian armed forces.¹⁰² That any expression of support for and affiliation with the Ukrainian nation and state is punished by torture, and is apparently done so on the basis of information provided by the Russian intelligence service,¹⁰³ indicates the existence of a policy and plan to suppress the Ukrainian identity of the population in the occupied territories.

Finally, Russian forces have been systematically and deliberately targeting the civilian population of Ukraine. On 16 March 2022, the Russian forces bombed a theatre in Mariupol where hundreds of civilians were sheltering. Amnesty International’s investigation established that the theatre was deliberately bombed by the Russian forces despite of the fact that it was clearly recognizable as a civilian object.¹⁰⁴ Often the Russian military deliberately attacked

¹⁰¹ World Organisation Against Torture, 'Ukraine: killings, kidnappings and torture of civilians in territories under Russian control' (6 May 2022) <<https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>> accessed 15 July 2022

¹⁰² World Organisation Against Torture, 'Ukraine: killings, kidnappings and torture of civilians in territories under Russian control' (6 May 2022) <<https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>> accessed 15 July 2022

¹⁰³ World Organisation Against Torture, 'Ukraine: killings, kidnappings and torture of civilians in territories under Russian control' (6 May 2022) <<https://www.omct.org/en/resources/statements/ukraine-killings-kidnappings-and-torture-of-civilians-in-territories-under-russian-control>> accessed 15 July 2022

¹⁰⁴ Amnesty International, 'Ukraine: “Children”: The attack on the Donetsk Regional Academic Drama Theatre in Mariupol, Ukraine' (30 June 2022) <<https://www.amnesty.org/en/documents/eur50/5713/2022/en/>> accessed 17 July 2022

civilians evacuating on foot,¹⁰⁵ buses¹⁰⁶ or private vehicles bearing the sign “children”.¹⁰⁷ The attack on Kramatorsk train station where 4 000 civilians, mostly women and children were waiting to evacuate from the Donetsk Region, is another grave example of attacking evacuees.¹⁰⁸ 59 civilians, including 7 children died and more than 100 civilians were injured as the result of the attack.¹⁰⁹ Furthermore, repeated instances of indiscriminate attacks resulted in deaths and serious injuries of civilians sheltering in residential homes, schools, hospitals and other civilian buildings.¹¹⁰ Amnesty International reports that Russian forces have relentlessly

¹⁰⁵ 'War in Ukraine: Lynsey Addario on witnessing Irpin mortar attack' BBC (11 March)

<<https://www.bbc.com/news/av/world-europe-60701350>> accessed 17 July 2022

¹⁰⁶ 'Ukraine Says Seven Killed In Russian Attack On Evacuees' RFE/RL's Ukrainian Service (15 April 2022)

<<https://www.rferl.org/a/ukraine-2557-evacuation-vereshchuk/31804524.html>> accessed 17 July 2022

¹⁰⁷ 'Civilian deaths: Aerial video shows escaping father killed in Ukraine' BBC (26 March 2022)

<<https://www.bbc.com/news/av/world-europe-60839787>> accessed 17 July 2022; Anna Myroniuk, 'Russian soldiers kill mother of two as she drives family to safety' The Kyiv Independent (18 March 2022)

<<https://kyivindependent.com/national/russian-soldiers-shoot-dead-mother-of-two-as-she-drives-family-to-safety>> accessed 17 July 2022; Human Rights Watch, 'Ukraine: Russian Forces Fired On Civilian Vehicles' (2 May 2022) <<https://www.hrw.org/news/2022/05/02/ukraine-russian-forces-fired-civilian-vehicles>> accessed 17 July 2022

¹⁰⁸ 'Kramatorsk station attack: What we know so far' BBC (9 April 2022) <<https://www.bbc.com/news/world-europe-61036740>> accessed 17 July 2022; Caroline Vakil, 'Death toll in Ukraine train station bombing reaches 59, including 7 children' The Hill (14 April 2022) <<https://thehill.com/policy/international/3269176-death-toll-in-ukraine-train-station-bombing-reaches-59-including-7-children/>> accessed 17 July 2022

¹⁰⁹ *ibid*

¹¹⁰ Amnesty International 'Russian military commits indiscriminate attacks during the invasion of Ukraine' (25 February 2022) <<https://www.amnesty.org/en/latest/news/2022/02/russian-military-commits-indiscriminate-attacks-during-the-invasion-of-ukraine/>> accessed 17 July 2022; Human Rights Watch, 'Ukraine: Deadly Attacks Kill, Injure Civilians, Destroy Homes' (18 March 2022)

<<https://www.hrw.org/news/2022/03/18/ukraine-deadly-attacks-kill-injure-civilians-destroy-homes>> accessed

and indiscriminately bombarded residential buildings in Kharkiv, Ukraine's second biggest city since the start of the full-fledged invasion causing at least 600 deaths and 1200 injuries among civilians.¹¹¹ The grave, widespread, persistent and systematic nature of the crimes committed against the civilian population of Ukraine serve as further evidence of Russia's intent to destroy the Ukrainian nation.

5.2. Deliberately inflicting conditions of life aimed at the physical destruction of the Ukrainian nation

Russian leadership has repeatedly declared its denial of Ukrainians' right to exist as a separate and independent nation. In order to achieve this goal, in addition to the direct killing of Ukrainians, other systematic actions are used to create conditions calculated to bring about physical destruction of the Ukrainian nation in the future. Several practical forms of this Russian activity should be emphasized here.

Since the beginning of the full-scale invasion in February 2022, Russians systematically targeted, including by means of enforced disappearance pro-Ukrainian leaders in local communities. There are numerous instances of causing serious physical and mental harm to the

17 July 2022; Human Rights Watch, 'Ukraine: Russian Strikes Killed Scores of Civilians in Chernihiv' (10 June 2022) <<https://www.hrw.org/news/2022/06/10/ukraine-russian-strikes-killed-scores-civilians-chernihiv>> accessed 17 July 2022; UNCHR, 'The situation of human rights in Ukraine in the context of the armed attack by the Russian Federation, 24 February to 15 May 2022' (29 June 2022) <<https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>> accessed 15 July 2022

¹¹¹ Amnesty International, 'Ukraine: "Anyone can die at any time": Indiscriminate attacks by Russian forces in Kharkiv, Ukraine' (13 June 2022) <<https://www.amnesty.org/en/documents/eur50/5682/2022/en/>> accessed 17 July 2022

representatives of Ukrainian public authorities and local self-government,¹¹² representatives of non-governmental organizations and other local activists, journalists, clergy and other authoritative figures in Ukrainian society.¹¹³ Abduction of pro-Ukrainian leaders and activists is a common practice in Russian-occupied territories.¹¹⁴ This aims not only to intimidate specific activists, but also to create an environment where any manifestation of Ukrainian identity will be impossible. This poses a real threat to the development and even the very existence of Ukrainian civil society.¹¹⁵ According to well-established practice of *ad hoc* tribunals, targeting of community leaders testifies to the existence of genocidal intent.¹¹⁶

It is also important to stress the numerous facts that indicate the creation of conditions of life calculated to physically destroy the population of Ukraine. Besieging of settlements, destruction of civilian infrastructure electricity, water and heat supply etc.) in the areas under siege (combined with blocking of humanitarian aid and obstructing the evacuation of civilians

¹¹² Kidnapped Ukrainian mayor freed in 'special operation,' officials say (21 April 2022)

<https://abcnews.go.com/International/kidnapped-ukrainian-mayor-freed-special-operation-ukrainian-government/story?id=83486933>

¹¹³ Russia uses abductions to intimidate Ukrainians in occupied territories (21 April 2022)

<https://www.france24.com/en/europe/20220329-russian-forces-are-abducting-ukrainians-in-occupied-territories>

¹¹⁴ Russia uses abductions to intimidate Ukrainians in occupied territories (21 April 2022)

<https://www.france24.com/en/europe/20220329-russian-forces-are-abducting-ukrainians-in-occupied-territories>

¹¹⁵ 'International institutions must protect Ukrainians from abductions and executions', Ukrainian SCOs (21 April 2022) <https://khpg.org/en/1608810199>; Enforced disappearances and the creation of "republics" on the territory occupied by the Russian armed forces (21 April 2022) <https://truth-hounds.org/en/enforced-disappearances-and-the-creation-of-republics-on-the-territory-occupied-by-the-russian-armed-forces/>

¹¹⁶ Prosecutor v. Krstić (Appeals Chamber Judgment) IT-98-33-A (19 April 2004) [8-9]; Prosecutor v. Jelisić (Judgment) IT-95-10-T (14 December 1999) [82]; Prosecutor v. Tolimir (Judgment) IT-05-88/2-T (12 December 2012) [749]

deprives the population of access to basic items indispensable for survival, namely water, food, heat in cold season, medicines and medical care.¹¹⁷ Some of the Russian bombing tactics and targets can be labelled as what some scholars describe as 'urbicide'.¹¹⁸ This is designed to inflict great suffering and ultimately achieve the physical destruction of civilians in many settlements in Ukraine. The besieging of such large cities as Mariupol and Chernihiv testifies to the intent of the Russian Federation to achieve the physical destruction of at least part of the Ukrainian nation.

A number of actions of the Russian Federation are aimed at inflicting conditions of life calculated to bring about gradual destruction of the Ukrainian nation by undermining its economic capacity and security, which is manifested in the destruction of vital infrastructure and blocking the normal operation of various economic facilities.¹¹⁹ There are a number of examples of damaging granaries in the occupied territories and territories where active hostilities are taking place as well as those located in the territory controlled by the Ukrainian government. Russian forces have also been using weapons with incendiary effects to set crop fields on fire. The sowing campaign in 2022 was put at serious risk, the work of agricultural

¹¹⁷ High Commissioner for Human Rights: High Numbers of Civilian Casualties in Ukraine Raise Concerns that Attacks by Russia are not Complying with International Humanitarian Law (21 July 2022)

<https://www.ohchr.org/en/press-releases/2022/07/high-commissioner-human-rights-high-numbers-civilian-casualties-ukraine>

¹¹⁸ Russia's Campaign of Urbicide in Ukraine (21 July 2022) <https://newlinesinstitute.org/power-vacuums/russias-campaign-of-urbicide-in-ukraine/>

¹¹⁹ Direct damage caused to Ukraine's infrastructure during the war has reached over \$94 billion (21 April 2022) <https://kse.ua/about-the-school/news/direct-damage-caused-to-ukraine-s-infrastructure-during-the-war-has-reached-over-94-billion/>

machinery was constantly under the threat of bombing, and many land plots and fields have been mined by Russians.

Another tactic used by Russia is purposeful destruction of energy facilities, in particular destroying electricity, fuel and gas infrastructure. Russia attacked several oil refineries and a large number of oil storage facilities throughout Ukraine, even in remote regions in Western Ukraine. This created a severe shortage of gasoline and diesel fuel which among other things put at high risk the implementation of the sowing campaign.

Russia's actions to block sea trade routes have made the transportation of Ukrainian goods such as steel, fertilizers, neon gas, grain, sunflower oil and other agricultural products impossible. Moreover, Russians are stealing Ukrainian products and selling them for their own benefit.¹²⁰ Russia's actions severely undermine Ukraine's economic potential, its access to markets and the prospects for the development of maritime trade in the future.

While it may be difficult to calculate the exact environmental damage caused by the Russian Federation in Ukraine, the first studies¹²¹ and the monitoring carried out by the Ukrainian Government¹²² proves that environmental threats of Russia's war are very serious. It is primarily about the negative environmental impact of constant bombing, mining, damage to

¹²⁰ Tracking where Russia is taking Ukraine's stolen grain (27 June 2022) <https://www.bbc.com/news/61790625>

¹²¹ Malko, Lyudmila & Nikolaenko, Dmitry. (2022). Military ecology: novelties of 2022 and assessment of the environmental consequences of Russia's aggression against Ukraine. 10.13140/RG.2.2.20594.38087.

¹²² Briefing on the environmental damage caused by Russia's war of aggression against Ukraine (16-22 June 2022) <https://mepr.gov.ua/en/news/39348.html>

protected areas and protected ecosystems in the areas of active hostilities, in particular Kharkiv, Sumy, Donetsk, Luhansk, Zaporizhia, Kherson and Mykolaiv regions.¹²³

Another dimension of the environmental impact of the Russian actions is nuclear and radiation safety threats. From the first days of full-scale military aggression, the Russian forces carried out dangerous manoeuvres in the Chernobyl Exclusion Zone¹²⁴ In fact, this facility was used by them for a massive attack on Kyiv. Furthermore, Russian forces used the Chernobyl Nuclear Power Plant sarcophagus (Shelter Structure) with a serious violation of safety standards which created a threat of nuclear contamination for the Dnipro River and large parts of Ukraine. The Zaporizhzhya Nuclear Power Plant, the largest in Europe, was under targeted fire of the Russian forces from the start and still remains under constant threat of bombing.¹²⁵ Being under the occupation of Russian forces, the premises of the Zaporizhzhya NPP are now used to store heavy weapons, missile systems and explosives.

The environmental damage caused by Russia's actions in Ukraine poses a serious threat to the health and well-being of the Ukrainian nation and its future generation. Moreover, actions of the Russian Federation described in this section are aimed at creating preconditions for the gradual impoverishment of the Ukrainian nation, imposing severe shortages of food supplies

¹²³ Eco-chronicles of the war in Ukraine: the main consequences of Russian aggression in May (01 June 2022)

<https://ecopolitic.com.ua/en/news/ekohroniki-vijni-v-ukraini-golovni-naslidki-rosijskoi-agresii-za-traven-3/>

¹²⁴ Inside Chernobyl: We stole Russian fuel to prevent catastrophe (16 June 2022)

<https://www.bbc.com/news/world-europe-61048256>; In Chernobyl's delicate nuclear labs, Russians looted safety systems (16 June 2022) <https://www.washingtonpost.com/world/2022/06/02/ukraine-chernobyl-damage-done-by-russians/>

¹²⁵ War against nature: the environmental damage of russia's full-scale invasion of Ukraine (16 June 2022)

<https://war.ukraine.ua/country-and-society/war-against-nature-the-environmental-damage-of-russia-s-full-scale-invasion-of-ukraine/>

and other vital resources indispensable for people's survival. In view of their systematic and purposeful character, these actions testify to the existence of the intent to bring about the destruction the Ukrainian nation.

5.3. Forcible transfer and russification of Ukrainian children

Modern international law recognises that genocide can be committed not only by killings and inflicting physical and psychological suffering but also by separating and isolating the children of the protected group from their families, their native environment and culture. Forcible transfer of children of the protected group to another group has, in the words of the International Law Commission, "particularly serious consequences for the future viability of a [protected] group as such."¹²⁶ According to the ICJ, the forcible transfer of children of the group to another group "can also entail the intent to destroy the group physically, in whole or in part, since it can have consequences for the group's capacity to renew itself, and hence to ensure its long-term survival."¹²⁷

Indeed, transfer and assimilation of children into a new group can result in the erasure of their identity as members of the protected group and consequently threaten the future existence of the protected group. For instance, in 2016 the Independent International Commission of Inquiry on the Syrian Arab Republic determined that the genocide against Yazidi community was committed by forced transfer and separation of Yazidi children from their families and their

¹²⁶ ILC, 'Report of the International Law Commission on the work of its 48th Session (6 May - 26 July 1996)' UN Doc A/51/10, at 46

¹²⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Croatia v. Serbia), Judgment, I.C.J. Reports 2015, para. 136

placement with ISIS fighters which led to cutting of Yazidi children from their religious community and erasure of their Yazidi identity.¹²⁸

Somewhat similarly Russia systematically engages in forcible transfer of Ukrainian children into the territories of Ukraine occupied by Russia or regions in Russia. The term “forcible transfer” has a broader meaning than resort to physical force. Forcible transfer may also take place where there is “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.”¹²⁹ Furthermore, transfer of children in the environment of fear or desperation which is inherent in the situation of armed conflict amounts to forcible transfer.¹³⁰

In June 2022, Russia itself admitted that they had transferred 330 thousand Ukrainian children to various regions of Russia.¹³¹ Russian officials have openly expressed their intent to have the transferred Ukrainian children educated in Russian language, adopted into Russian families and turned into Russian citizens.¹³² To this effect a draft law was introduced in the Russian parliament which provides for a simplified procedure for adoption of forcefully displaced

¹²⁸ Commission of Inquiry on the Syrian Arab Republic, “They Came to Destroy”: ISIS Crimes Against the Yazidis’ (15 June 2016) UN Doc A/HRC/32/CRP.2, at 62

¹²⁹ International Criminal Court (ICC), Elements of Crimes <<https://www.refworld.org/docid/4ff5dd7d2.html>> accessed 17 July 2022

¹³⁰ *Mutatis mutandis*, *Prosecutor v Akayesu* (Judgment) ICTR-96-4-T, T Ch I (2 September 1998) § 688

¹³¹ ‘Russia says more than 300,000 Ukrainian children “deported”’, *Ukrainska Pravda* (19 June 2022) <<https://www.pravda.com.ua/eng/news/2022/06/19/7353366/>> accessed 24 August 2022

¹³² ‘UN’s Bachelet concerned over Ukraine orphans ‘deported’ to Russia for adoption’ UN News (15 June 2022) <<https://news.un.org/en/story/2022/06/1120412>> accessed 17 July 2022

Ukrainian children by Russian families.¹³³ In addition, Russia has been issuing Russian birth certificates to Ukrainian children in the territories under its control.¹³⁴ The statements and actions of Russian officials indicate the intent to cut the Ukrainian children permanently from their families, national and ethnic group and thereby annihilate their Ukrainian identity. While the UN has condemned the forcible deportation and adoption of Ukrainian children in Russia,¹³⁵ international law experts point out that forcible transfer of Ukrainian children to Russia amounts to a genocidal act under Article II(e) of the Genocide Convention.¹³⁶

6. Conclusion

Russia's full-scale invasion of Ukraine on 24 February 2022 came as a shock to the world. Many still struggle to understand the reason behind Russia's destructive attack on Ukraine and its people. The Ukrainian Parliament's Declaration "On the Genocide Committed by the Russian Federation in Ukraine" adopted on 14 April 2022 and based on the draft text proposed

¹³³ 'UN's Bachelet concerned over Ukraine orphans 'deported' to Russia for adoption' UN News (15 June 2022) <<https://news.un.org/en/story/2022/06/1120412>> accessed 17 July 2022

¹³⁴ Xander Landen, 'Ukrainian babies issued Russian birth certificates as drags on', Newsweek (29 April 2022) <<https://www.newsweek.com/ukrainian-babies-issued-russian-birth-certificates-war-drags-1702206>> accessed 28 July 2022

¹³⁵ 'UN's Bachelet concerned over Ukraine orphans 'deported' to Russia for adoption' UN News (15 June 2022) <<https://news.un.org/en/story/2022/06/1120412>> accessed 17 July 2022

¹³⁶ New Lines Institute for Strategy and Policy, Raoul Wallenberg Centre for Human Rights, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) <<https://newlinesinstitute.org/wp-content/uploads/An-Independent-Legal-Analysis-of-the-Russian-Federations-Breaches-of-the-Genocide-Convention-in-Ukraine-and-the-Duty-to-Prevent-1-2.pdf>> 15 July 2022

by the authors of this article aimed to draw the world's attention to the genocidal intent motivating the Russia's war in Ukraine.

In this article the authors of the draft declaration explained the legal reasoning and historical context behind the statements on genocidal intent and acts contained in the parliamentary declaration. Most importantly, they clarify for the outside observers the true meaning of the terms “denazification”, “nazi” and “nationalism” as used by Russian official rhetoric in respect of Ukraine and Ukrainians. Russian state ideology has long perceived any manifestation of Ukrainians desire to live as a separate nation and an independent state as nationalism and nazism. The purpose of “denazification” is essentially the annihilation of Ukrainians who identify themselves as members of the independent Ukrainian nation. The authors also bring readers attention to systematic military attacks and destruction of objects of Ukrainian cultural heritage, the russification carried out through bans on Ukrainian books and language in the Ukrainian territories occupied by Russia, and the systematic and discriminatory character of the mass atrocities committed by Russian armed forces in Ukraine.

Once one understands the context and meaning of the terms employed by Russian official rhetoric to accompany the murder, torture, ill-treatment and persecution of Ukrainians, russification of Ukrainian children, and largescale destruction of Ukraine's vital infrastructure, one cannot but see the genocidal intent behind the Russia's war against Ukraine and its people. The facts described in the article, in their entirety, provide grounds to believe that the actions of the Russian Federation committed during the full-scale invasion of Ukraine are indeed aimed at the destruction of the Ukrainian nation and therefore amount to genocide.

In April and May 2022, parliaments of foreign states followed suit adopting declarations to condemn Russia's action in Ukraine as genocide. Academic voices were raised to draw the world's attention to the existence of a serious risk of genocide in Ukraine and states

concomitant obligations to act to prevent it.¹³⁷ In the authors' view, now supported by foreign parliamentarians and international academic community, sufficient evidence exists to support serious allegations of genocide being committed in Ukraine by the Russian Federation. It is now for domestic and international judicial organs, chief among them the International Criminal Court, to scrutinise these allegations and to bring those responsible for the crime of genocide to justice.

¹³⁷ See, for instance, New Lines Institute for Strategy and Policy, Raoul Wallenberg Centre for Human Rights, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) at 22 <<https://newlinesinstitute.org/wp-content/uploads/An-Independent-Legal-Analysis-of-the-Russian-Federations-Breaches-of-the-Genocide-Convention-in-Ukraine-and-the-Duty-to-Prevent-1-2.pdf>> 15 July 2022; Eugene Finkel, 'Opinion. What's happening in Ukraine is genocide. Period.' *Washington Post* (5 April 2022) https://www.washingtonpost.com/opinions/2022/04/05/russia-is-committing-genocide-in-ukraine/?fbclid=IwAR19qMNs-d449gwu-3g9ZmSuV6AmvTS27W4D_Eycu-wBuqSl8VpVMIIePUvis accessed 24 August 2022; Timothy Snyder, 'Russia's genocide handbook. The evidence of atrocity and of intent mounts' (8 April 2022) <https://snyder.substack.com/p/russias-genocide-handbook?utm_campaign=post&utm_source=direct&s=r&fbclid=IwAR34yBT5r1QDMkieZ2WJtTIhMDn0E1wnpzik9BbMKNKotMO_3jT_rg6dZPc> accessed 24 August 2022; Douglas Irvin-Erickson, 'Is Russia Committing Genocide in Ukraine?' *Opinio Juris Blog* (21 April 2022) <<https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>> accessed 24 August 2022; Kristina Hook, 'Why Russia's War in Ukraine Is a Genocide Not Just a Land Grab, but a Bid to Expunge a Nation' *Foreign Affairs* (28 July 2022) <<https://www.foreignaffairs.com/ukraine/why-russias-war-ukraine-genocide?fbclid=IwAR1fhpM0sERGYjcFESoyNnjVsg7OdOu6pO3jy3g38fVXpbo1Xvsz4wgHeBI>> accessed 24 August 2022