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DISSERTATION

GENOCIDAL INTENT TO DESTROY A NATIONAL GROUP IN WHOLE OR IN PART

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Submitted for obtaining the degree of Doctor of Philosophy.

The dissertation contains the results of the author’s original research. The use of ideas, results, and texts from other authors is properly acknowledged and referenced to their respective sources.

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ABSTRACT

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The interpretative frameworks of the law of genocide have traditionally overlooked the nuanced contextualisation of the crime’s elements application based on the identity of the protected group targeted. Since a human group and its right to exist is at the heart of the criminalisation of genocide, the interpretation of the crime’s elements – despite preserving the necessary interpretative core – inherently depends on the very identity of the targeted entity. The problem has been particularly relevant in cases of intent directed at the destruction of national groups, raising three fundamental challenges.

The first set of problematic aspects concerns the very definition of a national group in international criminal law, as well as its distinction from other groups. The discussions question whether it is necessary and desirable to single out national groups for the purposes of defining genocidal intent at all or, instead, to view all protected groups as an aggregated entity. Further complications relate to what should be the core of a national group’s definition with theories ranging from requiring shared citizenship, to national origin and national identity in the sense of membership in a nation as a complex socio-political entity. Inherently, an interconnected issue concerns the definition of a concept of a nation, *per se.*

The second category of intricate legal issues relates to the scope and direction of the required genocidal intent. In particular, they concern the question of defining the national group “in whole” contrasted with the national group “in part” as two alternative manifestations of the intent’s scope. Where the part is targeted for destruction, such a part must be substantial towards the group “in whole”. Yet, an algorithm for evaluating the

substantiality of the targeted part has traditionally been blurred and full of gray zones. Likewise, the question arises of whether intended destruction, especially in cases of targeting national groups, is limited to physical or biological destruction elimination sought or can, more broadly, also incorporate the group's social disintegration. Lastly, international legal doctrine and jurisprudence have mainly lacked a comprehensive, sequential and coherent methodology for inferring genocidal intent from indicators.

The purpose of the dissertation study is to provide a comprehensive and coherent interpretation of the law of genocide pertaining to the outlined contested issues of the definition of genocidal intent directed at the destruction of national groups "in whole" or "in part", as well as to further test their application in the context of Russian atrocities in Ukraine.

The dissertation represents a first-of-its-kind, holistic and multidisciplinary study of the special intent element in cases where national groups are targeted for destruction. The study represents a step-by-step methodology for the assessment of various layers and levels of the intent, pinpointing the gaps and inconsistencies frequently or overall missing or significantly overlooked, both in the commentaries and international jurisprudence. The study also offers ways to bridge the gaps and address the inconsistencies by evaluating various potential approaches and selecting the soundest legal interpretations for the purpose of cohesive application of the law of genocide in a systemic way. In particular, the novelty is attested by the following results distinguishing the present study from other research materials in the field of the law of genocide, international criminal law and public international law more broadly:

- The study offers a thorough overview of the approaches to delineate protected groups (labelling them as "distinctionist" and "aggregationist" based on their tendency to prefer or avoid delimitation of protected groups), weighing the benefits and drawbacks of each of them, and proposing an interpretation that avoids major legal risks and conflicts.

- The study provides the definition of national groups based on the rigorous discussion of its key characteristics, which is mainly missing in the contemporary commentaries. The study outlines the flaws in the definition of the national groups unfoundedly adopted by certain international jurisprudence, which associates membership in a national group with citizenship, instead proposing a definition linking national groups to nations. The study likewise addresses the key potential challenges and criticisms linked to this approach.
- The study presents a first-of-its-kind guidance on interpreting the meaning of the intent to destroy national groups "in whole". It contextualises the definition of the group "in whole" to all protected groups, focusing particularly on national groups, drawing on both objective factors and subjective perceptions of perpetrators and victims.
- The study lays out a comprehensive framework for evaluating the intent to destroy a national group "in part". The study provides a rigorous assessment of the substantiality requirement related to the targeted part, evaluating various approaches to the substantiality analysis proposed by the jurisprudence or implicitly stemming from it, concluding on the most sensible and well-founded one.
- The study presents a unique proposal for situating the "leadership factor" (i.e., targeting the protected group's leaders) within the methodology of intent assessment.
- The study provides for a meticulous analysis of the nature of the intended destruction required by the *mens rea* element, evaluating whether the term "to destroy" may encompass the group's social disintegration in addition to physical or biological forms of eradication sought.
- The study offers a comprehensive framework for a step-by-step evaluation of indicators relevant to the assessment of the presence of the intent to destroy national groups.
- The study supplements legal findings with the unique attempt to apply the developed framework to the factual context of the Russian atrocities in Ukraine following the 2022 full-scale invasion. Element by element, the study evaluates the scope of

underlying acts committed, the alleged targeted group, and indicators capable of both proving and disproving the existence of genocidal intent to destroy the Ukrainian national group.

- The study provides a preliminary hypothesis on the commission of the crime of genocide in Ukraine on the basis of the developed methodologies and legal theories.

The dissertation study is expected to be of substantial use for both further academic research in the field of the law on genocide and practical application by justice and civic society actors. Particularly, the dissertation study is expected to advance accountability efforts by the Ukrainian justice actors – prosecutors, judges, and investigators – by providing them with a clear methodology for the evaluation of genocidal intent in cases where targeting of the Ukrainian national group is alleged. The study is expected to assist the Ukrainian justice actors in understanding both the foundations of the *mens rea* element in general, as well as sub-elements of genocidal intent, which have to date received conflicting interpretations in both jurisprudence and legal doctrine. The findings of the study may also be of significant use and relevance to the Ukrainian civic society actors in their advocacy campaigns on the Russian atrocities in Ukraine by providing a coherent framework for the evaluation of the alleged intent behind the Russian actions.

Keywords: international law, international criminal law, criminal law, Ukraine international agreement, international crimes, genocide, clarity of the law, genocidal intent, protected groups, national group, Ukrainian nation, Russia, Ukraine, aggression, armed conflict.

АНОТАЦІЯ

Віщик М. А. Геноцидний умисел на знищення національної групи цілком або частково. – Кваліфікаційна наукова праця на правах рукопису.

Дисертація на здобуття наукового ступеня доктора філософії у галузі знань 293 "Міжнародне право" (29 – Міжнародні відносини). – Національний університет "Києво-Могилянська академія", Київ, 2026.

Практика тлумачення права стосовно геноциду традиційно не враховує різнобічні аспекти контекстуалізації елементів злочину до ідентичності конкретної захищеної групи, на яку спрямоване діяння. Оскільки людська група та її право на існування є наріжними концепціями у криміналізації геноциду, тлумачення елементів злочину – попри збереження певного інтерпретаційного незмінного ядра – невід'ємно залежитиме від ідентичності групи, що зазнає нападу. Ця проблема стає особливо актуальною у випадках умислу, спрямованого на знищення національних груп, що порушує три фундаментальні виклики.

Перша категорія проблемних аспектів стосується самого визначення національної групи в міжнародному кримінальному праві, а також її розмежування від інших груп. Дискусії виникають уже на рівні самої лише доцільності виокремлення національних груп для визначення змісту геноцидного умислу як такого або ж необхідності розглядання всіх захищених груп як сукупного явища. Подальші складнощі стосуються того, що має бути основою для визначення національної групи, з теоріями, які варіюються від вимоги спільного громадянства до національного походження та національної ідентичності в сенсі членства в нації як складному соціо-політичному утворенні. По суті, взаємопов'язане питання стосується визначення поняття нації як такої.

Друга категорія складних правових питань стосується обсягу та спрямування геноцидного умислу. Зокрема, вони стосуються питання визначення національної групи "в цілому" на противагу "частини" групи (у контексті умислу, спрямованого

на знищення групи “частково”) як двох альтернативних проявів обсягу умислу. Там, де “частина” є об’єктом знищення, слід оцінити, чи така частина є істотною відносно групи “в цілому”. Проте алгоритм оцінки істотності частини традиційно був розмитим і сповненим сірих зон. Так само виникає питання, чи обмежується знищення у контексті умислу (особливо, коли йдеться про знищення національних груп) фізичним або біологічним знищенням, чи може – у ширшому сенсі – також включати соціальну дезінтеграцію групи. Нарешті, міжнародній правовій доктрині та судовій практиці здебільшого бракує комплексної, послідовної та узгодженої методології для встановлення наявності геноцидного умислу на основі показників, що містяться у непрямих доказах.

Метою дисертаційного дослідження є надання комплексного та узгодженого тлумачення права стосовно злочину геноциду у контексті окреслених спірних питань визначення геноцидного умислу, спрямованого на знищення національних груп повністю або частково, а також подальша контекстуалізація їх застосування в контексті російських міжнародних злочинів в Україні.

Дисертаційне дослідження є першим цілісним та міждисциплінарним дослідженням такого елементу злочину геноциду як спеціальний умисел у випадках, коли національні групи є ціллю знищення. Дослідження надає покрокову методологію оцінки різних вимірів та рівнів геноцидного умислу, виявляючи прогалини та невідповідності, які часто або взагалі не аналізуються, або ж значною мірою ігноруються як у коментарях, так і в судовій практиці. Дослідження також пропонує способи подолання прогалин та усунення невідповідностей шляхом оцінки різних потенційних підходів та вибору найбільш обґрунтованих правових тлумачень з метою узгодженого застосування права щодо злочину геноциду системним чином. Зокрема, новизна підтверджується наступними результатами, які відрізняють це дослідження від інших дослідницьких матеріалів у галузі права стосовно геноциду, міжнародного кримінального права та міжнародного публічного права в ширшому сенсі:

- Дослідження пропонує ґрунтовний огляд підходів до розмежування захищених груп (позначаючи їх як “distinctionist” (заснований на відокремлені) та “aggregationist” (заснований на об’єднанні) на основі їхньої схильності віддавати перевагу або уникати поділу захищених груп), зважуючи переваги та недоліки кожного з них та пропонуючи тлумачення, що уникає основних юридичних ризиків та конфліктів.
- Дослідження надає визначення національних груп на основі ретельного обговорення їх ключових характеристик, чого переважно бракує в сучасній доктрині. Дослідження окреслює недоліки у визначенні національних груп, необґрунтовано прийнятому певною міжнародною судовою практикою, яка пов’язує членство в національній групі з громадянством, натомість пропонуючи визначення, що пов’язує національні групи з націями. Дослідження також розглядає ключові потенційні виклики та критику, пов’язані з цим підходом.
- Дослідження представляє перше у своєму роді керівництво щодо тлумачення значення умислу знищити національні групи “повністю”. Воно контекстуалізує визначення групи “повністю” для захищених груп, зосереджуючись, зокрема, на національних групах на основі як об’єктивних чинників, так і суб’єктивного сприйняття злочинців та потерпілих.
- Дослідження викладає комплексну систему для оцінки умислу знищити національну групу “частково”. Дослідження надає ретельний аналіз вимоги істотності, пов’язаної з частиною, що є об’єктом геноцидного умислу, оцінюючи різні підходи до аналізу істотності, які були запропоновані судовою практикою або неявно випливають з неї, із висновком щодо найбільш обґрунтованого варіанту.
- Дослідження пропонує визначення “фактора лідерства” (тобто спрямування діянь проти лідерів захищеної групи) та оцінює його значимість в контексті різних вимірів методології оцінки умислу.

- Дослідження передбачає ретельний аналіз характеру умислу “знищити”, що вимагається елементом *mens rea*, оцінюючи, чи може термін “знищити” охоплювати соціальну дезінтеграцію групи, а не лише фізичні або біологічні форми знищення, якого прагнуть досягнути злочинці.
- Дослідження пропонує комплексну основу для покрокової оцінки індикаторів, що стосуються оцінки наявності умислу знищити національні групи на підставі непрямих доказів.
- Дослідження доповнює правові висновки унікальною спробою застосувати розроблену правову рамку до фактичного контексту російських злочинів в Україні після повномасштабного вторгнення 2022 року. Елемент за елементом дослідження оцінює обсяг скоєних діянь, ймовірну групу, на яку спрямований умисел, та індикатори, здатні як довести, так і спростувати існування геноцидного умислу знищити українську національну групу.
- Дослідження пропонує попередню гіпотезу щодо вчинення злочину геноциду в Україні на основі розроблених методологій та правових теорій.

Очікується, що дисертаційне дослідження буде суттєво корисним як для подальших академічних досліджень у сфері права стосовно злочину геноциду, так і для практичного застосування суб’єктами правосуддя та акторами громадянського суспільства. Зокрема, дисертаційне дослідження має сприяти зусиллям українських суб’єктів правосуддя – суддів, прокурорів та слідчих – щодо притягнення винних у міжнародних злочинів до відповідальності, надаючи їм чітку методологію для оцінки геноцидного умислу у випадках, коли йдеться про напади на українську національну групу. Очікується, що дослідження допоможе українським суб’єктам правосуддя зрозуміти як основи елементу *mens rea* загалом, так і піделементи геноцидного умислу, які на сьогоднішній день отримали суперечливі тлумачення як у судовій практиці, так і в правовій доктрині. Результати дослідження також можуть бути суттєво корисними та актуальними для акторів українського громадянського суспільства в їхніх адвокаційних кампаніях щодо російських злочинів в Україні, забезпечуючи узгоджену основу для оцінки ймовірного умислу, що стоїть за діями Росії.

Ключові слова: міжнародне право, міжнародне кримінальне право, кримінальне законодавство, міжнародний договір України, міжнародні злочини, геноцид, ясність закону, геноцидний умисел, захищені групи, національна група, українська нація, Росія, Україна, агресія, збройний конфлікт.

LIST OF PUBLICATIONS OF THE CANDIDATE

List of scientific publications in which the primary research results of the dissertation are published:

1. Maksym Vishchyk, 'Construing national and Ethnic Groups under the Genocide Convention through Soviet and Russian Narratives on the Ukrainian Identities' [2024] 13 *NaUKMA Research Papers. Law* 15–25. https://doi.org/10.18523/2617-2607.2024.13.15-25.
2. Maksym Vishchyk, 'Targeting of the Protected Group's Leadership and Otherwise Representative Members as an Indicator of Genocidal Intent' [2025] 14 *NaUKMA Research Papers. Law* 19–31. https://doi.org/10.18523/2617-2607.2024.14.19-31.
3. Maksym Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' [2025] 11 *Kyiv-Mohyla Law and Politics Journal* 91–109. https://doi.org/10.18523/2414-9942.11.2025.91-109.
4. Maksym Vishchyk, 'Indicators Relevant for the Evaluation of the Alleged Genocidal Intent to Destroy a National Group' [2025] 92(5) *Uzhhorod National University Herald. Series: Law* 102–108. https://doi.org/10.24144/2307-3322.2025.92.5.15.

List of scientific publications confirming dissemination of the dissertation findings:

1. Conference "Development of the Legal System of Ukraine in the Context of European Integration Aspirations" (Lutsk National Technical University, 10 December 2025), Statements titled "Methodology for Assessing the Alleged Genocidal Intent to Destroy the Ukrainian National Group in the Russian War against Ukraine" published in the "Development of the Legal System of Ukraine in the Context of European Integration Aspirations: Materials of the 1st All-Ukrainian Academic and Practical Conference for Young Scientists with International Participation, Dedicated to the Week of Law" (Lutsk, 10 December 2025)" [ed.: L.L. Kovalchuk et al.]. – Lutsk, 2026. – 531 p.

2. Roundtable “Crimes of the Russian Federation During the Aggression against Ukraine in Light of the Rome Statute of the International Criminal Court”, Presentation on the topic “Issues of Justice for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations Between Ukraine and Russia and the Potential Future Peace Agreement” (National University of “Kyiv-Mohyla Academy” and Ukrainian Free University (Germany), 14 July 2025), Statements titled “Accountability for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations between Ukraine and Russia and the Potential Future Peace Agreement” [2025] 26 *Scientific collection of the Ukrainian Free University* 22-33, ISBN: 978-3-928687-90-4.

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LIST OF ABBREVIATIONS

ATO	Anti-terrorist Operation
ECtHR	European Court of Human Rights
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide
ICI	International Commission of Inquiry
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IICI	Independent International Commission of Inquiry on Ukraine
ILC	International Law Commission
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations
UN ECOSOC	United Nations Economic and Social Council
UN HRC	United Nations Human Rights Council
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics
VCLT	Vienna Convention on the Law of Treaties

INTRODUCTION

Justification for the choice of the research topic

The crime of genocide is one of the most complex legal constructs in contemporary international criminal law. Born from the ashes of World War II and the horrific Nazi atrocities, particularly the Holocaust, and incorporated in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), the crime embodied a sophisticated multi-layered structure of elements. In addition to the *actus reus* element in the form of five underlying acts (killing, infliction of serious bodily or mental harm, creation of deadly conditions of life, birth prevention and transfer of children), the crime requires such acts to be committed with a special intent in whole or in part one of the four protected groups (national, ethnical, racial or religious).[1]

The crime's complexities arose immediately from the stage of the Convention's drafting yet escaped authoritative judicial interpretation for nearly half a century after its adoption, rendering the crime a relatively half-alive construct. The doctrinal interpretation of the crime in the period in question was likewise relatively rare. It was only in the 1990s, with the creation of the first international criminal tribunals for the former Yugoslavia ("ICTY") and Rwanda ("ICTR"), when the crime gained increased jurisprudential and doctrinal attention.

To date, various authoritative commentators have provided in-depth considerations related to the law of genocide more broadly and various aspects of the special intent element in particular: among them, C. Kreß, C. J. Tams, L. Berster, B. Schiffbauer, K. Ambos, G. Mettraux, P. Gaeta, P. Akhavan, W. Schabas and others. Among the Ukrainian scholars, V. Vasylenko, M. Antonovych, D. Azarov, V. Venher, D. Koval, K. Busol, G. Nuridzhanian, Y. Ioffe and I. Marchuk have made substantial contributions to the academic discussion on the crime of genocide, particularly with the focus on the Ukrainian context.

[1] Convention on the Prevention and Punishment of the Crime of Genocide (adopted 9 December 1948, entered into force 12 January 1951) 78 UNTS 277 (hereinafter – "Genocide Convention"), Article II.

At the same time, despite substantial doctrinal contributions, the interpretative process has not come without its own complexities. The multi-layered legal constitution of the crime, embodying several fundamental, intertwined elements, has frequently received confusing, inconsistent, divergent or fragmented interpretations by judicial authorities and commentators. While understanding of the *actus reus* element has been relatively consistent, the *mens rea* element of special intent has caused substantial challenges. While the core of the special intent element has shared a relatively universal agreement, its sub-elements lack the same degree of uniformity.

The first complexity has traditionally related to the object of the destruction, i.e., the definition of the four protected groups and their distinction between themselves (as well as the need to draw such a distinction as such). Although certain protected groups' definitions remained uncontested (e.g., racial or religious groups), the understanding of the essence of national groups has remained largely conflicting. The second challenge has concerned the scope of the prerequisite intent to destroy. Among the key issues lacking a comprehensive interpretative framework is the methodology to define the group "in whole". While the methodology for defining the group "in part" has been more elaborate, it is lacking consistency in reconciling various conflicting interpretations, primarily related to the assessment of the substantiality of the targeted part. The meaning of the term "to destroy" within the intent has remained equally blurred, namely in relation to the question whether the intended destruction needs to be physical and biological only or may encompass social disintegration (i.e., destruction of the group as a social unit). Finally, the state of legal doctrine lacks a holistic overview of the indicators relevant to the methodology for evaluating the existence of absence of special intent, whereby many of the factors relevant to the analysis remain scattered across multiple judgements originating from different jurisdictions.

In addition to general interpretative issues, both international jurisprudence and doctrine lack the contextualised assessment of these issues in cases where national groups are being targeted for destruction. They tend to consistently overlook the fact that, since a human group and its corollary right to exist are at the heart of the prohibition and criminalisation of genocide, the contours of the crime's elements' interpretation will inherently depend on specific and context-dependent identity features of the targeted entity. This is specifically relevant to the Russian atrocities committed in Ukraine after the beginning of the 2022 full-scale invasion, which raised allegations of genocide related to the Ukrainian national group.

The study's purpose and research objectives

The object of the dissertation study relates to the normative framework arising of the law of genocide and its contemporary interpretation concerning the *mens rea* element of special intent.

The subject of the dissertation study relates to the normative and practical interpretative aspects related to the sub-elements of genocidal intent directed at the destruction of national groups, particularly the intent's object and scope, as well as the methodology for its evaluation.

The purpose of the dissertation study is to provide a comprehensive and coherent interpretation of the law of genocide pertaining to the contested issues of the definition of genocidal intent directed at the destruction of national groups "in whole" or "in part", further contextualised to the evaluation of the nature of the Russian atrocities in Ukraine.

The objectives of the dissertation study, in order to achieve the aforementioned purpose, are:

- To outline various approaches to delineating protected groups and differentiate national groups from other protected groups;
- To provide an overview of different proposed definitions of national groups and determine the most legally sound one, in particular to analyse the concept of national groups through the definition of nations;
- To analyse and characterise the methodology for defining protected groups, in particular national groups, "in whole";

- To develop a clear and comprehensive methodology for defining protected groups, in particular national groups, “in part”;
- To propose a consistent and holistic approach to evaluating the substantiality of the targeted part of the national group;
- To analyse and determine the meaning of the intended destruction within the definition of genocidal intent;
- To provide a comprehensive overview of various indicators relevant to the evaluation of genocidal intent to destroy national groups, as well as to propose a methodology compiling them for legal analysis purposes;
- Based on the results of the legal analysis, to contextualise them to the Russian atrocities in Ukraine in order to develop a preliminary hypothesis on the commission of the crime of genocide by the Russian forces in Ukraine.

Research methods

In light of the dissertation study’s object, subject, purpose, and objectives, the dissertation study adopted the following combination of philosophical (through the primary dialectical and hermeneutic lenses), general and special scientific, and juridical methods.

The method of extrapolation was applied to conceptualise various possible outcomes based on competing proposed interpretations of concepts in the law of genocide. This, particularly, relates to the competing definitions of national groups, as well as methodologies for evaluating national groups “in whole” and “in part” whereby the extrapolation method allowed to determine how any of the adopted interpretations may affect the practical outcome of legal analysis. For similar purposes, the modelling method proved its relevance.

The comparative method allowed for the formulation of legal interpretations based on the contrast and collation of the factual and legal backgrounds of various contexts where the allegations of genocide were made, which is particularly relevant to the case study of the Ukrainian context in Chapter IV. Additionally, the comparative method was particularly important for the issues of the protected group's delimitation, as well as laying the foundations of the methodology for assessing the substantiality of the group's targeted part.

The methods of induction and deduction were relevant throughout all parts of the studies to make determinations, in particular, regarding the definition of a national group, the scope of the destruction "in whole" and its impact on determining the "part" and evaluating the substantiality of the targeted part. In each of these settings, the methods proved relevant to juxtapose general categories against more specific components or ingridients and *vice versa* in order to reach the most holistic methodology for the evaluation.

The historical method was used throughout the entire study in order to trace the development of various concepts and interpretations from the moment predating the Genocide Convention's adoption until the contemporary days. Additionally, the historical method was employed to study the precedents where allegations of genocide were made and/or disproved via a judicial process and beyond. The use of the method allowed to trace similarities and divergences in various geographically and temporarily distinct contexts in order to identify the lessons suitable for re-adoption in the contemporary realities and specific conclusions to be treated with caution given the specificity and uniqueness of every factual pattern.

The use of the formal-logical and formal-juridical methods provided a consistent and sequential overview of available judgements from various international adjudication institutions, precluding gaps caused by the fragmented and out-of-context application of their conclusions. In particular, the study emanates from a holistic and cohesive overview of case-law and approaches adopted therein, treating jurisprudential developments as an integral process, in which individual pieces cannot be viewed in isolation from the general dynamic and the preceding interpretative heritage. This proved especially relevant for the interpretation of the intent to destroy the group "in part" and associate sub-elements, whereby the interpretative logic can only be established through a holistic and sequential analysis of judgements viewed as a whole.

Interpretation of interdependent legal concepts within the law of genocide, such as the definition of the group's "in whole" and "in part", required the application of systemic-structural, functional and phenomenological methods. The hypothetical method allowed for deducing the soundest legal interpretations via testing them on the basis of multiple variables in the hypothetical scenarios proposed.

Overall, the study was consistently conducted via the application of fundamental rules of treaty interpretation contained in the Vienna Convention on the Law of Treaties ("VCLT")[2] and reflective of customary international law[3] (which is of utmost importance for the Genocide Convention that entered into force prior to the VCLT's entry into force). They provide, in particular, that treaty terms shall be primarily interpreted in good faith, according to their ordinary meaning, in their context and in the light of the treaty's object and purpose.[4] Interpretation may also take into account any subsequent agreement between parties regarding the treaty interpretation or application, any subsequent practice of the treaty application establishing the parties' agreement on interpretation, and "any relevant rules of international law applicable in the relations between the parties".[5] Where these elements of the interpretation process leave the meaning ambiguous or obscure, or lead to a manifestly absurd or unreasonable result, recourse may be made to

[2] Vienna Convention on the Law of Treaties (signed 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 (hereinafter – "VCLT"), Articles 31-32.
[3] Oliver Dörr, Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties. A Commentary* (Springer 2018) (hereinafter – "Dörr and Schmalenbach (2018)") 561-563. See also, *inter alia*, *Arbitral Award of 31 July 1989* (*Guinea-Bissau v. Senegal*) [1991] ICJ Rep 53, para. 48; *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 174, para. 94; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v Serbia and Montenegro*) (Merits) [2007] ICJ Rep 43 (hereinafter – "*Bosnia and Herzegovina v Serbia and Montenegro*"), para. 160; ILC, 'Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties' (2018) *Yearbook of the International Law Commission* vol. II, Part Two, Conclusion 2(1).
[4] VCLT, Article 31(1).
[5] *Ibid*, Article 31(3).

supplementary means of interpretation[6] to confirm or determine the meaning of terms.[7] As such, these rules combine several different interpretative approaches, namely textual, subjective (based on the intention of state parties), effective and teleological (extracting the meanings beyond actual formulations used).[8]

Finally, the study relied on the socio-legal methods and addressed the understanding of legal concepts through anthropological and sociological lenses. The definition of protected groups, particularly the national group, their interplay, as well as their definition "in whole" or "in part" inevitably required the recourse to the understanding of groups as human entities through the lenses of modern anthropology (especially in the context of juxtaposing national groups against other human collectivities). In the context of Ukraine and definition of the Ukrainian national group, the study, where relevant, relies on the publicly available sociological surveys assisting in understanding the group's dynamic, structure, composition and traits.

Scientific novelty and originality of the research findings

Key ingredients of the special intent element described above may seem well-established to any reasonable external observer not privy to the dynamics of the development in the interpretation of the law of genocide. None of these ingredients is *per se* a novel jurisprudential or interpretative invention. All of them, to varying degrees, have received attention both in jurisprudence and legal commentaries. It may thus appear that their essence has, for a relatively long time, been well known to international law and received substantial coverage.

While it may be true regarding the *core* of *some* special intent element's ingredients, the same cannot be said about multiple contours and layers of every sub-element. For decades, jurisprudence and doctrine have largely (purposefully or not) avoided nuanced

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6 *Ibid*, Article 32.

7 Dörr and Schmalenbach (2018) 629-631; Yves Le Bouthillier, '1986 Vienna Convention: Article 32 Supplementary means of interpretation' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 847-851.

8 Jean-Marc Sorel, Valérie Boré Eveno, '1969 Vienna Convention: Article 31 General rule of interpretation' in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: A Commentary* (OUP 2011) 808.

discussions on the most intricate and conflicting issues pertaining to the essence of the element's ingredients and their interplay with each other, interpreted in a way that avoids both normative and logical conflicts. Moreover, very little attempt has ever been undertaken to contextualise the definition of the special intent's ingredients to the nature of the protected groups, which form a foundation of the crime being at the heart of the intended destruction. Obvious as the necessity of such contextualisation may seem, protected groups as an element of genocide have often been treated separately from other elements perceived as generally and uniformly applicable regardless of *what unique characteristics* distinguish the object of the intended destruction in every particular case.

Trying to address these long-standing contentious gaps, the dissertation undertakes the first-of-its-kind comprehensive study of the special intent element in cases where national groups are targeted for destruction. The study represents a step-by-step methodology for the assessment of various layers and levels of the intent, pinpointing the gaps and inconsistencies frequently or overall missing or significantly overlooked, both in the commentaries and international jurisprudence. The study also offers ways to bridge the gaps and address the inconsistencies by evaluating various potential approaches and selecting the soundest legal interpretations for the purpose of cohesive application of the law of genocide in a systemic way.

Overall, the novelty is attested by the following results distinguishing the present study from other research materials in the field of the law of genocide, international criminal law and public international law more broadly:

- The study offers a thorough overview of the approaches to delineate protected groups, weighing the benefits and drawbacks of each of them, and proposing an interpretation that avoids major legal risks and conflicts.
- The study provides the definition of national groups based on the rigorous discussion of its key characteristics, which are mainly missing in the contemporary commentaries.
- The study outlines the flaws in the definition of the national groups unfoundedly adopted by certain international jurisprudence which associates membership in the

national group with citizenship, instead proposing the definition linking national groups to nations. The study likewise addresses the key potential challenges and criticisms linked to this approach.

- The study presents a first-of-its-kind guidance to interpret the meaning of the intent to destroy national groups “in whole”. It contextualises the definition of the group “in whole” to every protected group, focusing on national groups in particular, based on both objective and subjective factors of perpetrators and victims.
- The study lays out a comprehensive framework for evaluating the intent to destroy a national group “in part”. The study provides a rigorous assessment of the substantiality requirement related to the targeted part, evaluating various approaches to substantiality evaluation proposed by the jurisprudence or implicitly stemming from it, and concluding on the most sensible and well-founded one.
- The study presents a unique proposal on situating the “leadership factor” (i.e., targeting the protected group’s leaders) within the methodology of the intent’s assessment.
- The study provides for a meticulous analysis of the nature of the intended destruction required by the *mens rea* element, evaluating whether the term “to destroy” may encompass the group’s social disintegration in addition to physical or biological forms of eradication sought.
- The study offers a comprehensive framework for a step-by-step evaluation of indicators relevant to the assessment of the presence of the intent to destroy national groups.
- The study supplements legal findings with the unique attempt to apply the developed framework to the factual context of the Russian atrocities in Ukraine following the 2022 full-scale invasion. Element by element, the study evaluates the scope of underlying acts committed, the alleged targeted group, and indicators capable of both proving and disproving the existence of genocidal intent to destroy the Ukrainian national group.

- The study provides a preliminary hypothesis on the commission of the crime of genocide in Ukraine on the basis of the developed methodologies and legal theories.

While the study adopts legal framework as an undisputable foundation, it strongly relies on multidisciplinary lenses. Instead of simply relying on the letter of the law for the purposes of its interpretation, the dissertation study dwells into the social history of the concepts' development, adoption and evolution in light of specific contexts of their application – both past and contemporary. The study acknowledges the value in the genocide-relate debates across various geographic and temporal settings – from the Balkans, Rwanda and Cambodia to past and modern Ukraine – drawing parallels and deducing lessons were relevant and well-founded but cautioning against the blind extrapolation of the historical frameworks to the newly-emerging realities. The study likewise relies on a range of other humanitarian, social and political sciences, particularly anthropology and sociology, in order to analyse complicated intra- an intergroup dynamic of human communities, including various protected groups. This interdisciplinary focus is particularly relevant for adoption in the analysis of the Russian atrocities in Ukraine presenting multiple interdisciplinary considerations that cannot be sufficiently captured by a blind decontextualised application of a legal rule. In this respect, the study also introduces post-colonial lenses to the debate on the genocide allegations in Ukraine and targeting of national groups, which is largely missing in the contemporary academic discourse.

Finally, the phenomenon of genocide can be viewed under multiple different angles, including as a tool for history-telling, political instrumentalisation, social activism, including human rights activism, as well as an object for a purely social and political sciences' analysis.[9] The present dissertation study, however, approaches the definition of genocide primarily through the optic of (international) criminal justice and law of state responsibility, focusing on its coherent and holistic interpretation in present and future

[9] Among the most remarkable works, see, e.g., Adam Jones, *Genocide. A Comprehensive Introduction* (4th edn, Routlege 2024).

accountability efforts. It therefore deliberately leaves aside multiple insightful issues pertaining to genocide as a multifaceted social phenomenon.

Dissemination of the dissertation findings

The findings of the dissertation study were presented during:

- Conference “Development of the Legal System of Ukraine in the Context of European Integration Aspirations” (Lutsk National Technical University, 10 December 2025), Statements titled “Methodology for Assessing the Alleged Genocidal Intent to Destroy the Ukrainian National Group in the Russian War against Ukraine” published in the “Development of the Legal System of Ukraine in the Context of European Integration Aspirations: Materials of the 1st All-Ukrainian Academic and Practical Conference for Young Scientists with International Participation, Dedicated to the Week of Law” (Lutsk, 10 December 2025)” [ed.: L.L. Kovalchuk et al.]. – Lutsk, 2026. – 531 p.
- Roundtable “Crimes of the Russian Federation During the Aggression against Ukraine in Light of the Rome Statute of the International Criminal Court”, Presentation on the topic “Issues of Justice for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations Between Ukraine and Russia and the Potential Future Peace Agreement” (National University of “Kyiv-Mohyla Academy” and Ukrainian Free University (Germany), 14 July 2025), Statements titled “Accountability for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations between Ukraine and Russia and the Potential Future Peace Agreement” [2025] 26 *Scientific collection of the Ukrainian Free University* 22-33, ISBN: 978-3-928687-90-4.

Other conferences and events confirming the dissemination of the dissertation findings are listed in Annex A.

Structure and scope of the dissertation

The dissertation study consists of an abstract, an introduction, four chapters, final conclusions, and a list of authorities. Chapter I, composed of seven sections, is dedicated to defining the national group as a protected group in the law of genocide. Chapter II, composed of two major sections with three and four sub-sections each, respectively focuses on the scope and meaning of the intent to destroy the national group "in whole or in part", including the meaning of the "destruction" within the definition of the intent. Chapter III, consisting of seven sections, lays out the methodology for the assessment of genocidal intent directed against national groups. Finally, Chapter IV, containing six sections, represents a case study of the analysis of the Russian atrocities against the Ukrainian national group through the lens of the law of genocide.

The total volume of the text of the dissertation study is 291 pages, of which the main body of the text contains 237 pages, and the list of authorities – 32 pages.

Integration with the research programs, grants and themes

The dissertation study was conducted as a part of the research project of the Centre for the Study of Genocide and Human Rights of the National University of "Kyiv-Mohyla Academy" titled "Russian Genocides against the Ukrainian Nation" (2023-2028, State Registration Number in UkrINTEI: 0123U100290).

CHAPTER 1

DEFINING THE NATIONAL GROUP AS A PROTECTED GROUP IN THE LAW OF GENOCIDE

1.1. Introductory remarks on the protected groups

The question of what can distinguish the commission of genocide against national groups when contrasted to other groups has been underexplored and overlooked so far in legal authorities and practice. Several reasons may explain this gap. The most prevailing explanation may be attributed to the lack of uniform understanding of the key features underpinning the national group's definition, as well as the seeming lack of a pressing need to search for such definition. The latter, in turn, may ostensibly be associated with two significant factors. First, with the globalisation tendencies of the past several decades and diversification of the composition and constitution of human societies, the traditional concept of "nation-states" has been gradually diluting. This has led to a blurred or diminishing academic focus on nations as social human entities, as well as the connection of the concept of a nation to established international legal terms, including national groups.

The second potential explanation lies in the decrease in the degree and character of interstate violence, especially wars of colonial conquest, traditional to the international order of previous centuries. Attempts to conquer and subjugate another nation while aiming at eradicating its identity became a stark, often hardly conceivable, exception instead of a routinised normality of the past.

As the number of interstate wars decreased sharply after World War II, mass violence became predominantly concentrated in intrastate conflicts throughout the time that the Genocide Convention has been in force.[10] This shifted the focus to the internal

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[10] Siri Aas Rustad, 'Conflict Trends: A Global Overview, 1946–2024' (PRIO Paper, 2025) 9 <https://cdn.cloud.prio.org/files/31b69202-0728-4852-94e9-a08bdf662fe9/Rustad%20-%20Conflict%20Trends%201946-2024%20-%20PRIO%20Paper.pdf?inline=true> accessed 29 December 2025; Oona A. Hathaway, 'The Great Unraveling Has Begun' (*The New York Times*, 6 January 2026) <https://www.nytimes.com/2026/01/06/opinion/peace-conflict-war.html> accessed 17 January 2026.

intergroup dynamic, mainly between different factions within a state, most often involving minorities, rather than eliminationist violence between nations. Even where interstate wars occurred, one could usually hardly find a contemporary example of blatant declarations of denial of another nation's right to exist and intent to eradicate its identity. All situations in which international courts and tribunals adjudicated genocide allegations since the Genocide Convention thus happened against the backdrop of intrastate violence, even where third states were secondarily involved.[11] In these cases, the jurisprudence displayed unwillingness or inaptitude to engage in the discussion of the essence of protected groups, features distinguishing them and the potential impact such features may have on how the interpretation of the elements of genocide may differ depending on what group is the object of targeting. The mention of the national groups only seemed to be residual, thrown into an intertwined mixture with three other protected groups, and not backed by careful consideration of the term's meaning.

At the heart of the issue of defining genocidal intent to destroy national groups inherently lies the question of what the national group represents, or, put otherwise, how one defines national groups and distinguishes them from other groups. As simple as it may seem at first glance, the definition does not come easy. In relation to other human communities, a reasonable observer would find the words that are most associated with the identity underpinning such groups. For example, political groups are immediately associated with a shared political ideology of a certain kind or membership in a political party, while religion is linked in association to the common mode of worship or rituals. Linking national groups to any form of such immediate attribute at its face appears a much more difficult task and, moreover, a relatively simplistic exercise.

The present Chapter is fundamental to the entire following analysis. It aims to define the concept of "national groups" within the law of genocide, trying to reconcile and bridge

[11] Even in the context of the Balkan wars and the massacres in Bosnia and Herzegovina, Serbia was found responsible for the violation of its obligations to prevent and punish genocide, not the commission of genocide or complicity in it despite its support provided to the Republika Srpska forces responsible for the commission of genocide. See *Bosnia and Herzegovina v Serbia and Montenegro*, para. 471.

divergent (and often inconsistent) interpretations in judgements and commentaries through the lenses of international law, modern anthropology, political and other social sciences. Only by defining *what* a targeted group truly represents can one analyse and explain *how* the group in question may be destroyed and *how* the intent to destroy may be manifested. The Chapter starts with how national groups were initially viewed by the drafters of the Genocide Convention and early commentators, moving further to the definitions developed in the contemporary jurisprudence and legal commentaries. It analyses where and why proposed approaches have solid reasoning or lack it, and how they should be read coherently, especially in light of the anthropological distinction between various human groups.

1.2. The concept of "national groups" in the pre-Convention age, at the time of the adoption of the Genocide Convention and in early commentaries

The concept of "national groups" has been rather indigenous to the law of genocide since the very conception of the term "genocide". Already in his *magnum opus* "Axis Rule in Occupied Europe", Raphael Lemkin, the founding father of the term, primarily spoke about genocide as directed at "a nation" or "a national group" (while using the terms rather generically, without attributing a clear definition to them).[12] To Lemkin, the direction of genocide against nations seemed a rather obvious intrinsic nature of the newly proposed crime. Lemkin's invention launched a further initiative on the international criminalisation of genocide, which commenced with the United Nations ("UN") General Assembly ("GA") Resolution 96(I) proclaiming genocide a crime under international law.[13] However, the Resolution – for unknown reasons – was missing an explicit mention of national groups while referencing "racial, religious, political and other groups" as a potential victim group.[14]

[12] Raphael Lemkin, *Axis Rule in Occupied Europe; Laws of Occupation, Analysis of Government, Proposals for Redress* (Carnegie Endowment for International Peace, Division of International Law 1944) (hereinafter – "Lemkin (1944)") 79
[13] UNGA 'The Crime of Genocide' (11 December 1946) UN Doc A/RES/51/210.
[14] UNGA 'The Crime of Genocide' (11 December 1946) UN Doc A/RES/51/210.

Throughout the later drafting process of the Genocide Convention, the references to national groups (or, more rarely, nations) as potential victim groups were – even if not absolutely uniform – relatively consistent and frequent.[15] At the same time, until the later stages of drafting no delegation or expert attempted to inquire into the characteristics defining the national groups or distinguishing them from other groups.

It was during the 73rd meeting of the Sixth Committee of the UNGA tasked with drafting the Convention, when the Swedish delegation stressed the need to clarify the scope of the term "national groups", including whether national groups were defined by the entitlement to the enjoyment of civic rights in a given state.[16] If that was the case – the delegation claimed – national groups would always be linked to existing states.[17] He believed this would signify that, where a national group would lack links with an "existing state", e.g., because the latter had disappeared or had not been formed, the group would fall outside the Convention's protection.[18]

To avoid inconsistencies and confusing national groups with political ones (e.g., where persons are solely united by the mere desire to form a group), as well as to "extend protection to doubtful cases", the Swedish delegation thus proposed to supplement the list

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[15] As a matter of illustration see, *inter alia*, UN Secretary-General 'The Crime of Genocide' (12 March 1947) UN Doc. E/330, 1; UN Secretary-General 'Draft Convention on the Crime of Genocide' (26 June 1947) UN Doc. E/447 (hereinafter – "Secretariat's Draft E/447") 5, 21, 27; UN ECOSOC Res 77 (V) (2 September 1947) UN Doc. E/573, 23; UNGA UN Doc. A/362 (25 August 1947) 3; UNGA 'Draft Convention on the Crime of Genocide: Communications Received by the Secretary-General' (27 September 1947) UN Doc. A/401/Add.2 (hereinafter – "A/401/Add.2") 4; UN ECOSOC 'Prevention and Punishment of Genocide: Historical Summary, 2 November 1946 – 20 January 1948' (26 January 1948) UN Doc. E/621 (hereinafter – "E/621") 7; UN ECOSOC, 'Prevention and Punishment of Genocide Comments by Governments on the Draft Convention prepared by the Secretariat, Communications from Non-Governmental Organizations' (30 January 1948) UN Doc. E/623 cited in Hirad Abtahi, Philippa Webb, *The Genocide Convention: the travaux préparatoires* (Martinus Nijhoff Publishers 2008) (hereinafter – "Abtahi and Webb (2008)") 536-537, 557; UN ECOSOC, 'Genocide France: Draft Convention on Genocide' (5 February 1948) UN Doc. E/623/Add.1 cited in Abtahi and Webb (2008) 577; UN ECOSOC, 'Ad Hoc Committee on Genocide, Basic Principles of a Convention on genocide (Submitted by the Delegation of the Union of Soviet Socialist Republics on 5 April 1948)' (7 April 1948) UN Doc. E/AC.25/7 (hereinafter – "E/AC.25/7") 3; UN ECOSOC, 'Ad Hoc Committee on Genocide, Summary Record of the Third Meeting, Lake Success, New York, Tuesday, 5 April 1948, at 2 p.m.' (13 April 1948) UN Doc. E/AC.25/SR.3 (hereinafter – "E/AC.25/SR.3") 11; UN ECOSOC, 'Ad Hoc Committee on Genocide, Summary Record of the Fourth Meeting, Lake Success, New York, Wednesday, 7 April 1948' (15 April 1948) UN Doc. E/AC.25/SR.4 (hereinafter – "E/AC.25/SR.4") 2, 5, 8, 10, 13; ECOSOC, 'Ad Hoc Committee on Genocide: Summary Record of the Fifth Meeting, Held at Lake Success, New York, Tuesday, 8 April 1948' (16 April 1948) UN Doc. E/AC.25/SR.5 (hereinafter – "E/AC.25/SR.5") 2-3, 9, 11, 15.

[16] UNGA 'Seventy-Third Meeting Held at the Palais de Chaillot, Paris, on Wednesday, 13 October 1948, at 3.15 pm' (13 October 1948) UN Doc. A/C.6/SR.73 (hereinafter – "A/C.6/SR.73") 97.

[17] *Ibid* 97, UNGA 'Seventy-Fifth Meeting Held at the Palais de Chaillot, Paris, on Friday, 15 October 1948, at 3.20 pm' (13 October 1948) UN Doc. A/C.6/SR.75 (hereinafter – "A/C.6/SR.75") 115.

[18] A/C.6/SR.75, 115.

of the groups with "ethnical" groups.[19] The limited scope of *travaux* where this proposal was actually described (i.e., only one sentence) leaves it unclear how adding ethnic groups to the list of protected groups was actually supposed to clarify the concept of national groups. The Swedish delegate seemingly implied that if membership in a national group was to be considered linked to the entitlement to civic rights in a particular state, then minorities possessing a distinct language or culture that did not have their own state would be left outside of protection.[20] In other words, the Swedish proposal seemed to imply that national groups are, in fact, ethnic groups that possess their own state.

During the 74th meeting of the Sixth Committee of the UNGA, the Egyptian delegate disregarded the Swedish proposal to include ethnic groups in the Convention for the purpose of clarifying the scope of national groups, and confusingly referred to the concept of national groups as somehow being simultaneously "somewhat ambiguous" and "perfectly clear", given the example of national minorities in Europe.[21] The Belgian representative stressed that the concept of national groups was clear as such wording was derived from the "minority treaties".[22] The delegation of the Union of Soviet Socialist Republics ("USSR") did not object to the inclusion of ethnic groups, regarding them as "sub-groups of national groups" and smaller collectivities within the nation.[23]

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[19] *Ibid*; A/C.6/SR.73, 97-99.
[20] A/C.6/SR.73, 97-98.
[21] UNGA 'Seventy-Fourth Meeting Held at the Palais de Chaillot, Paris, on Thursday, 14 October 1948, at 3.25 pm' (14 October 1948) UN Doc. A/C.6/SR.74 (hereinafter – "A/C.6/SR.74") 99-100.
[22] A/C.6/SR.75, 116.
[23] A/C.6/SR.74, 106.

In other places, where *travaux* repeatedly used the terms "nation"[24] and "nationality"[25] (with nationality often intertwined with "national origin") in connection to protected groups, little clarity was introduced. Several elements of what might characterise "a nation" included common cultural or historical tradition and heritage, or language.[26] While the mere desire "to form a separate group" was considered insufficient on its own to identify a nation and was envisioned as rather indicative of political groups,[27] more profound elements such as "a common will to cohesion" and "the will to live together as a group" were emphasised as important attributes of a national group.[28]

The dichotomy between ethnic and national groups was therefore common to the crime's definition from the moment of its conception and seemed somewhat natural to Lemkin and certain state delegates, even though they were not necessarily able to clearly delimit the two notions. Early commentaries following the Convention's adoption are mostly silent on the essence of each protected group, including national groups.

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[24] UNGA 'Sixth Committee, Delegation of Saudi Arabia: Draft Protocol for the Prevention and Punishment of Genocide' (26 November 1946) UN Doc. A/C.6/86 (hereinafter – "A/C.6/86") 1; UNGA 'Sixth Committee, Legal Questions, Summary Record of Meetings, Summary Record of Meetings Monday, 2 December 1946, Twenty-fourth meeting, Lake Success, New York, Friday, 29 November 1946, at 11:20 a.m.' (2 December 1946) UN Doc. A/C.6/96 cited in Abtahi and Webb (2008) 22; Secretariat's Draft E/447, 27; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Fourteenth Meeting, Lake Success, New York, Wednesday, 21 April 1948' (27 April 1948) UN Doc. E/AC.25/SR.14 (hereinafter – "E/AC.25/SR.14") 6; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Twenty-Forth Meeting, Held at Lake Success, New York, Wednesday, 28 April 1948' (12 May 1948) UN Doc. E/AC.25/SR.24 (hereinafter – "E/AC.25/SR.24") 4; UN ECOSOC 'Two Hundred and Eighteenth Meeting, Held at the Palais des Nations, Geneva, on Thursday, 26 August 1948, at 3 p.m.' (26 August 1948) UN Doc. E/SR.218 (hereinafter – "E/SR.218") 710, 718.

[25] E/AC.25/SR.4, p 14; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Tenth Meeting, Held at Lake Success, New York, Thursday, 16 April 1948, at 2:00 p.m.' (16 April 1948) UN Doc. E/AC.25/SR.10 (hereinafter – "E/AC.25/SR.10") 11, 16; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Eleventh Meeting, Lake Success, New York, Thursday, 16 April 1948, at 2:00 p.m.' (16 April 1948) UN Doc. E/AC.25/SR.11, 1; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Twelfth Meeting, Lake Success, New York, Monday, 19 April 1948, at 2:20 p.m.' (19 April 1948) UN Doc. E/AC.25/SR.12, 8; UN ECOSOC 'Ad Hoc Committee on Genocide: Commentary on Articles Adopted by the Committee' (20 April 1948) UN Doc. E/AC.25/W.1 (hereinafter – "E/AC.25/W.1") 2; E/AC.25/SR.24, 15-16; UN ECOSOC 'Ad Hoc Committee on Genocide (5 April – 10 May 1948), Report of the Committee and Draft Convention Drawn Up by the Committee (Dr. Karim Azkoul – Rapporteur)' (24 May 1948) UN Doc. E/794, 14; E/SR.218, 719; UN ECOSOC 'Two Hundred and Nineteenth Meeting, Held at the Palais des Nations, Geneva, on Thursday, 26 August 1948, at 9 p.m.' (26 August 1948) UN Doc. E/SR.219 (hereinafter – "E/SR.219") 723; UNGA 'Sixty-third meeting, Palais de Chaillot, Paris, Thursday, 30 September 1948, at 10.30 a.m.' (30 September 1948) UN Doc. A/C.6/SR.63 (hereinafter – "A/C.6/SR.63") 6; UNGA 'Sixty-sixth meeting, Held at Palais de Chaillot, Paris, Monday, 4 October 1948, at 10.45 a.m.' (4 October 1948) UN Doc. A/C.6/SR.66 (hereinafter – "A/C.6/SR.66") 31; A/C.6/SR.73, 97; A/C.6/SR.74, 99-100, 105, 108.

[26] UNGA 'Summary Record of the Twenty-ninth Meeting, Held at Lake Success, New York, on Monday, 16 June 1947, at 2:00 p.m.' (24 June 1947) UN Doc. A/AC.10/SR.29 (hereinafter – "A/AC.10/SR.29") 27; A/C.6/SR.73, 97-98.

[27] A/C.6/SR.73, 97-98.

[28] A/AC.10/SR.29, 27.

However, two notable exceptions existed. One is represented by the "Study of the question of the prevention and punishment of the crime of genocide" prepared by the Special Rapporteur Nicodème Ruhashyankiko in 1978, who defined national groups in connection with national origin.[29] The second example is contained in the "Fourth report on the draft code of offences against the peace and security of mankind" produced by Special Rapporteur Doudou Thiam in 1986. While attempting to describe the concept of protected groups, Thiam claimed that various groups may indeed overlap in characteristics, but they are not identical.[30] For example, Thiam stated that national groups may often accommodate several different ethnic groups and are "characteri[s]ed by a common wish to live together, a common ideal, a common goal and common aspirations".[31] Surprisingly, however, Thiam's study is mainly not represented or cited by the contemporary jurisprudence or commentaries. With the substantial discussion on the essence of the protected groups lacking, the first *ad hoc* international criminal tribunals for Rwanda and the former Yugoslavia were left with little guidance on approaching the definition of protected groups.

1.3. Contemporary approaches to defining the national group in international jurisprudence

Uncertainty about the definition of the concept of national groups (as well as other protected groups) was only deepened by the subsequent practice of international courts and tribunals.

The first contentious issue is *whether different protected groups should be defined and delineated at all.* The jurisprudence and doctrine have developed two approaches to this dilemma. They can be labelled as "aggregationist" (i.e., the one that merges all protected groups together and views them as a single whole because differentiating them

[29] UN ECOSOC 'Study of the Question of the Prevention and Punishment of the Crime of Genocide, Study Prepared by Nicodème Ruhashyankiko, Special Rapporteur' (4 July 1978) UN Doc. E/CN.4/Sub.2/416 (hereinafter – Ruhashyankiko's Study E/CN.4/Sub.2/416"), paras 59-61.
[30] ILC '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 (hereinafter – "Thiam's Fourth Report A/CN.4/398"), para. 57.
[31] *Ibid*.

based on objective criteria appears unreasonable[32]) and "distinctionist" (i.e., singling out and defining every protected group separately based on unique features that distinguish them from each other[33]).

1.3.1. "Aggregationist" approach to defining protected group

The "aggregationist" approach primarily stems from the ICTY's jurisprudence. On a limited number of occasions when the chambers discussed the notion of protected groups more extensively, they declined to define each group separately to then establish where Bosnian Muslims as a targeted group belonged. For example, in *Krstić (Trial)*, the Chamber refused to attribute express distinctive features to the protected groups and argued that the list of four groups was supposed to "describe a single phenomenon […] rather than to refer to several distinct prototypes of human groups".[34]

Hence, in the Chamber's view, attempts to differentiate groups based on "scientifically objective criteria […] would be inconsistent with the object and purpose of the Convention".[35] This approach was not contested by the Appeals Chamber (albeit, the Appeals Chamber specifically referred to Bosnian Muslims as a standalone "national group")[36] and was further supported by some commentators who suggested, *inter alia*, that searching for autonomous meaning of every protected group will "weaken the overarching sense of the enumeration as a whole" and "risks distorting the sense that belongs to the four terms, taken as a whole".[37]

It is true that in the world of the "fluidity of identity fault lines",[38] differentiating between protected groups in real-life situations based on clear and scientific indicators

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[32] See, *e.g.*, *Prosecutor v Krstić* (Trial Judgement) IT-98-33-T (2 August 2001) (hereinafter – "*Krstić* (Trial Judgement)"), para. 556.
[33] *Prosecutor v Akayesu* (Trial Judgement) ICTR-96-4-T (2 September 1998) (hereinafter – "*Akayesu* (Trial Judgement)"), para. 512.
[34] *Krstić* (Trial Judgement), para. 556.
[35] *Krstić* (Trial Judgement), para. 556. See also *Prosecutor v Jelisić* (Trial Judgement) IT-95-10-T (14 December 1999), para. 70.
[36] *Prosecutor v Krstić* (Appeal Judgement) IT-98-33-A (19 April 2004) (hereinafter – "*Krstić* (Appeal Judgement)"), para. 6.
[37] William A. Schabas, *Genocide in International Law. The Crime of Crimes* (3rd edn, CUP 2025) (hereinafter – "Schabas (2025)") 166.
[38] Carola Lingaas, 'Conceptualizing the National Group for the Crime of Genocide: Is Law Able to Account for Identity Fault Lines?' [2020] 49(2) Nationalities Papers 240 (hereinafter – "Lingaas (2020)"), 241.

can be an overly theoretical exercise – challenging or even impossible.[39] Four protected identities can often overlap, and viewed in entirety, can appear mutually complementary.[40] This arguably was the case of Bosnian Muslims, whose national, ethnic and religious identities were (in the ICTY Chambers' opinion) closely intertwined and almost impossible to discern, or Vietnamese in Cambodia, whose (self-)identification rested simultaneously on ethnic, national and racial grounds (according to the Extraordinary Chambers in the Courts of Cambodia ("ECCC")).[41]

Yet, the vagueness of this approach is also problematic. However attractive the "aggregationist" approach may seem due to its perceived pragmatism, dissolving four distinct groups into one "ill-contoured whole" in any given case undermines fundamental principles of treaty interpretation.[42] Such principles require the rules on genocide to be construed in a manner that gives them their maximum legal effects[43] and that "a reason and a meaning be attributed to every word" in the treaty text.[44] If the Convention's list of protected groups was intended to cover four *distinct* categories, attempts should thus be made to establish an autonomous meaning of every category (even if they overlap).[45] Furthermore, the "aggregationist" approach equally does not account for the anthropological complexities of the four groups as unique social constructs, which should be decisive when analysing particular contexts.

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[39] Schabas (2025) 163-166.

[40] *Ibid* 164. See also UNSC 'Final Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)' (27 May 1994) UN Doc. S/1994/674 (hereinafter – "S/1994/674"), para. 96: "If there are several or more than one victim groups, and each group as such is protected, it may be within the spirit and purpose of the Convention to consider all the victim groups as a larger entity".

[41] Case 002/02 (Trial Judgement) 002/19-09-2007/ECCC/TC (16 November 2018) (hereinafter – "Case 002/02 (Trial Judgement)"), para. 3419.

[42] Christian J. Tams, Lars Berster, Björn Schiffbauer, *Convention on the Prevention and Punishment of the Crime of Genocide: A Commentary* (C.H. Beck 2014) (hereinafter – "Tams, Berster, Schiffbauer (2014)") 102-103; Claus Kreß, 'The Crime of Genocide under International Law' [2006] 6(4) International Criminal Law Review 461 (hereinafter – "Kreß (2006)"), 475-476; See also, Lingaas (2020) 241; Gunal Mettraux, *International Crimes: Law and Practice: Volume I: Genocide* (OUP 2019) (hereinafter – "Mettraux (2019)") 205: "It is questionable whether such a generic sort of finding satisfies the Chamber's obligation to give a reasoned opinion and whether such an approach is in fact supported in law".

[43] International Commission of Inquiry on Darfur, 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004' (25 January 2025) <https://www.legal-tools.org/doc/1480de/pdf/> accssed 30 December 2025 (hereinafter – "ICI on Darfur Report (2004)"), para. 494.

[44] Marija Đorđeska, *General Principles of Law Recognized by Civilized Nations (1922-2018)* (Brill/Nijhoff 2020) 309.

[45] Tams, Berster, Schiffbauer (2014) 103; Stefan Weber, 'On the concept of a 'national group' under the Genocide Convention' [2024] 44 Human Rights Law Journal 296 (hereinafter – "Dörr"), 297.

Domestic jurisprudence and commentaries confirm this diversity of scenarios and distinction of groups by stating that "a targeted group may be distinguishable on more than one basis"[46] or "partially overlap, but each of them has a clear core",[47] thus being not identical.[48] Thiam's report confirms the attempts to draw a distinction between various groups, particularly national, ethnic and racial.[49] Factors relevant to the determination of the group's existence and membership in it will always be context-specific and never analogous.[50] Hence, while in some situations singling out a particular category among the four protected groups will not be necessary since victims' identities can overlap based on several underlying concepts (e.g., ethnicity and religion), other scenarios can be more nuanced and will require a more precise determination.

Moreover, in light of the Convention's limitation of protected groups to only four enumerated categories, the way in which these groups are defined is of fundamental importance since "the threshold question in any potential prosecution is whether the targeted group falls within any of the protected categories".[51] Otherwise, legal certainty and the principle of legality are undermined by overly vague terminology, subject to the broad discretion of individual judges or respective courts,[52] guided by no common standard and likely to produce contradictory or unclear interpretations.

The same logic applies to some authors' attempts to define national and ethnic groups by relying on the unifying, generic concept of "national minorities". During the negotiations on the Convention, several state delegates indeed argued that the concept of a "national group" could be understood based on the notion of "national minorities" commonly used in the times when the Convention was drafted in the context of the

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[46] *Prosecutor v Stakić* (Trial Judgement) IT-97-24-T (31 July 2003), para. 512.
[47] *Prosecutor's Office of Bosnia and Herzegovina v Duško Jević et al.* (Verdict) X-KR-09/823-1 (25 May 2012) (hereinafter – "*Jević et al.* (Verdict)"), para. 949.
[48] Thiam's Fourth Report A/CN.4/398, para. 56.
[49] Thiam's Fourth Report A/CN.4/398, paras 56-59.
[50] Mettraux (2019) 207.
[51] David Lisson, 'Defining "National Group" in the Genocide Convention: A Case Study of Timor-Leste' [2008] 60(5) Stanford Law Review 1459 (hereinafter – "Lisson (2008)"), 1460.
[52] Tams, Berster, Schiffbauer (2014) 102-103.

minorities protection regimes.[53] National minorities, in turn, were regularly understood as a relatively considerable yet non-dominant proportion of individuals on a state territory whose national, ethnic, linguistic or religious identity was different from that of the majority,[54] that arguably shared these characteristics with the majority population of another state.[55]

The delegates' understanding of the "national minorities" concept was apparently shaped by the contemporary minority treaties and minority protection regime established under the auspices of the League of Nations. The minority treaties reflected a post-World War I shift from multinational empires to newly created nation-states.[56] Despite the attempts to draw boundaries based on the traditional territories of inheritance and concentration of the dominant national groups, newly-created nation-states inevitably could not be ethnographically homogenous and accommodated representatives of various ethnic groups and former imperial ruling elites, which became a subject of international protection.[57] The notion was just based on juxtaposing a predominant national group (or groups in cases of states accommodating several relatively major group representations like Czechoslovakia) in a newly established nation-state against minorities who found themselves under the jurisdiction of such states.

This approach linking national groups to national minorities also raises concerns due to its unreasonable restriction of the definition of national groups. Firstly, suppose the definition of a national group is narrowed to the concept of national minorities, essentially meaning ethnic, linguistic or religious minorities in a particular state. In that case, their inclusion will be redundant since it will overlap with two other respective protected groups

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[53] A/C.6/SR.74, 99-100; A/C.6/SR.75, 6.

[54] Ruhashyankiko's Study E/CN.4/Sub.2/416, paras 67-68; Pablo de Azcarate, Eileen E. Brooke (tr), *League of Nations & National Minorities: An Experiment* (Washington: Carnegie Endowment for International Peace 1945) 3-27; UN ECOSOC 'Report of the 6th session of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to the Commission on Human Rights, New York, 4 to 29 January 1954' (5 February 1954) UN Doc. E/CN.4/703 – E/CN.4/Sub.2/157, para. 200(2).

[55] Lisson (2008) 1469.

[56] Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford, 1998; online edn, Oxford Academic, 3 October 2011) <https://doi-org.peacepalace.idm.oclc.org/10.1093/acprof:oso/9780198294375.001.0001> accessed 19 March 2026, 67-68.

[57] *Ibid.*

– ethnic and religious.[58] National minorities can thus be protected under the Convention – yet not as a standalone category but only if they fall within the categories of ethnic or religious groups. Secondly, restricting a national group to a "minority" would lead to absurd results, e.g., if the majority national group within a country is targeted by a minority[59] or, especially, a foreign invading power. If it is recognised that a victim group can constitute a majority of the state's population (which is a reasonable and natural premise to operate upon),[60] then using the national minorities concept for the definition of a national group appears futile and leads to an absurd result whereby, e.g., ethnic and religious groups who constitute a majority in a state can theoretically be targeted, while national groups cannot, unless they constitute a minority.

In conclusion, while the "aggregationist" approach is not entirely devoid of rationality, it is only suitable for cases in which the targeted group possesses multiple overlapping protected identities.[61] In other cases, where a targeted group is distinguished by only one of four identities, the "aggregationist" approach fails to assist in determining whether a group exists and whether it indeed benefits from the Convention's protection.

1.3.2. <u>"Distinctionist" approach to defining protected groups</u>

An alternative approach was proposed in the *Akayesu (Trial)* judgement of the ICTR, in which the Chamber sought to provide a separate and exhaustive definition of each protected group. National groups were defined as "a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties".[62] This contrasted with ethnic groups based primarily on "common language or culture", racial groups connected with "hereditary physical traits", and

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[58] See similar argument in Lisson (2008) 1469.
[59] Lisson (2008) 1469.
[60] S/1994/674, para. 95: "It is not a condition that the victim group be a minority, it might as well be a numerical majority".
[61] Maksym Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' [2024] 13 *NaUKMA Research Papers. Law* 15 (hereinafter – "Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024)") 17.
[62] *Akayesu* (Trial Judgement), para. 512.

religious groups associated with a particular "religion, denomination or mode of worship".[63] These definitions were further readopted by some domestic judgements too.[64]

While *Akayesu (Trial)*'s intention to define every protected group based on their unique characteristics should be seen as valid and justified, considering the criticism of the "aggregationist" approach provided above, the very essence of the definitions seems questionable, while their sources and relevance are unclear. For ethnic, religious, and racial groups, the tribunal entirely failed to specify where the definitions were derived from. However, a source for the definition of national groups was provided. *Akayesu (Trial)* explicitly imported the definition from the characterisation of the term "nationality" in the 1955 *Nottebohm* judgement of the International Court of Justice ("ICJ"), where the Court was called upon to rule on matters of state responsibility in deciding what a state can exercise diplomatic protection over an individual in cases of multiple nationality.[65] The ICJ thus discussed the concept of "nationality" from the standpoint of "citizenship", i.e., an individual's legal ties with the state. If *Akayesu (Trial)*'s pronouncement is read plainly, membership in national groups is, in the first place, defined by an individual's passport linking it to citizenship of a particular state.

The basic rules of treaty interpretation suggest that reliance on *Nottebohm* as the sole arbiter in framing national groups is highly questionable. Customary international law rules codified in the VCLT dictate that treaty terms shall be interpreted in good faith, in their ordinary meaning used in their context, and in the light of the object and purpose of the treaty, considering subsequent agreements and practice of parties and – if meaning is still ambiguous – preparatory works and other supplementary means (such as legal doctrine and international jurisprudence).[66]

If these rules had been carefully followed in *Akayesu (Trial)*, the tribunal would have reached a radically different conclusion. Firstly, the tribunal did not provide any

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[63] *Ibid*, paras 513-515.
[64] *Jević et al.* (Verdict), para. 950; *Prosecutor's Office of Bosnia and Herzegovina v Ivanović* (Second Instance Judgement) S1 1 K 003442 (18 June 2014), para. 51.
[65] *Nottebohm Case (Liechtenstein v Guatemala)* (Second Phase) [1955] ICJ Rep 4 (hereinafter – "*Nottebohm*"), 16-17.
[66] VCLT, Articles 31-32.

explanation for why the term “national group”, in its ordinary meaning, is linked to the concept of state citizenship. Most likely, the Chamber referred to citizenship associating a “national group” with the concept of “nationality”. However, international law ascribes two different meanings to the term “nationality”: nationality in the legal sense of “citizenship” and nationality in the socio-political sense of “membership of a certain nation in the sense of race” (i.e., national origin).[67] These two notions should not be confused. Therefore, even if membership in a national group is to be based on the premise of “nationality”, it remains possible and desirable that membership in a national group is linked to belonging to a nation and requires the exploration of what “a nation” represents.

Secondly, *Akayesu (Trial)*’s pronouncement apparently ignored the specific context of the *Nottebohm* judgement (i.e., nationality (citizenship) as a precondition for a state’s standing before the Court for the purpose of establishing state responsibility under the law of diplomatic protection). It imported the definition from that narrow context to the completely dissimilar one of construing the elements of the crime of genocide under international criminal law – whose primary purpose is to punish those responsible for “the most serious crimes of international concern”.[68] There is difficulty in establishing a plausible explanation as to why individual’s affiliation with a national group in the context of the crime of genocide should be assessed against the background of the criteria and definitions developed in the context of the law of state responsibility and the law of diplomatic protection.

Thirdly, defining membership in a national group through the lenses of citizenship disregards the very object and purpose of the Genocide Convention (i.e., “to safeguard the very existence of certain human groups”).[69] It unreasonably limits the Convention’s protection by connecting the existence of the national group to the existence of a state: if

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[67] Robert Jennings, Arthur Watts, ‘Individuals’ in Robert Jennings, Arthur Watts (eds),*Oppenheim’s International Law: Volume 1 Peace* (9th edn, 2008, online edn, Oxford Law Pro) <https://doi.org/10.1093/law/9780582302457.003.0008> accessed 1 January 2026, 857.

[68] See, e.g., Rome Statute of the International Criminal Court (signed 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, Article 1.

[69] *Reservations to the Convention on Genocide* (Advisory Opinion) [1951] ICJ Rep 15, 23.

a state disappears (e.g., because of the foreign occupation and/or annexation of territory) or is not formed yet, a national group ceases to exist or was not yet formed.[70]

Lastly, even if these considerations leave ambiguity as to whether citizenship is the foundation for the definition of the national group, the *travaux préparatoires* to the Genocide Convention provide additional evidence to refute such allegations.[71] Although the *travaux* do not define the concept of national groups precisely, while referring to the terms "nation" and "nationality" several state delegations and the *Ad Hoc* Committee on Genocide stated that "nationality" should not be associated with "citizenship" but with the national origin as opposed to legal nationality.[72] This approach was followed by some of the earlier and contemporary commentators.[73]

Overall, there is a strong rationale behind the arguments against equating membership in the national group with citizenship. Understanding national groups only in the dimension of "citizenship" would unreasonably narrow the definition to a technical connection with a particular state rather than deeper social, cultural and anthropological ties[74] comparable to those uniting the members of three other groups. It will make the construction of national groups a technical political issue, since membership in them can be easily and instantly amended by the fact of the acquisition, relinquishment and loss of citizenship that can happen overnight. Bonds of citizenship do not create socio-cultural identities compared to those belonging to a nation: citizens of one state are diverse in backgrounds, and sometimes even fellow citizens can share different national affiliations (e.g., collaborators aligning with foreign occupation forces or separatist groups). It is

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[70] Lisson (2008) 1468-1469. See also A/C.6/SR.73, 97-98, where the Swedish delegate argued that a more precise definition of the term "national group" was necessary, since "if it meant a group enjoying civic rights in a given State, then the convention would not extend protection to such groups if the State ceased to exist or if it were only in the process of formation". See also Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024) 18.

[71] Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024) 17.

[72] E/AC.25/SR.10, 16; E/AC.25/W.1, 2-3; A/C.6/SR.73, 97-98.

[73] See, e.g., Ruhashyankiko's Study E/CN.4/Sub.2/416, paras 59-61. See also a less clear mention in ICI on Darfur Report (2004), para. 494: "By "national groups", one should mean those sets of individuals which have a distinctive identity in terms of nationality or of national origin".

[74] See, e.g., Lingaas (2020) 242-245.

therefore accepted that in the context of defining "national groups" under the Genocide Convention, the connection between a national group and a state is irrelevant: one state can incorporate several national groups or one national group can exist on the territories of several states comprising individuals with different citizenship status.[75]

Even if *Nottebohm*'s analysis can be somehow relevant for the consideration of what constitutes a national group, it remains to be read in a different light. In *Nottebohm*, the ICJ essentially pronounced that legal nationality (citizenship) is merely a juridical expression of broader social ties based on "a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties" and closer connection "with the population of the State conferring nationality than with that of any other State".[76] Read this way, it is not legal nationality that defines a person's membership in a national group; *vice versa*, nationality is a particular juridical expression of "connection of existence, interests and sentiments" holding national groups together, as well as "reciprocal rights and duties" uniting its members.[77]

Thus, the "distinctionist" approach better suits the goals of effective treaty interpretation, while also taking into account complex socio-cultural and anthropological identities of the four protected groups, especially when they do not seem to overlap. However, the attempts to define "national groups" with reference to citizenship go contrary to the well-established principles of treaty interpretation. Instead, the *Akayesu (Trial)*'s pronouncement has to primarily be read through the factor of "reciprocal rights and duties", of which citizenship may only be a formal expression.

Where Convention remains silent or ambiguous on the matters, the notion of the "national group" as a generic term is to be interpreted evolutionarily in light of the ever-changing social realities. In particular, using generic terms in a treaty, the parties necessarily were (or should have been) aware that "the meaning of the terms was likely to

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[75] Weber (2024) 306.
[76] *Nottebohm* 23.
[77] *Ibid*.

evolve over time, and where the treaty has been entered into for a very long period or is "of continuing duration", the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning".[78] The evolution undergone by the anthropological understanding of the human groups and their identities in the 70 years after the Convention's adoption[79] cannot thus remain without the impact on the Convention. The chapter below will explain why the definition of national groups should primarily be based upon the concept of a "nation".

1.4. Defining the national group in connection with the concept of a nation

Although the term "nation" can sometimes appear synonymous with states, peoples or national minorities,[80] nations also constitute a special category of human groups viewed and understood autonomously through the lenses of modern anthropology. Today, nations are generally defined along two dichotomous views: cultural (sometimes also referred to as "ethnic") and consensual (sometimes also labelled as "civic" or "political").

The cultural or ethnic view refers to nations as communities defined by (real or presumed) shared descent and inherited or unchosen identities.[81] Through this perspective, membership in a nation is thus defined by a set of relatively objective facts that are presumed by birth and descent, such as "a common relation to some combination of historical memory, geography, kinship, tradition, mores, religion, and language".[82] In other words, the cultural conception considers that a person is born into a nation as a

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[78] *Dispute regarding Navigational and Related Rights* (*Costa Rica v Nicaragua*) [2009] ICJ Rep 213, para. 66. See also Oliver Dörr, Kirsten Schmalenbach, 'Article 31. General rule of interpretation' in Oliver Dörr, Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties* (Springer 2018) 535-536.

[79] As an example of the social dynamic in understanding groups' identities, see Polly Rizova, John Stone, 'Race, Ethnicity, and Nation', *Oxford Research Encyclopedia of International Studies* (26 April 2021) <https://doi.org/10.1093/acrefore/9780190846626.013.470> accessed 18 March 2024 (hereinafter – "Rizova and Stone (2021)").

[80] Armin von Bogdandy, Stefan Häuβler, 'Nations', *Max Planck Encyclopedias of International Law* (August 2019) <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1441?d=%2F10.1093%2Flaw%3Aepil%2F9780199231690%2Flaw-9780199231690-e1441&p=emailA0xCRz0EcNH5s> accessed 1 January 2026 (hereinafter – "von Bogdandy and Häuβler (2019)"), para. 1; Weber (2024) 298.

[81] Renaud-Philippe Garner, 'Nationalism', *Oxford Research Encyclopedia of Politics* (18 May 2022) <https://doi.org/10.1093/acrefore/9780190228637.013.2039> accessed 19 March 2024 (hereinafter – "Garner (2022)"); Jan Marschelke, 'National Identity' in Mortimer Sellers, Stephan Kirste (eds), *Encyclopedia of the Philosophy of Law and Social Philosophy* (Springer, Dordrecht 2023) (hereinafter – "Marschelke in Sellers and Kirste (2023)") 2452-2453.

[82] Brian C. J. Singer, 'Cultural versus Contractual Nations: Rethinking Their Opposition' [1996] 35(3) *History and Theory* 309 (hereinafter – "Singer (1996)") 311.

system of values and cultural attributes, and human beings generally do not choose to which nation they belong.

Alternatively, the consensual view defines nations as voluntary communities whose recognise each other as a part of the same nation based on their mutual "convictions and loyalties and solidarities".[83] Nations thus are perceived as social contracts or covenants established by human beings through their voluntary choice and commitment.[84] From the consensual standpoint, individual ethnic descent or other socio-cultural variables do not matter as long as a person self-identifies with the nation and other nation members accept this person as a fellow. For example, the United States is often analysed from the civic (consensual) perspective: members of American society who are diverse ethnically, linguistically, and culturally constitute a single nation by virtue of their mutual self-identification and self-recognition in the membership of such a nation.

Yet, in reality, both ethno-cultural and consensual (civic) perceptions merely reference ideal models that are often mistakenly perceived as being in a stark opposition to each other.[85] Some authors explicitly link the notion of "a nation" to both political will to cohesion and culture.[86] In reality, all nations, to various degrees, combine both cultural and civic (consensual) elements, and none of these elements taken alone can suffice to construe a nation. For example, every modern nation – however relatively ethnically hetero- or homogeneous it is – is based on a cultural foundation[87] that can either be historically predefined by a particular ethnicity (i.e., related to cultural pillars of a particular ethnic group, such as the Japanese in Japan) or developed throughout history

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[83] Ernest Gellner, *Nations and Nationalism* (Basil Blackwell, Oxford UK & Cambridge USA 1983) (hereinafter – "Gellner (1983)") 7.
[84] Garner (2022); Marschelke in Sellers and Kirste (2023) 2453.
[85] Garner (2022); Singer (1996) 316. See also Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024) 18.
[86] Weber (2024) 303 referencing Marcus Llanque, 'Hermann Heller and the Republicanism of the Left in the Weimar Republic' [2019] 23 *Jus Politicum* 13.
[87] Singer (1996) 313.

(e.g., the US and "American" identity and culture formed by people of diverse backgrounds).[88]

Likewise, ethnicity, religion, language, or territorial descent alone do not suffice to build nations: what turns a community into a nation is "a shared history and a shared project, and their historical narratives built on an experience, socially, ethnically, territorially, and genderly diversified, but common to the people of each country on many grounds".[89] National groups are largely founded upon members' belief that they belong together, a common wish to continue living and acting together, historical narratives exploiting the past for the construction of a future project today, as well as connection to a particular geographical space (in contrast to other groups, such as ethnic or religious).[90] Members of national groups believe that they share traits marking them off from other people, although these qualities may not necessarily be specific or precisely formulated.[91] National fellows may not always be able to articulate what binds them together, but will feel the distinction when confronted with outsiders' features.[92] People can inherit national identity, as well as adopt it in the process of living their life while residing on a particular territory and sharing a willingness to exhibit traits and projects distinguishing a particular national group from the others.[93] In other words, a nation exists where humans "begin to see themselves as members of a national community and feel loyal to co-nationals, above and beyond their attachment to an ethnic group, a tribe, a village community or a religion".[94] Certain authors specifically emphasise on the "solidarity" element distinguishing nations (and national groups respectively) from other fellow human

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[88] See, e.g., Manuel Castells, *The Power of Identity* (2nd ed, Wiley-Blackwell 2010) (hereinafter – "Castells (2010)") 32; Singer (1996) 313; Garner (2022). See also PACE 'The concept of "nation"' Recommendation 1735 (2006) <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17407&lang=en> accessed 19 March 2026.

[89] Castells (2010) 32. See also David Miller, 'In Defence of Nationality' [1993] 10(1) *Journal of Applied Philosophy* 3 (hereinafter – "Miller (1993)"), 7.

[90] *Ibid* 7.

[91] *Ibid* 7-8.

[92] *Ibid* 8.

[93] *Ibid* 11.

[94] Andreas Wimmer, *Nation Building: Why Some Countries Come Together While Others Fall Apart* (Princeton University Press 2018) 23 cited in Weber (2024) 302.

communities[95] based on "will to cohesion, expressed through the patterns of behaviour (values and norms) within the group".[96] The sources for this will to cohesion may differ and include "common political achievements, common political destiny, ethnicity, tribal kinship, language, religion, a way of life, culture, history and territory".[97]

Accordingly, "a national group" should be defined as a collectivity of people sharing a political will to cohesion, combined with the shared cultural values and norms among the group members, that involve a deeper level of mutually understood and accepted self-identification and solidarity with a community.

1.5. Distinction between national and other groups protected under the Genocide Convention

As a nation's essential components to varying degrees, the "consensual" element and the cultural element also showcase the key distinctions between a "national group" and an "ethnic" or "political" one. The "consensual" element highlights the difference between national groups and ethnic ones, while the cultural element distinguishes nations from political groups.

In contrast to ethnic groups that are inherently "apolitical" concepts founded on the cultural ties between their members, national groups desire higher levels of self-determination based on their members' voluntary self-identification.[98] National identity *de facto* "injects" political vision into a cultural context,[99] exploits cultural foundations for the construction of the shared national project, and, often, subjective communications about the nation's ideology, memories and cultural significations, or a shared past.[100] Thus, a people or an ethnic community becomes a nation when "it takes conscience of

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[95] Weber (2024) 303-304 referencing and discussing, in particular, Max Weber, *Gesammelte Aufsätze zur Soziologie und Sozialpolitik* (2nd ed., Marianne Weber ed. 1988) 484 and Max Weber, *Economy and Society: An Outline of Interpretive Sociology* (University of California Press 1978) (hereinafter – "Weber (1978) in Weber (2024)") 922.

[96] Weber (2024) 304.

[97] *Ibid*.

[98] Douglas Woodwell, *Nationalism in International Relations: Norms, Foreign Policy, and Enmity* (Palgrave Macmillan 2007) (hereinafter – "Woodwell (2007)") 16.

[99] *Ibid* 13.

[100] von Bogdandy and Häußler (2019), para. 9 citing Karl W. Deutsch, *International Political Communities: An Anthology* (Doubleday Garden City 1966), Gellner (1983) and Eugen Lemberg, *Nationalismus vol 1 Psychologie und Geschichte* (Rowohlt Reinbek 1964).

itself according to its history”, i.e., not only is culturally or ethnically distinct from the others but also is politically conscious of this difference and builds its national project on it.[101]

The situation of distinguishing ethnic and national groups can, however, become more difficult when manifesting one’s culture is turned into, or perceived externally as, a political statement. In such a case, the determination of the nature of the identity will likely depend on the intention behind the use of such a political statement. For example, if culture is used to assert a claim to nationhood (i.e., by exploiting the ethnocultural aspect of national identity), it is possible to claim that a group is developing or asserting national identity. If culture is simply professed as a matter of self-determination, such manifestations (e.g., against domestic oppression), even despite the political background of intentions, will not bring the group outside the ethnic realm into the field of nationhood.

Shared (relatively homogenous) ethnicity can be a foundation for the development of some national groups, and ethnicities can serve as a potential source of new national identities (i.e., ethnic groups can be viewed as “potential” future nations).[102] At the same time, national groups can encompass various ethnicities, uniting them with an overarching national project or identity (e.g., people of different ethnic backgrounds in the United States).[103]

In turn, the cultural element sets national groups apart from political groups. Defining nations as “voluntary associations” merely sharing common ideology and disregarding their shared cultural foundations falsely equates nations to purely political movements that can claim the right to self-determination merely based upon their desire

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[101] Hannah Arendt, Jerome Kohn (ed), *Essays in Understanding, 1930-1954. Formation, Exile, and Totalitarianism* (Schocken Books 2005) 208. See also Gerhart Husserl, ‘The Political Community Versus the Nation’ [1939] 49(2) *Ethics* 127 (hereinafter – “Husserl (1939)”) 142-143.

[102] David Miller, *On Nationality* (Oxford 1997; online edn, Oxford Academic, 1 November 2003) <https://doi.org/10.1093/0198293569.003.0002> accessed 1 January 2026 (hereinafter – “Miller (1997)”) 20-21;

[103] Miller (1997) 20-21; Vishchyk, ‘Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities’ (2024) 19.

to form a separate group.[104] Although nations are often described as "political" communities,[105] they go beyond mere political doctrine, uniting, e.g., political parties or movements defined based on holding a particular political opinion.[106]

Unlike political parties or movements that can be created, disappeared, banned or reorganized overnight by an act of the human will, nations exist in continuity driven by cultural foundations, i.e., "consciousness of a common past, from which it derives a stock of traditional values" that are "kept alive in the feelings, thoughts, and actions of the community".[107] This distinction is reflected in the positions of some delegates during the drafting of the Genocide Convention who differentiated political groups from, *inter alia*, national groups based on two major factors: the latter's more continuous and stable character, as well as their cultural foundation. In particular, certain delegations contended that, unlike political groups that are based on "a body of theoretical concepts", national groups are bound by "sentiment or tradition",[108] as well as "fully established historical background".[109]

In contrast to political groups, the birth of nations and national sentiments cannot be the decision of a single person or a group of persons. Neither can nations be born spontaneously. Nations do not have a "birth date".[110] Nations are not created: nations evolve gradually and naturally in the historical continuity. Nations are not defined or driven by political doctrines or political opinion. The only thing that justifies the label of nations as political communities is the fact that, in contrast to ethnic groups, nations are a "people which has awakened to political consciousness […] of a historic mission, […] of

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[104] Notably, Swedish delegate pointed to similar aspects during the drafting process of the Convention: "It could be contended, of course, that the mere desire to form a group constituted a political factor, and that all such groups would be covered by the concept of a political group": see A/C.6/SR.73, 97-98.
[105] Husserl (1939) 142-146; Singer (1996) 309-311.
[106] This is evident throughout consistent references to "political opinion" or "political parties" defining political groups throughout the preparatory works to the Genocide Convention: see, e.g., E/AC.25/SR.4, 9-10, 12; E/AC.25/SR.10, 4, 11; UN ECOSOC 'Ad Hoc Committee on Genocide: Summary Record of the Thirteenth Meeting, Lake Success, New York, Monday, 20 April 1948, at 2 p.m.' (20 April 1948) UN Doc. E/AC.25/SR.13 (hereinafter – "E/AC.25/SR.13") 4; E/AC.25/W.1, 3. See also Weber (2024) 304.
[107] Husserl (1939) 131.
[108] E/AC.25/SR.13, 2.
[109] E/AC.25/SR.4, 10.
[110] Husserl (1939) 131.

its historic and cultural background" that finds its place on a political arena.[111] In fact, national identity serves to unite people of various political persuasions and views to share a common loyalty.[112]

Thus, unlike ethnic groups, national groups are not merely bound culturally but possess a degree of political self-consciousness associated with the national project. Unlike political groups, nations are culturally founded and not driven purely by political doctrines or ideologies.

1.6. Addressing challenges related to defining national groups through the lenses of a nation

A mixture of cultural and consensual elements in the definition of national groups makes national identities relatively more fluid than those defining other protected groups, particularly ethnic identity.[113] This may seem to contradict a widespread contention, held prominently in *Akayesu (Trial)*, suggesting that the Genocide Convention was meant to protect only "'stable' groups, constituted in a permanent fashion and membership of which is determined by birth […] [and] would seem to be normally not challengeable by its members, who belong to it automatically […] in a continuous and often irremediable manner".[114] In contrast, "'mobile' groups which one joins through individual voluntary commitment, such as political and economic groups" were excluded from the conventional protection.[115]

However, the premise that permanence and stability were the main and decisive factors in defining the list of protected groups under the Genocide Convention is far from being well-settled.[116] There are credible arguments that mainly political considerations (i.e., compromises to ensure the broadest possible ratification of the Convention)

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[111] Husserl (1939) 142-143.
[112] Miller (1993) 9-10.
[113] Woodwell (2007) 13.
[114] *Akayesu* (Trial Judgement), para. 511.
[115] *Ibid*.
[116] William A. Schabas, 'Groups Protected by the Genocide Convention: Conflicting Interpretations from the International Criminal Tribunal for Rwanda' [2000] 6(2) *ILSA Journal of International & Comparative Law* 375 (hereinafter – "Schabas (2000)") 382; Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024) 19.

governed the drafters' actions when defining protected groups.[117] Political groups provide an illustrative example in this regard. They are inherently rather impermanent and unstable. Despite this, they were initially included in drafts and only removed towards the later end of negotiations in an attempt to quickly secure acceptance from a recalcitrant minority of states concerned about limitations to their ability to exercise political repression.[118]

This is not to necessarily claim that the factor of permanence and stability is irrelevant, as contended by certain authors, on the basis that such criteria appeared in the *travaux* only "infrequently".[119] While it is correct to state that there was no uniform consensus as to the relevance of the criteria of permanence and stability (and the political groups were initially included in the draft by four votes to three[120]), arguments on the infrequency of such mention in the *travaux* seems rather overstated. It was still mentioned consistently by various delegations representing different regions, as well as political systems.[121] Hence, although the permanence and stability factor might not have been *determining* in the decision to exclude political groups from the conventional protection, it nevertheless was one of the *guiding* arguments.

The notions of stability and permanence are thus important but must be construed logically and coherently. This brings forth the secondary issue: an excessive and overbearing view of the notions of stability and permanence. It is correct to state that four groups enjoying the conventional protection (including the national group) are relatively permanent. But the assertion that their permanence is founded on membership that is "irremediable" and "determined by birth" appears unsubstantiated. Arguably, all identities

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[117] Schabas (2000) 382.
[118] *Ibid*.
[119] *Ibid*.
[120] E/AC.25/W.1, 2.
[121] These positions were mostly raised by the same governments and groups of governments: see, e.g., Venezuela (UNGA 'Sixty-fifth meeting, Held at Palais de Chaillot, Paris, Saturday, 2 October 1948, at 10.40 a.m.' (4 October 1948) UN Doc. A/C.6/SR.65 (hereinafter – "A/C.6/SR.65") 21); Iran (A/C.6/SR.66, 31); Norway (UNGA 'Sixty-ninth meeting, Held at Palais de Chaillot, Paris, Monday, 7 October 1948, at 3.30 p.m.' (7 October 1948) UN Doc. A/C.6/SR.69, 61); Iran (A/C.6/SR.74, 99); China (E/AC.25/SR.3, 5); Lebanon (E/AC.25/SR.4, 10); E/AC.25/W.1, 2; Brazil, Venezuela and Poland (E/SR.218, 705, 712, 719).

except can be altered or abandoned while they all, to a certain extent, represent imaginary social constructs.[122]

Firstly, it is generally accepted today that the concept of "a race" is an archaic social construct having no scientific genetic foundation but rooted in the historical power dynamic and struggle for dominance of one group over another.[123] An individual's affiliation with a particular "racial group" may change and vary depending on who is the author of the determination and what criteria they choose to apply. The history of racism and apartheid in South Africa serves as a potent example. Individuals could be classified as affiliated with one of the four designated racial groups based on voluntaristic, often ill-defined, pseudoscientific criteria, including their social standing.[124] Individuals could also be reclassified based, e.g., on the change of their status.[125] Therefore, racial identity underpinning the classification of an individual as a racial group's member is – given the very nature of the concept of a race – inherently unstable and amendable.

Second, individuals can change or relinquish their religion: yesterday's Christians can become today's Muslims. Studies estimate that between 2015 and 2020, over 40 million people switched from one religious group to another (excluding the two most populous nations, China and India).[126] For example, in the United States alone, recent

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[122] Lingaas (2016) 93, 101.

[123] Rizova and Stone (2021). On the definition of national groups, see also Carola Lingaas, 'Defining the Protected Groups of Genocide through the Case Law of International Courts' (*International Crimes Database*, December 2015) <https://www.internationalcrimesdatabase.org/upload/documents/20151217T122733-Lingaas%20Final%20ICD%20Format.pdf> accessed 2 January 2026, 8-9; Carola Lingaas, 'Imagined Identities: Defining the Racial Group in the Crime of Genocide' [2016] 10(1) *Genocide Studies and Prevention: An International Journal* 79 (hereinafter – "Lingaas (2016)") 87-93, 101; Rizova and Stone (2021).

[124] Geoffrey C. Bowker and Susan Leigh Star, *Sorting Things Out: Classification and Its Consequences* (Massachusetts Institute of Technology, 1999) 199-218; Sue Armstrong, 'Forum: Watching the 'race' detectives - The results of South Africa's race classification laws' (New Scientist, 20 April 1991) <https://www.newscientist.com/article/mg13017656-200-forum-watching-the-race-detectives-the-results-of-south-africas-race-classification-laws/> accessed 19 March 2026; BBC, 'Apartheid' <https://www.bbc.co.uk/worldservice/specials/1624_story_of_africa/page27.shtml> accessed 19 March 2026.

[125] *Ibid.*

[126] 'The Changing Global Religious Landscape' (*Pew Research Center*, 2017) <https://www.pewresearch.org/religion/2017/04/05/the-changing-global-religious-landscape/> accessed 2 January 2026.

studies show that 24% of Americans change religious traditions or denominations in their lifetime.[127]

Third, ethnic identities are not everlasting either. While human beings can inherit ethnic origin by descent, born into and raised in a culture and language, practised by their parents, such human beings can at any point in time change or reject previous cultural or linguistic practices and start self-identifying with another ethnic group or no ethnic group at all. For example, yesterday's representative of the Hutsuls or Lemkos (Lemky), ethnic groups in Ukraine, may decide to move away from ancestral land, cut ties with unique cultural and linguistic practices associated with the group, adopt new ones, or simply pretend they never existed. The absence of connection to previously shared culture will mean that an individual willfully deprives themselves of membership in an ethnic group despite their initial origin. The same logic applies to immigrants in diverse societies (i.e., nations that lean more towards the "civic" or "political" side of the spectrum), whereby, e.g., those whose ancestors previously self-identified with Italian, Irish, or Somalian ethnic groups may assimilate in the diverse society, cutting ties with the culture and language previously underpinning their ethnic identity.

Likewise, affiliation with one nation can be amended or renounced in favour of another: once Polish or Italian, a person can assimilate in the United States or Canada and begin identifying with a different national identity, regardless of initial ethnic roots. Even ethnic identities are alterable: e.g., a member of an ethnic minority – once in a diverse society – can stop self-identifying with an ethnic group and its culture, and no outsider will be in a position to identify their ethnicity.[128] Even racial groups – although based on physical traits and thus arguably unalterable identity defined by birth – are social constructs founded by a scientifically erroneous idea of race that is "a powerful legacy of

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[127] 'Religion and Congregations in a Time of Social and Political Upheaval' (*PRRI*, 16 May 2023) <https://www.prri.org/research/religion-and-congregations-in-a-time-of-social-and-political-upheaval/> accessed 2 January 2026, 14.

[128] See, e.g., Rosita Albert, Adina Schneeweis, Iva Knobbe, 'Strengthening, Hiding or Relinquishing Ethnic Identity in Response to Threat: Implications for Intercultural Relations' [2005] XIV:1 *Intercultural Communication Studies* 107 <https://media.sciltp.com/articles/sciltp/ics/2005/09-Rosita-Albert-Adina-Schneeweis-Iva-Knobbe.pdf> accessed 2 January 2026, 107-112.

cultural tradition and social inertia" rather than an objective factor.[129] It entails that racial identities are amendable too, depending on the evolving societal realities.

Yet, although membership in protected groups is alterable, their greater level of stability and permanence remains defined by powerful socio-cultural ties among their members. The change of the four identities is not an easy or short process compared to other human groups, such as political or economic groups, whose membership can change relatively quickly with shifts in political opinions or economic status (obviously, with possible exceptions). To the contrary, relinquishing identity of belonging to one of the four protected groups or transitioning to another group is the result of gradual adaptation involving "a rebuilding of the historic basis of [one's] life".[130] Because membership in four groups affect human identities so deeply and often determine human beings as they are through generations, relinquishing them is a complex process that requires either a strong individual intention or a forceful imposition of power. An individual's belonging to such communities cannot be easily wiped out.

Since national groups are built on deep levels of self-determination, mutual self-identification based on the shared vision and project intertwined with cultural bonds, national identities are built on powerful narratives of historical continuity and "transcendental", almost "quasi-religious qualities".[131] In contrast to other identities, national identity is active, i.e., being a member of a national group requires much more than passive inheritance but investment in a shared project, active decision-making, and achieving goals.[132] This high level of will to cohesion and joint contribution to a national project makes voluntary abandonment of the national group's membership a relatively complicated endeavour, yet a possible one.

Since national identity is consensual and relatively fluid, through oppression, persecution or violence, members of a national group can be forced to hide, renounce or

[129] Rizova and Stone (2021).
[130] Husserl (1939) 135.
[131] Marschelke in Sellers and Kirste (2023) 2455.
[132] Miller (1993) 7.

abandon their national identity. Therefore, national groups are not unalterable, and their members can voluntarily or forcibly renounce their ties with the group manifested in mutual aspirations, ties and a shared project, similarly to members of the religious groups who may leave or be forced to leave their communities. It might thus be the case that a person may sever ties with a national group while continuing to share or practice its culture remaining then a member of an ethnic group (for example, members of the Ukrainian national group previously residing in Ukraine and sharing aspirations with the Ukrainian national project may one day migrate to Canada, assimilate there, start self-identifying as members of the Canadian nation but continue Ukrainian cultural practices).

1.7. Conclusions on the definition of the national group

While a national group is listed first as one of the four protected groups in the commonly accepted international definition of the crime of genocide, its true essence and meaning have been substantially overlooked in the international jurisprudence and legal commentaries. Based on the findings in the present Chapter, this Section aims at summarising the key conclusions relevant to coherently defining the national groups in the law of genocide.

- International jurisprudence and doctrine have developed two approaches to defining every protected group (or protected groups in general). The "aggregationist" approach suggests that defining each of the four protected groups separately is an unnecessary, or, taken to the extreme, even a harmful exercise. It insists that "protected groups" are supposed to represent a generic category, whereby national, ethnic, racial and religious groups are just four delineating corners of a square. The "distinctionist" approach suggests defining every protected group as a unique, standalone category. While the application of the "aggregationist" approach may seem justified in certain contexts, where several identities overlap within one group, it fails to account for the complex nature of every protected group as a separate category in modern anthropology. Moreover, it is not helpful in situations where only one particular identity feature shapes the perpetrator forces' intent to destroy, since it fails to clearly define what every protected group represents as a potential object of destruction. It also undermines the effectiveness of the treaty interpretation, overlooking the fact that drafters' choice of protected groups was not a random selection but was underpinned by various considerations (albeit not always clear), whereby every term of the treaty has to be attributed the meaning to its utmost effectiveness. Therefore, it remains essential to define each protected group separately.

- One of the proposed approaches in international jurisprudence, later commonly recited in the doctrine, proposes to define national groups based on a legal bond on the basis of a shared common citizenship, as well as reciprocal rights and duties. This approach, however, appears to be flawed. First, it mistakes the notion of "nationality" in its legal and socio-political sense, with the latter linked to national origin and identity rather than citizenship. Second, it goes against the intention of the Genocide Convention's drafters, where certain delegations made the intention clear that national groups should not be linked to shared citizenship. Third, it links the national group's identity to a technical legal issue of the possession of a passport rather than complex identity ties underpinning the definition of other groups. Finally, it seems incomprehensible that perpetrators of the crime of genocide would intend to target individuals simply for their possession of a particular citizenship.
- Instead, national groups should be defined with a link to a concept of "a nation". Nations can be viewed through two lenses: ethno-cultural (based on the inherited cultural or linguistic characteristics) and civic-political (based on the common desire to form a separate national community regardless of origin). In reality, no nation is defined exclusively through one of the mentioned approaches, and all nations combine ethno-cultural and civic-political elements. National identity is thus premised on a deep level of the will to cohesion, mutual self-identification with fellow group members, common vision of a national project, past, present and future based on shared patterns of values and norms.

- In contrast to ethnic groups, national groups are not simply premised on a shared culture or language (although culture and language can form a substantial part of national identity) and are distinguished by a higher degree of mutual self-identification and strong will to cohesion. Unlike political groups, national groups are not premised on any political ideology or affiliation with a political party or movement. Although nations (and, respectively, national groups) are seen as political communities, the connotation of the term "political" is not linked to a political ideology in the ordinary sense.
- Finally, while the definition of the national groups may invite criticism for the alleged lack of stability and permanence (i.e., the allegation that one may choose to acquire or abandon national identity), this criticism faces two major counterarguments. First, every protected group – to one degree or another – is fluid and features underpinning its identity are amendable (e.g., individuals may choose to stop practising the culture and language underpinning the ethnic group's identity or stop their affiliation with the religious community or practices forming a core of its identity). The factor of permanence and stability of the protected groups – although relied upon by some delegations during the drafting of the Genocide Convention – was not a defining and decisive factor in crafting the list of protected groups. Second, although national identity – as the identities of other protected groups – is susceptible to alteration, this process never occurs easily: like ethnic or religious identities, an affiliation with a national group forms a powerful core of the individual's identity in contrast to other identities not covered by the Convention's scope of protection (such as economic, social or political affiliations).

CHAPTER 2

THE SCOPE AND MEANING OF THE INTENT TO DESTROY THE NATIONAL GROUP "IN WHOLE OR IN PART"

The crime of genocide is distinguished from other international crimes by the special *mens rea* requirement, i.e., special intent (*dolus specialis*) to destroy one of the four groups, particularly a national group, protected by the Genocide Convention.[133] Special intent differentiates genocide from other international crimes, particularly those based on discriminatory treatment based on humans' identity, such as its sister-crime against humanity of persecution, whose essence lies in the intent to deprive the group of fundamental rights without aiming at its destruction.[134]

To qualify as genocide, each of the five underlying acts (i.e., killing, serious bodily or mental harm, imposition of life conditions calculated to bring about physical destruction, prevention of births and transfer of children) must be committed with the special intent to destroy a group in addition to the general intent requirement typical to the conduct in question.[135]

The intent to destroy is also often referred to as an "ultimate intent", highlighting a goal-oriented nature of the crime of genocide.[136] It is the perpetrator's mental state that needs to *aim at* the destruction of a group, even if actual elimination does not occur.[137] Even where the existence of a group (in whole or in part) is threatened, genocidal intent may not be presumed, and it must be verified whether perpetrators went beyond mere discrimination aimed at bringing about the targeted group's destruction as such.[138]

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[133] ILC 'Draft Code of Crimes against the Peace and Security of Mankind with Commentaries' (1996) *Yearbook of the International Law Commission*, vol. II, Part Two (hereinafter – "ILC Draft Code with Cmts (1996)") 44, para. 5; Florian Jeßberger, 'The Definition and the Elements of the Crime of Genocide' in Paola Gaeta, *The UN Genocide Convention: A Commentary* (OUP 2009) (hereinafter – "Jeßberger in Gaeta (2009)") 105.

[134] *Jelisić* (Trial Judgement), para. 79; *Prosecutor v Kupreškić et al.* (Trial Judgement) IT-95-16-T (14 January 2000), para. 636.

[135] ILC Draft Code with Cmts (1996) 44, para. 5; Jeßberger in Gaeta (2009) 105; Tams, Berster, Schiffbauer (2014) 132.

[136] Tams, Berster, Schiffbauer (2014) 132 also referring to Kai Ambos, 'What does 'intent to destroy' in genocide mean?' [2009] 91(876) *International Review of the Red Cross* 833, 835.

[137] Jeßberger in Gaeta (2009) 105.

[138] *Jelisić* (Trial Judgement), paras 78-79.

In addition to its centrality to the crime's definition, the element of genocidal intent is also marked by its inherent complexity. The reasons relate to both its multi-layered nature as a legal construct *per se* and the sophisticated interpretative history attributed to it by international and domestic adjudicative mechanisms and legal commentators, which is frequently filled with contradictions and uncertainties. International jurisprudence and doctrine seem to agree only on the core of the special intent element. It seems uncontested that to establish the special intent, it has to be demonstrated that the perpetrator's intent (i) was aimed at the group "destruction" "as such" (ii) in whole or in part.

However, while this core is clearly defined, its exact contours and essence are not. In particular, the essence of the special intent element raises two fundamental sets of questions. First, how is the exact scope of the destruction sought determined, i.e., what represents the group "in whole" and the group "in part" as potential objects for destruction? The intended partial destruction raises several additional layers of questions related to the methodology of establishing whether the targeted part is "substantial", which has been uniformly accepted as an essential qualifier for the intended destruction of the part to be encompassed by the criminalised conduct. Second, what type of destruction does the special intent seek to achieve, i.e., whether it requires physical and/or biological elimination of the group, or rather its disintegration as an entity (e.g., through social dissolution), allowing for the survival of individual members even where the group disappears "as such"?

The present Chapter seeks to address these critical questions with a specific focus on national groups. It starts with the analysis of the scope of the destruction sought, determining how to define the group "in whole" and "in part" and respective methodologies for their evaluation. In particular, it bridges the interpretative gaps created by jurisprudence and legal commentators.

2.1. Intent to destroy the national group "in whole" or "in part"

The object of genocidal intent (i.e., the intended object of destruction) is defined in duality. The intent may be directed at destroying the group "in whole". At the same time, the existence of genocidal intent does not require an intention "to achieve the complete annihilation of a group from every corner of the globe".[139] Instead, the intent may as well be directed at destroying the group "in part".

Plain as they may seem, both forms of special intent remain some of the most complex elements of the crime of genocide. While international jurisprudence and many authoritative commentators have sought to bring interpretative clarity and consistency to the definitions of these concepts, their essence remains rife with interpretative grey zones. This Section aims at clarifying their substance, particularly in cases where national groups are targeted for destruction. It starts with elaborating on what the destruction of the group "in whole" entails. It further explains the essence of the intent to achieve partial destruction, including the substantiality requirement and its core indicators.

2.1.1. Destruction of the national group "in whole"

As the first alternative form of the intent, the definition of genocide enshrines the intent to destroy the group "in whole". At the same time, the exact scope and meaning of this *mens rea* form has remained unsettled. Comprehending the group "in whole" may be easier in the context of geographically concentrated small communities (such as tribal communities or small religious groups) comprising several hundred members (albeit with various qualifiers, as will be elaborated further). However, history has usually revealed more complex contexts, e.g., those involving groups with multiple identity layers or those scattered across vast geographic areas or around the globe, which makes the determination of intent in such cases a particularly nuanced endeavour.

The first question to ask is whether the group "in whole" should encompass all group members around the world or those concentrated in a particular geographically limited community (such as one region, country or, even more restrictedly, a municipality within one state)? For example, what constitutes the Ukrainian national or ethnic group "in whole"? Is it comprised solely of Ukrainians in Ukraine? Or does it encompass Ukrainians worldwide? Do Ukrainians in Ukraine constitute the group "in whole"? Do Ukrainian

[139] ILC Draft Code with Cmts (1996) 45, para. 8.

national minorities in other countries altogether qualify as "a part" of the group "in whole"? Or do each of them (e.g., Ukrainians in Canada, Ukrainians in Turkey or Ukrainians in Georgia) constitute a separate "group in whole"? Can Ukrainians within particular localities constitute a group "in whole" (e.g., Ukrainians of the city of Kherson, Ukrainians of Crimea, or Ukrainians of the Russian-occupied territories more broadly)?

The same complex considerations arise in relation to other groups, too. Hypothetically, where a non-state armed group intends to target Christians of a particular town, almost all of whom turn out to be Catholics, what constitutes the whole group? Do Catholics of that particular locality constitute the whole group? Is it Catholics of the entire territory controlled by a non-state actor or Catholics of the entire country? Should the considerations be centred on Catholics globally, or Christians more broadly, of which the Catholic segment is a part? Should the group "in whole" encompass Catholics and Christians worldwide?

Addressing these questions is not only a hypothetical matter of legal curiosity. Determining how to evaluate the group "in whole" is fundamental for any further steps in analysing the *mens rea* element since it necessarily impacts how the group "in part" is determined and how substantiality of the part is measured, respectively (as will be discussed in Section 2.1.2.3). The discussion is further complicated by the fact that no jurisprudence has to date clearly addressed the cases of targeting the group "in whole". The present Section addresses the most relevant considerations centring the analysis around two major clusters of issues: (i) how the group "in whole" can be defined based on geographical considerations; and (ii) whether the definition of the group "in whole" should be premised on objective or subjective factors.

2.1.1.1. Geographical considerations in determining the group "in whole"

The geographical dimension of defining the group "in whole" is essentially concerned with the question of whether the group in whole has to be evaluated universally (globally) or within a limited territory (a continent, region, country or even smaller localities within it, such as communities).

The *travaux préparatoires* to the Genocide Convention provide no clear guidance whatsoever on the issue at hand. As will be further shown in Section 2.1.2 related to partial destruction, the essence of the potential scope of genocidal intent did not draw sufficient attention from the Convention's drafters. Only statements by certain delegations can, in theory, be considered potential hints, while it remains unknown whether their interventions resulted from thorough legal considerations underpinning the reasoning or from hasty thinking during the debates.

For example, during the discussion on the notions of national and ethnic groups, the Egyptian delegation stated that "the well-known problem of the German minorities in Poland or of the Polish minorities in Germany, and the question of the Sudeten Germans, showed that the idea of the national group was perfectly clear".[140] One possible interpretation of this view can suggest that national minorities were viewed by the delegation as standalone groups "in whole". However, an alternative reading remains possible, suggesting that minorities were merely viewed as parts of national groups existing externally from the minorities' countries of residence, to which they were linked by national origin (e.g., the Polish minority in Germany as a part of the Polish group overall).

None of the early commentaries to the Genocide Convention or other supplementary means of interpretation provided any relevant indicators. For example, 1994 Final Report of the Commission of Experts Established pursuant to Security Council Resolution 780 merely defines the intent to destroy the group "in whole" by contrasting it with the intent to destroy "in whole" and stating that the latter indicates the absence of need it "to aim at killing all the members of the group" to prove genocide.[141] However, again, the report does not specify what territorial considerations should be applied as a basis for evaluation.

The UN International Law Commission adopted a similar ambiguous approach in its commentaries to the 1996 Draft Code of Crimes against the Peace and Security of

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[140] A/C.6/SR.74, 100.
[141] S/1994/674, para. 93.

Mankind. The Commission stated that genocidal intent does not require perpetrators "to intend to achieve the complete annihilation of a group from every corner of the globe".[142] However, it is unclear whether this statement points to the Commission's vision that the group "in whole" should be defined universally (globally) or merely represents a metaphorical reference aimed at better illustrating and contrasting the intent to destroy "in part".

Further international jurisprudence of *ad hoc* tribunals likewise does not attempt to define the group "in whole". Yet, potential approaches may be evident from how tribunals approached definitions of the group "in part". While the details of the approaches will be discussed in Section 2.1.2 further, this Section will outline the main tendencies.

The jurisprudence of the ICTR was not concerned with the attempts to differentiate the two alternative objects of genocidal intent. The ICTY's jurisprudence tends to be more detailed, though it provides the basis for several confusing narratives. The first ICTY's judgement involving genocide charges, *Jelisić (Trial)* was centred around the responsibility of the accused for killings of Bosnian Muslims in three localities within one municipality of Bosnia and Herzegovina. *Jelisić (Trial)* accepted that genocidal intent may only extend to a limited geographic zone following the prosecution's contention that "the geographical zone in which an attempt to eliminate the group is made may be limited to the size of a region or even a municipality".[143] This pronouncement followed earlier considerations, where the Chamber assessed the meaning of the destruction of the group "in whole" claiming that "targeted part of a group would be classed as substantial either because the intent sought to harm a large majority *of the group* in question or the most representative members of the targeted *community*" [emphasis added].[144]

The pronouncement provides room for several possible interpretations of the Chamber's intention. The first reading may suggest that the Chamber considered defining the group "in whole" as limited by a geographically defined area (e.g., a municipality or

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[142] ILC Draft Code with Cmts (1996) 45, para. 8.
[143] *Jelisić* (Trial Judgement), para. 83.
[144] *Ibid*.

even a community). The emphasis on a "community" is also common throughout the preceding passages in *Jelisić (Trial)* and is particularly interesting as it leaves the space for a doubt as to whether the Chamber actually meant that targeting of representative members (as a part of the group) can affect the community (as the group "in whole"). At the same time, in the same passage of the judgement, the Chamber further reiterated that genocidal intent may be manifested in either "extermination of a very large number of the members of the *group* or […] persons selected for the impact that their disappearance would have upon the survival of the *group* as such" [emphasis added].[145] Confusing references to the group and the community leave the Chamber's vision unclear and cannot unequivocally testify to the underlying intention to equate an individual community to the group "in whole".

According to the alternative reading, it can be assumed that the Chamber meant that the commission of genocide within a geographically limited territory (e.g., the community) may be indicative of the intent to affect the entirety of the group. This reading can be reinforced by further pronouncement in the *Krstić Appeal*, and upheld by subsequent chambers, indicating that the intent to destroy will necessarily be limited "by the opportunity presented to [perpetrators]", as well as such factors as "the area of the perpetrators' activity and control, as well as the possible extent of their reach" can be relevant factors to consider.[146] This reasoning appears more likely, especially in light of further jurisprudential developments in the subsequent *Krstić* judgements that followed *Jelisić (Trial)*.

Krstić judgements are foundational to the assessment of the *mens rea* requirement of genocide in many respects, particularly because they lay out the considerations for subsequent chambers in assessing the intent requirement. *Krstić* judgements concerned the killing of around 7,000 to 8,000 Bosnian Muslim men within a Srebrenica community

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[145] *Ibid*.
[146] *Krstić* (Appeal Judgement), para. 13.

with a parallel displacement of Bosnian Muslim women, children and elderly therefrom.[147]

In *Krstić (Trial)*, the prosecution contended that in the assessment of the genocidal intent, "it is not necessary to consider the global population of the group", and reiterated the Trial Chamber's logic in *Jelisić (Trial)*, claiming that the intent can be established even if targeted persons "constitute only part of a group either within a country or within a region or within a single community".[148] The Chamber in *Krstić (Trial)* upheld this preposition with the reference to multiple preceding authorities (of various nature – from international and domestic judgements to pronouncements of international political bodies) supporting the argument that the commission of genocide can be limited to a particular geographical area.[149]

What constitutes the group "in whole", however, remained largely unclear. Yet, the Trial Chamber provided one important indicator. It stated that although the prosecution presented different conflicting definitions of the group (to be read as the group "in whole"), such as Bosnian Muslims or "Bosnian Muslims of Srebrenica or the Bosnian Muslims of Eastern Bosnia" (i.e., the "whole" being limited geographically), the group overall was "the Bosnian Muslims".[150] In other words, Bosnian Muslims within particular geographically limited communities could not be regarded as the group "in whole".

Krstić (Trial) thus provided the first clear indication that the definition of the group "in whole" based on the considerations of limited geography is an incorrect approach. It can lead to a dangerous compartmentalisation of the group "in whole", whereby the latter can be constantly subdivided into smaller territorial constituents, leading to the multiplicity of the "groups in whole" (e.g., standalone groups "in whole" in every region, district, town or village). This approach – undisputed by subsequent chambers – leads to the first substantive conclusion regarding the definition of the group "in whole": while the

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[147] *Ibid*, para. 2.
[148] *Krstić* (Trial Judgement), para. 582.
[149] *Ibid*, para. 589.
[150] *Ibid*, paras 558, 560, 591.

commission of genocide can be geographically limited, the group within such limited locality remains defined as a part of the "whole", not the "whole" in itself.

Subsequent pronouncement in *Krstić (Appeal)* introduced further considerations as to the definition of the "whole". However, they failed to bring sufficient clarity to the matter, too. Two major passages of the judgement are illustrative in this respect. First, while discussing the factors of the area of perpetrators' activity, control, and reach as relevant factors for the assessment of the intent, the Appeals Chamber recalled the Holocaust example.[151] The Appeals Chamber stated that while the Nazis aimed at the extermination of Jews in Europe, their "ambition probably did not extend, even at the height of its power, to an undertaking of that enterprise on a global scale".[152] While this is, potentially, the hint on the definition of the group "in whole", this hint remains highly vague. The wording may entail that, within the example in question, the Appeals Chamber treated the Jews worldwide as a group "in whole". This reading is justified given that the relevant passage in the judgement appears in the context of the discussion on partial destruction, where destruction of the Jewish group worldwide is juxtaposed against the partial destruction on the continent, over which the Nazis had direct control, albeit not a full one.

However, the subsequent second passage casts doubt on the accuracy of this determination. When assessing whether Bosnian Muslims of Srebrenica constituted a "substantial part" of the Bosnian Muslim group, the Appeals Chamber evaluated their substantiality – first in numerical terms – to "the overall Muslim population of Bosnia and Herzegovina".[153] Subsequently, the Appeals Chamber assessed the targeted part's qualitative substantiality (discussed in greater details in Section 2.1.2.2 below) in the context of "continued survival of the Bosnian Muslim people", "prominence in the eyes of both the Bosnian Muslims", and emblematic fate of "all Bosnian Muslims".[154] While

[151] *Krstić* (Appeal Judgement), para. 13.
[152] *Ibid*, para. 13.
[153] *Ibid*, para. 15.
[154] *Ibid*, paras 15-16.

this pronouncement may *prima facie* be read as a generic reference to Bosnian Muslims more generally (e.g., worldwide), the contextual reading of relevant passages rather points to the fact that the Appeals Chamber had in mind Bosnian Muslims *in Bosnia and Herzegovina* as such (i.e., within the borders of one country).

These pronouncements leave open multiple questions about the definition of the group "in whole". On the one hand, there were no historical reasons to believe that the extent of reach of Bosnian Serb leadership could extend beyond Bosnia and Herzegovina (or border regions of certain neighbouring states) as such to threaten the fate of Bosnian Muslims worldwide. Thus, the limitation of the whole group to the borders of Bosnia and Herzegovina may indicate that the whole group must be defined within the borders of a country. At the same time, one may point to the specific features of the Bosnian Muslims, notably their most concentrated presence within the borders of one country – Bosnia and Herzegovina (unlike the Jews in the 1940s). Therefore, expanding these considerations globally would be of little practical significance since most of the group in question remained confined within the borders of a particular state.

Regardless of these considerations, *Krstić (Appeal)* adopted the methodology for the substantiality assessment in which the group "in whole" was seemingly defined as limited to the borders of a particular state. The same logic was replicated by subsequent chambers, particularly in *Popović, Tolimir* and *Mladić*, as well as by the ICJ.[155]

Equally, the ECCC supported this approach. The Trial Chamber referred to targeting of "the Vietnamese *as a group* [emphasis added]" in Cambodia, thus seemingly limiting it to the Cambodian territory (with no indication that the intent expanded to Vietnamese elsewhere, including in Vietnam).[156] This is implicitly supported by the references to "the

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[155] *Prosecutor v Popović et al.* (Trial Judgement) IT-05-88-T (10 June 2010) (hereinafter – "*Popović et al.* (Trial Judgement)"), para. 865; *Prosecutor v Tolimir* (Trial Judgement), IT-05-88/2-T (12 December 2012) (hereinafter – "*Tolimir* (Trial Judgement)"), para. 774; *Prosecutor v Mladić* (Trial Judgement) IT-09-92-T (22 November 2017) (hereinafter – "*Mladić* (Trial Judgement)"), para. 3554; *Bosnia and Herzegovina v Serbia and Montenegro*, paras 296-297. See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Croatia v Serbia*) (Merits) [2015] ICJ Rep 3 (hereinafter – "*Croatia v Serbia*"), para. 406 in relation to the Croats in Croatia.
[156] Case 002/02 (Trial Judgement), paras 3517-3518, 4101.

intent to destroy, in whole or in part, the Vietnamese group as such".[157] This entails that the group in Cambodia should have necessarily be treated as a potential whole (which the Cambodian authorities intended to destroy fully or in part), since if Vietnamese beyond Cambodia were to be treated as a whole, the reference would not make sense given that perpetrators could not even realise the intent to destroy other Vietnamese beyond Cambodia as a whole. More explicitly, however, the Trial Chamber clearly concluded that "Vietnamese *living in Cambodia* constituted an ethnic, national and racial group at the relevant time [emphasis added]".[158] The same arguments relate to targeting of the Cham ethnic and religious group,[159] whose members also exist in large numbers beyond Cambodia.

The Supreme Court Chamber at the appeal stage, however, disagreed. It ruled that:

> "the fact that the protected group is defined by the shared racial, national, and ethnic characteristics of its members is consequential, because it signifies that the protected group comprises all Vietnamese, including those living outside of Cambodia. The fact that only members of the protected group located in Cambodia were targeted does not limit the scope of the protected group itself, but it may have an impact on whether a perpetrator intended to destroy the group "in whole or in part"."[160]

Consequently, the Supreme Court Chamber engaged in the analysis of whether the evidence supported the proof of the destruction "in part", not "in whole", since it was only limited by the Cambodian borders.[161]

Therefore, the jurisprudence presents two conflicting interpretations for the evaluation of what the group "in whole" represents. One approach suggests that the group "in whole" should be defined universally, i.e., encompassing group members worldwide (the "universalist" approach). The second approach suggests defining the "whole" as limited by the borders of a particular state (or, at most, the region) (the "territorialist"

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[157] *Ibid*, paras 3514, 3518.
[158] *Ibid*, paras 3418-3419.
[159] *Ibid*, paras 3203-3204.
[160] Case 002/02 (Supreme Court Judgement) 002/19-09-2007-ECCC/SC (23 December 2022), para. 1597.
[161] *Ibid*, paras 1631-1632.

approach). How should this conflict be resolved for the sake of the soundest possible interpretation of the law on genocide?

Certain arguments support both approaches. One may claim that the universalist approach is justified, since if a group's identity is underpinned by certain features (e.g., religion or culture) and shared by members beyond the borders of an individual state, there seems to be little to no sound reason to limit the group's definition to a particular state's territory. Consider cases in which a particular ethnic group is scattered across several neighbouring states but remains a homogeneous entity with a shared identity. Limiting a group to the borders of one state would constitute an unreasonable and artificial separation. The same applies to larger groups represented across the globe, e.g., religious groups such as Catholics or Muslims. If members of these groups profess the same religion or mode of worship in different countries, what would be the reason to consider them separate, distinct entities? Does it mean that upon exiting one state's border, a person suddenly turns into a member of another protected group?

In support of the second approach, limiting the definition of the "whole" to the state's territory, one may argue that perpetrators' opportunities – and, arguably, their intention – cannot realistically extend to the whole globe and can quite rarely exceed one state's borders. In the majority of cases, perpetrators' opportunities will be limited, at most, by the territory of a state or a part thereof.

Alternative cases are nevertheless possible. Perpetrators can, in theory, fully or partially control the territories within several states. Nazi Germany, with its control over multiple European states and the Jewish population therein, is one such example. The "Islamic State", at the peak of its territorial control, is another. This opens the door to the argument that in such cases, the group "in whole" can be defined as limited to a specific region or a group of states under the perpetrators' control.

All these arguments – valid as they may seem – are, taken standalone, not helpful in addressing the interpretative conflict. However, considered as a whole, they may point to a reconciliatory approach. At its core lies the recognition that, as with the definition of the group identities themselves, the definition of what constitutes the "whole" of the group is equally contextual. The groups "in whole" must necessarily be defined by the significant, distant characteristics they possess when juxtaposed with other groups. For example, among religious groups, the core of the denomination and/or mode of worship may be the same or similar across the group representatives in multiple states. Say, Catholic communities in North America or Sunni Muslims across various Arab countries share the same religious identity. Accordingly, they may all be viewed as a group "in whole" scattered across the borders.

It is, however, also possible that religious communities in a particular state – despite being part of the broader family of denominations – possess unique, distinctive features linked as well to their ethnic identities or other characteristics. For instance, Catholic Christians, Protestant Christians and Orthodox Christians all demonstrate clearly distinct features despite belonging to the Christian faith. Even within the territory of a single state, identities may differ significantly despite the shared bonds. Ukrainian Greek Catholics and Ukrainian Roman Catholics undoubtedly represent two distinct religious identities despite both belonging to the Catholic Church. Orthodox Christians in Ukraine, Greece, Syria, and Armenia are equally distinguished based on religious, cultural, and linguistic peculiarities. The ethnic communities of Lemkos (Lemky) are present in Ukraine (the majority), Poland and Slovakia.[162] However, each of them self-identifies differently, including due to cultural and linguistic peculiarities. Therefore, it would be contextually inaccurate and erroneous to attribute membership in these groups to the broader possible master groups they allegedly belong to (e.g., Ukrainian Greek Catholics to Catholics or even Christians globally). The same applies to ethnic groups.

Hence, the determination of the "whole" group is always contextual and based on the contrasting features that distinguish it from others. It can be limited to the territory of one state if a group in question – even technically being a part of a broader unit – displays sufficiently distinguishable characteristics. It can also be defined regionally or globally if

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[162] 'Lemky' (*The Encyclopedia of Modern Ukraine*) <https://esu.com.ua/article-54193> accessed 2 January 2026.

members of the group across the region or worldwide share a relatively homogeneous identity. In this case, the intended destruction of group members within the territory of one state may nevertheless amount to genocide upon the argument that such a part is qualitatively substantial since they represent the broader group within one state.

At the same time, national groups arguably offer a more nuanced perspective. Because of their identity closely linked to a particular state in terms of nationhood and a shared national project, it appears fair to define national groups "in whole" as limited to the territory of a particular state. While it is true that members of a national group can continue to exist around the globe (e.g., due to temporary or permanent relocation or immigration), the majority of members – by definition – are predominantly concentrated within a single state. Therefore, the presence of such group members around the globe does not necessarily mean that it changes the basis for determining the "whole" to the universal rather than the state level. Such an approach is also justified by the fact that a national group's identity often demonstrates a strong connection to the state to which it is bound (especially if it is a nation-state).

A related question concerns the status of "national minorities". Should national minorities in a particular state be defined as a group "in whole" or should they be linked to another state which "accommodates" their "master nation"? For instance, should Germans in Poland or Albanians in Italy be treated as a standalone entity or should they be linked to the national groups in their respective nation-states? The answer here is equally contextual. It may be the case that, despite the qualifier "national", a minority *de facto* constitutes an ethnic group, as it shares cultural and/or linguistic characteristics without a deeper level of self-identification with the national project. In such a situation, the minority can be ethnically linked to a broader ethnic majority within the territory of another state, and altogether they will constitute an ethnic group. It is also possible that such a minority – because of its residence in the territory of another state – developed a unique sense of identity distinct from the majority in the state to which it historically belonged.

Therefore, groups "in whole" are distinguished based on what differentiates them amongst themselves, which is always contextual. In certain cases, the universal or regional approach seems justified, while in others, the definition of the "whole" will be confined to the territory of a particular state due to the group's very nature.

2.1.1.2. Subjective factors in the determination of the group "in whole"

Geographical considerations are only the first step in evaluating what the group "in whole" represents. The group members' and perpetrators' subjective perceptions of their identities also play a substantial role. International jurisprudence has consistently held that the definition of the concepts of protected groups is dependent on a particular political, social and cultural context.[163] This is why membership of a protected group may be seen essentially "a subjective rather than an objective concept" both from a perspective of a victim and a perpetrator,[164] although subjective definition alone is insufficient to define the protected groups and a case-by-case approach is to be adopted based on a combination of objective and subjective factors.[165]

While taking subjective factors into account in defining the protected group is not without criticism,[166] in the definition of intent – an inevitably subjective element of the crime – subjective factors are impossible to discard. Moreover, certain factors that are being viewed as inherently subjective also form a part of the objective analysis of the group's definition (e.g., how members of the group view the group itself and their membership in it is necessarily relevant to the determination of *what* the group is, and vice versa, ignoring such a perspective will make the analysis incomplete and flawed).

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[163] *Prosecutor v Rutaganda* (Trial Judgement) ICTR-96-3-T (6 December 1999) (hereinafter – "*Rutaganda* (Trial Judgement)"), para. 56; *Prosecutor v Musema* (Trial Judgement) ICTR-96-13-T (27 January 2000), (hereinafter – "*Musema* (Trial Judgement)"), para. 161; *Prosecutor v Bagilishema* (Trial Judgement) ICTR-95-1A-T (7 June 2001) (hereinafter – "*Bagilishema* (Trial Judgement)"), para. 65.

[164] *Rutaganda* (Trial Judgement), para. 56; *Musema* (Trial Judgement), para. 161; *Prosecutor v Brdjanin* (Trial Judgement) IT-99-36-T (1 September 2004) (hereinafter – "*Brdjanin* (Trial Judgement)"), para. 683.

[165] *Rutaganda* (Trial Judgement), para. 57; *Musema* Trial Judgement, para. 162; *Prosecutor v Stakić* (Appeal Judgement) IT-97-24-A (22 March 2006) (hereinafter – "*Stakić* (Appeal Judgement)"), para. 25; *Prosecutor v Semanza* (Trial Judgement) ICTR-97-20-T (15 May 2003) (hereinafter – "*Semanza* (Trial Judgement)"), para. 317; *Bagilishema* (Trial Judgement), para. 65; *Tolimir* (Trial Judgement), para. 735; *Brdjanin* Trial Judgement, para. 684; *Prosecutor v Muvunyi* (Trial Judgement) ICTR-2000-55A-T (12 September 2006), para. 484. See also implicitly in *Bosnia and Herzegovina v Serbia and Montenegro*, para. 191.

[166] Most notably, Tams, Berster, Schiffbauer (2014) 105-107.

Therefore, determining what the group "in whole" is must account for the subjective attitude of both group members (including victims) and perpetrators, as well as the objective realities (primarily the geographical considerations listed above).

Firstly, group members may see their identity as distinct from other similar or connected identities. For example, members of an ethnic or a religious group in a particular state may testify to their cultural, religious, social, or historical differences with the "sister-group" or a broader "master-group" bearing the same or similar name or demonstrating the same or similar features. For example, the perspectives of Lemkos (Lemky) in Ukraine, Poland, and Slovakia may help determine why each is viewed as a group in its own right rather than as a single group. Taking into account the perspectives of Catholic communities within a state or even a region with distinctive traditional features may help determine whether they are sufficiently distinct to qualify as a group "in whole". Distinctness can often be evaluated not only by objective features but also by group members' subjective perceptions of distinctness. In other words, if individuals themselves do not feel as a part of a broader community but rather position themselves independently or autonomously, it is questionable how they may be objectively classified as belonging to such a broader community as a whole.

Secondly, the perpetrators' subjective perspective may also be useful in determining what a group "in whole" constitutes. For example, the perpetrators may be clear that they intend to eliminate the Catholic minority within one state without targeting other Christians. In such a case, perpetrators' vision will validly point to the conclusion that it is the Catholic minority that has to be taken as a basis for the determination of the "whole", not Christians in general, since otherwise the expression of the intent would be entirely different and more all-encompassing. This would, however, pose a challenge in cases when, e.g., Catholics are the only Christian group within a state, and thus two manifestations of the intent can coincide.

Depending on the context, multiple other considerations relevant to the subjective evaluation should be factored in. Indigenous people of Northern or Southern America can serve as a basis for illustration. For example, in the historical retrospective preceding the colonisation, what if a perpetrator belonging to one ethnic group was convinced, due to their limited possibility for broader awareness, that another ethnic tribe's existence was limited by an adjacent area, not knowing that thousands of the same tribe's representatives are scattered around several other locations in the region? Should the objective determination prevail in what constitutes the "whole", i.e., should the "whole" be defined within that broader area even despite the perpetrator's lack of knowledge, or should it be framed in light of the perpetrator's subjective perspective? The perpetrator's awareness cannot be disregarded as irrelevant and must necessarily guide the analysis. If the perpetrator thought that their actions would lead to the elimination of the whole group, the intent to destroy "in whole" should be present. Otherwise, if one claims that the intent in such a case – objectively judging – is qualified as the intent to destroy a group "in part", this would require the perpetrator to know and realise that the targeted part was substantial – a knowledge that in a given example the perpetrator could not possess. After all, the destruction "in whole" inherently belongs to the element of genocidal intent, making a perpetrator's subjective perspective critical to how they framed the intent.

Hence, subjective perceptions of both victims and perpetrators may assist in determining what the group "in whole" represents, along with the objective factors fundamental to this determination.

2.1.2. Destruction of a national group "in part"

The intent to destroy the group "in part" represents another separate form of a dual possible genocidal intent. It does not relate to the actual scale of the committed crimes actually committed.[167] The element of "partial destruction" is thus an inherent part of the *mens rea* element defining the object towards which the intent is directed, which refutes the allegation that "any destruction, even if only partial, must [be] carried out with the intent to destroy the entire group".[168]

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[167] *Krstić* (Trial Judgement), paras 583-584.
[168] *Ibid*.

International jurisprudence and commentators today seem to agree on certain core elements of the intent to achieve partial destruction. First, to amount to genocide, the targeted part of the group must be "at least a substantial part".[169] This element is broadly known as "the substantiality requirement", which is a "critical" criterion to establish partial destruction.[170] As international jurisprudence showcases, the situation is possible where perpetrators both committed underlying acts against parts of the protected groups which "were the only part of the […] protected group within their area of activity and control" *and* possessed the requisite intent to destroy, yet the finding of genocide was precluded since targeted parts failed to satisfy the substantiality requirement.[171]

The goal of the substantiality requirement is evidently to avoid the finding of genocide in cases where only an insignificant fraction of the group or even simply a few individuals are being targeted. In other words, the crime of genocide requires the intended destruction of "more than an imperceptible number of the targeted group".[172] The intention behind the Convention – as Raphael Lemkin explained – was to outlaw "actions undertaken on a mass scale".[173] Support for this claim is evident from the Convention's *travaux* too. Certain delegates argued in favour of or, at least, considered the possibility of the definition of genocide covering the destruction of merely one or several group members.[174] However, this argument found little support: the prevalent view remained that destruction of an individual group member or several members may amount to genocide only if the intent concerned targeting the broader or entire group.[175] The

[169] ILC Draft Code with Cmts (1996) 45, para. 8.
[170] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 201; *Croatia v Serbia*, para. 142.
[171] *Mladić* (Trial Judgement), paras 3526-3535.
[172] *Prosecutor v Kajelijeli* (Trial Judgement) ICTR-98-44A-T (1 December 2003) (hereinafter – "*Kajelijeli* (Trial Judgement)"), para. 809.
[173] United States, Congress, Senate, Committee on Foreign Relations, 'Executive Sessions of the Senate Foreign Relations Committee (Historical Series)', vol. 2 (Washington, D.C.: United States Government Printing Office 1976) (hereinafter – "US Senate Executive Sessions of the Senate Foreign Relations Committee (Historical Series) (1976)") 370.
[174] E/AC.25/SR.10, 14; A/C.6/SR.73, 90-91.
[175] E/AC.25/SR.10, 14; E/AC.25/SR.13, 6, 13; E/AC.25/W.1, 2; A/C.6/SR.73, 92-93.

application of the substantiality requirement was later supported by early commentators (albeit through different angles)[176] and contemporary jurisprudence.[177]

Unlike the settled status of the substantiality requirement *per se*, its essence and methodology for its assessment are far less clear. International case-law has developed two approaches to the substantiality assessment. The quantitative approach evaluates the number of the targeted individuals while the qualitative approach relies on the special features (e.g., significance or prominence of those targeted).[178] Further analysis will elaborate on the substance of both approaches, as well as associated interpretative challenges and outcomes.

2.1.2.1. Quantitative substantiality

Quantitative evaluation represents the "necessary", "essential" and "important" starting point of the substantiality assessment.[179] Since the early days of the Convention's drafting, infrequent discussions of partial destruction during the drafting process focused on the number of group members destroyed. For example, Poland inquired whether the destruction of only half of the group would suffice to establish genocide.[180] The US delegate responded that the intention would be decisive: destroying a fraction of the group can qualify as genocide if the intention was to destroy the group entirely.[181] In the

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[176] Nehemiah Robinson, *The Genocide Convention: A Commentary* (New York: Institute of Jewish Affairs, World Jewish Congress 1960) (hereinafter – "Robinson (1960)") 63; UN ECOSOC, 'Revised and updated report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker' (1985) UN Doc. E/CN.4/Sub.2/1985/6 (hereinafter – "Whitaker's Report E/CN.4/Sub.2/1985/6") 16.

[177] See, *inter alia*, *Prosecutor v Kayishema and Ruzindana* (Trial Judgement) ICTR-95-1-T (21 May 1999) (hereinafter – "*Kayishema and Ruzindana* (Trial Judgement)"), paras 96-97; *Jelisić* (Trial Judgement), para. 82; *Bagilishema* (Trial Judgement), para. 64; *Krstić* (Trial Judgement), para. 586; *Prosecutor v Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit) IT-95-8-T (3 September 2001) (hereinafter – "*Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit)"), para. 65; *Semanza* (Trial Judgement), para. 316; *Kajelijeli* (Trial Judgement), para. 809; *Krstić* (Appeal Judgement) para. 8; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 198; *Popović et al.* (Trial Judgement), para. 831; *Tolimir* (Trial Judgement), para. 749; *Prosecutor v Popović et al.* (Appeal Judgement) IT-05-88-A (30 January 2015) (hereinafter – "*Popović et al.* (Appeal Judgement)"), para. 419; *Prosecutor v Tolimir* (Appeal Judgement) IT-05-88/2-A (8 April 2015) (hereinafter – "*Tolimir* (Appeal Judgement)"), para. 186; *Croatia v Serbia* para. 142; *Mladić* (Trial Judgement), para. 3437; *Prosecutor v Karadžić* (Trial Judgement) IT-95-5/18 (24 March 2016) (hereinafter – "*Karadžić* (Trial Judgement)"), paras 555, 5672.

[178] *Krstić* (Appeal Judgement), para. 12; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 200; *Croatia v Serbia*, para. 142.

[179] *Krstić* (Appeal Judgement), para. 12; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 200; *Popović et al.* (Trial Judgement), para. 832; *Popović et al.* (Appeal Judgement), para. 420.

[180] E/AC.25/SR.13, 6.

[181] *Ibid.*

commentary to the draft convention, the *Ad Hoc* Committee on Genocide further indicated that genocide can be manifested by the intent to destroy only a part of the group, such as the intention to reduce the group "by a third or a quarter of the number of its members".[182]

Early commentaries on the Convention supported this numeric focus. For example, Nehemiah Robinson claimed that "the intent to destroy a multitude of [group members] must be classified as Genocide even if these persons constitute only part of a group either within a country or within a region or within a single community, provided the number is substantial".[183] In addition to the quantitative approach, the remark is peculiar from the perspective of *how* (towards what segment of the group) substantiality should be measured – a question addressed below in Section 2.1.2.3.

Numeric substantiality requires perpetrators to destroy "a considerable number of individuals",[184] "a large majority of the group",[185] "a very large number of the members of the group",[186] "a reasonably significant"[187] or, alternatively, "reasonably substantial number".[188] However, naturally, there is no universal numeric threshold for the finding of genocide,[189] and relevant determination will depend on the particularities of every case. For example, the ICJ in *Croatia v Serbia* concluded – based on numeric and geographical indicators only thus excluding qualitative considerations – that ethnic Croats in Eastern and Western Slavonia, Banovina/Banija, Kordun, Lika, and Dalmatia that "constituted slightly less than half of the ethnic Croat population living in Croatia" qualified as a substantial part of the ethnic Croatian group in Croatia.[190] "Slightly less than half" thus satisfied the numeric percentage threshold and may somehow indicate the permissible

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[182] E/AC.25/W.1, 2.
[183] Robinson (1960) 63.
[184] *Kayishema and Ruzindana* (Trial Judgement), para. 97.
[185] *Jelisić* (Trial Judgement), para. 82.
[186] *Ibid*.
[187] Whitaker's Report E/CN.4/Sub.2/1985/6, 16.
[188] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 65.
[189] *Semanza* (Trial Judgement), para. 316; *Kajelijeli* (Trial Judgement), para. 809; *Tolimir* (Trial Judgement), para. 749; *Prosecutor v Stakić* (Trial Judgement) IT-97-24-T (31 July 2003) (hereinafter – "*Stakić* (Trial Judgement)"), para. 522; *Prosecutor v Gacumbitsi* (Trial Judgement) ICTR-2001-64-T (17 June 2004) (hereinafter – "*Gacumbitsi* (Trial Judgement)"), para. 253.
[190] *Croatia v Serbia*, para. 406.

minimum, which does not, in any case, give an exhaustive uniform guidance: uncompromisingly setting an unconditional numeric minimum threshold constitutes a dangerous interpretative game. In the words of *Stakić (Trial)*, "it is not necessary to establish, with the assistance of a demographer, the size of the victimised population in numerical terms": it is the intent to destroy that matters to establish the crime.[191]

At the same time, from a different angle, e.g., *Sikirica (Trial)* held that 2%-2.8% of the targeted victims juxtaposed against the whole Muslim population in the municipality "would hardly qualify as a "reasonably substantial" part of the […] group" within that municipality[192] (although, as explained in Section 2.1.2.3, such an approach to evaluating numeric substantiality is erroneous). Similarly, in *Krstić (Appeal),* the Bosnian Muslim community of Srebrenica that constituted around 2.9% of the overall Bosnian Muslim group in Bosnia and Herzegovina[193] did not meet the threshold for quantitative substantiality, which justified the Chamber's further inquiry into qualitative substantiality and the prominence of the Srebrenica community.[194] In these cases, too, while the numbers outlined may be illustrative, they cannot form an unconditional guidance as to where the numeric minimum lies.

At the same time, the number of targeted individuals should be evaluated both in absolute terms, as well as relative to the "overall size of the entire group".[195] This dichotomy was well illustrated by Benjamin Whitaker, UN Special Rapporteur on Prevention and Punishment of the Crime of Genocide, who raised a question as to whether "an attack affecting half of a small group" qualifies as genocide if juxtaposed against "a massacre which affects only one tenth of a larger group of several million people".[196]

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[191] *Stakić* (Trial Judgement), para. 522.
[192] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 72.
[193] *Krstić* (Appeal Judgement), para. 15, footnote 27.
[194] *Ibid*, para. 15.
[195] *Krstić* (Appeal Judgement), para. 12; *Tolimir* (Trial Judgement), para. 749; *Popović et al.* (Trial Judgement), para. 832; *Popović et al.* (Appeal Judgement), para. 422; *Mladić* (Trial Judgement), paras 3437, 3528, 3550. See also *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 65 speaking of the relation to the "the total population of the group" only.
[196] Whitaker's Report E/CN.4/Sub.2/1985/6, 16.

Whitaker concluded that "considerations of both of proportionate scale and of total numbers are relevant".[197]

This implies that the finding of genocide based on the numeric considerations only is possible in cases where perpetrators target, for example, half of the group "in whole" consisting of merely several thousands of members, since the number will be significant relative to the group in whole. The same finding will be precluded in cases where, although the same number of persons is targeted, they only constitute a very small percentage of the group with millions of members. At the same time, it would be unreasonable to exclude the finding of genocide in cases where perpetrators succeeded in targeting a few hundred thousand or millions of members of a group whose total membership is counted in dozens or hundreds of millions. Where the intent to destroy the group is present and manifest (excluding the mere persecutory intent), an objectively significant number of victims in absolute terms would arguably suffice to satisfy the substantiality threshold.

Thus, quantitative analysis constitutes a critical primary consideration in assessing the substantiality requirement, with no uniform threshold and evaluation to be made both in absolute and relative terms. At the same time, quantitative assessment is not necessarily "the ending point of the inquiry": qualitative assessment of substantiality can inform the analysis too.[198]

2.1.2.2. Qualitative substantiality

Unlike the quantitative approach, which focuses on numbers, the qualitative approach focuses on the specific features or traits of the targeted part, such as its significance beyond numerical value or prominence.

Although *Krstić (Appeal)* is frequently considered and cited – explicitly or implicitly – as the primary source for discussing the relevance of qualitative factors, *Jelisić (Trial)*

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[197] *Ibid*.
[198] *Krstić* (Appeal Judgement), para. 12; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 200; *Popović et al.* (Trial Judgement), para. 832; *Tolimir* (Trial Judgement), para. 749; *Popović et al.* (Appeal Judgement), para. 420; *Mladić* (Trial Judgement), para. 3528.

arguably constitutes the first jurisprudential reference to the qualitative substantiality. In *Jelisić (Trial)*, the Chamber ruled that genocidal intent may be manifested in two forms: it may seek to exterminate or harm either “a large majority of the group” (i.e., quantitative consideration) or “the most representative members of the targeted community” (such as its leaders).[199] In other words, genocidal intent to destroy the group in part may undertake two forms – *en masse* destruction targeting “a very large number” of the group members or “selective” destruction aimed at “a more limited number of persons selected for the impact that their disappearance would have upon the survival of the group as such”.[200] This pronouncement was subsequently used and supported in the reasoning of *Sikirica et al. (Judgement on Defence Motions to Acquit)*, which claimed that if the quantitative test for substantiality is not satisfied, the intent to destroy a group “in part” may be established where intended destruction aims at “a significant section of the group, such as its leadership”.[201]

At the same time, the most cited explanation of the qualitative considerations in the substantiality assessment emanates from the landmark pronouncement of *Krstić (Appeal)* on the commission of genocide of the Bosnian Muslim community of Srebrenica. Citing the pronouncements in *Jelisić (Trial)* and *Sikirica et al. (Judgement on Defence Motions to Acquit)*, the Chamber ruled that although the numeric size of the group’s targeted part is the starting point for the evaluation, additionally, the prominence of the targeted part within the group “can be a useful consideration”.[202] For example, if a targeted part “is emblematic of the overall group, or is essential to its survival, that may support a finding that the part qualifies as substantial”.[203] This pronouncement further became the primary basis for future jurisprudence’s evaluation of the substantiality requirement.[204]

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[199] *Jelisić* (Trial Judgement), para. 82.
[200] *Ibid*.
[201] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 76.
[202] *Krstić* (Appeal Judgement), para. 12.
[203] *Ibid*.
[204] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 200; *Popović et al.* (Trial Judgement), para. 832; *Tolimir* (Trial Judgement), para. 749; *Croatia v Serbia*, para. 142; *Mladić* (Trial Judgement), para. 3528.

The place and significance of the qualitative analysis for the substantiality assessment remain contested. Relying on *Krstić (Appeal)*, the ICJ stated that "the qualitative approach cannot stand alone".[205] The aforementioned wording of the *Krstić (Appeal)* does support the ICJ's understanding too: *Krstić (Appeal)* mentioned quantitative assessment as "a necessary and important starting point", implying that it should always be considered first, while qualitative considerations follow "in addition".[206] *Krstić (Appeal)* also referenced *Jelisić (Trial)* and *Sikirica et al. (Judgement on Defence Motions to Acquit)* claiming that although they relied on the qualitative factor as an independently sufficient consideration to meet the substantiality requirement, "properly understood, this factor is only one of several which may indicate whether the substantiality requirement is satisfied".[207] Understanding qualitative approach as one of many "additional considerations" follows in other judgements subsequent to *Krstić (Appeal)* too.[208] In *Bosnia and Herzegovina v Serbia and Montenegro*, the ICJ even (erroneously) created additional confusion by seemingly treating "emblematic or qualitative factors" as indicia separate from the substantiality requirement.[209]

Despite somewhat inconsistent or confusing wording, the judgements seem to be in consensus that qualitative analysis is secondary to the primary quantitative assessment and cannot form a standalone process. It also implies that the finding of substantiality based on qualitative considerations is impossible, and numerosity of some kind is nevertheless required. However, it appears reasonable to claim that the threshold for such numerosity can be lower than for the cases where, based on the quantitative assessment alone, substantiality would be met. The opposite conclusion would render qualitative factors futile and meaningless since relevant analysis would always return to quantitative analysis alone. Therefore, the most apparent scenario would be that where numeric

[205] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 200.
[206] *Krstić* (Appeal Judgement), para. 12.
[207] *Ibid*, footnote 22.
[208] *Tolimir* (Trial Judgement), para. 749; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 296.
[209] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 296.

substantiality is doubtful or unsubstantiated, recourse can nevertheless be made to qualitative factors which may support the substantiality finding.

This interpretation of the interlink between quantitative and qualitative considerations seems natural since considering otherwise would support the finding of genocide, where overall simply a few "prominent" and "emblematic" group members (such as leaders) were targeted in isolation from the whole group.

International jurisprudence and doctrine seemingly present two distinct interpretations as to *whose* jurisprudential and scholarly sources focus on the prominence of either *persons* (hereinafter referred to as "**personal prominence**") or *communities* (hereinafter referred to as "**communal or territorial prominence**") targeted. Sets of arguments and considerations relevant to both views follow below.

As to **personal prominence**, many authorities link qualitative considerations of prominence to certain special strata of the group, whose destruction may be indicative of genocidal intent, notably up (the "leadership factor").[210] The present Section will examine the roots and essence of the personal prominence factor, followed by distilling its essence for the soundest possible interpretation of jurisprudence, as well as implications for the cases of national groups.

Although *Jelisić (Trial)* was the first jurisprudential authority to implicitly elaborate on the "leadership factor",[211] its roots are far deeper and predate *Jelisić*. Despite little to no guidance on the factors underpinning the assessment of the substantiality requirements in the *travaux* to the Genocide Convention, certain documents evince that already at the drafting stage, some delegates and experts harboured a view that certain members of protected groups play a significant and special role in the group's survival. For example, the early UN Secretariat's draft of the Genocide Convention, prepared by a group of three experts, including Raphael Lemkin, enshrined the criminalisation of the so-called

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[210] For a detailed discussion, see Maksym Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' [2024] 14 *NaUKMA Research Papers. Law* 19 (hereinafter – "Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024)").
[211] *Jelisić* (Trial Judgement), para. 82.

"cultural genocide" (further excluded from the Convention's scope).[212] One of the envisioned underlying acts of cultural genocide was defined as "forced and systematic exile of individuals representing the culture of a group".[213] In their commentary experts explained that such persons included "chiefly scholars, writers, artists, teachers and educators, ministers of religion, doctors of medicine, engineers, lawyers, administrators, etc.", who sustained "the cultural and moral life of a group" and whose removal will lead to the group turning into "no more than an amorphous and defenceless mass".[214]

At the later stages, during a rare debate on the essence of intended partial destruction before the Sixth Committee of the UN General Assembly, New Zealand's delegate argued that genocide did not require the intention to destroy the whole group but could be manifested in selective targeting, e.g., of older members with the subsequent survival and ideological conversion of the youth.[215] Different from the example of "leaders" within the realm of "cultural genocide", the intervention hinted at the special value of certain group members for the group's survival.

The opposite claims were also raised, albeit even less frequently. For example, Poland's delegation claimed that political groups should not benefit from the Convention's protection since, unlike other groups, they could "disappear simply because [their] head was eliminated or as a result of reprisals against [their] leaders", which arguably highlighted their instability.[216] This argument, however, would further be dismissed in essence by subsequent authorities.

In 1950, before the US Senate Hearings on the Genocide Convention, Adrian Fisher, Legal Adviser with the US Department of State, explained the notion of partial destruction by referencing a hypothetical example of destroying the leaders of a religious group.[217]

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[212] Secretariat's Draft E/447, 5-7.
[213] *Ibid*.
[214] *Ibid* 28.
[215] A/C.6/SR.73, 94.
[216] E/AC.25/SR.4, 10.
[217] US Senate 'Hearings before a subcommittee of the Committee on Foreign Relations, United States Senate, Eighty-first Congress, second session, on Executive O, the International convention on the prevention and punishment of the crime of genocide' (US Government Printing Office 1950) (hereinafter – "US Senate Hearings (1950)") 262-263.

For instance, Fisher claimed, if perpetrators' plan was to eliminate "all of the Catholic priests in a particular country" in order to destroy the Catholic religious group, although the plan did not aim at eradicating every Catholic, the destruction of priests as religious leaders would lead to the group's destruction too.[218]

In 1985, Benjamin Whitaker, the previously mentioned UN Special Rapporteur on Prevention and Punishment of the Crime of Genocide, introduced qualitative factors into the substantiality assessment – seemingly, for the first time among early Convention's commentators. Whitaker's report stated that genocidal intent to achieve partial destruction would require either a "reasonably significant number" of persons targeted or "a significant section of a group such as its leadership".[219]

Further, in 1994, the Commission of Experts established pursuant to Security Council Resolution 780 (1992), with the mandate to collect information on atrocities committed in the territory of the Former Yugoslavia, presented its final report, inclusive of legal conclusions on the crime of genocide. According to the report, genocidal intent may take a form of targeting "essentially the total leadership of a group", i.e., "the intent to destroy the fabric of a society through the extermination of […] leadership.[220] The definition of leadership respectively included "political and administrative leaders, religious leaders, academics and intellectuals, business leaders and others".[221] Hence, such totality in itself "may be a strong indication of genocide regardless of the actual numbers killed" in view of "the fate or what happened to the rest of the group".[222] For example, if the group's leadership was targeted in parallel to the large numbers of other members being subjected to heinous acts, e.g., large-scale deportations, the entirety of facts may point to the genocidal intent.[223] Another example provided in the report related to "law enforcement and military personnel", who might qualify as a group's "significant section"

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[218] *Ibid*.
[219] Whitaker's Report E/CN.4/Sub.2/1985/6, 16.
[220] S/1994/674, para. 94.
[221] *Ibid*.
[222] *Ibid*.
[223] *Ibid*.

and whose disappearance would render the group "at large defenceless against other abuses of a similar or other nature, particularly if the leadership is being eliminated as well".[224]

The Commission's findings further became a basis for several ICTY Chambers discussions of the substantiality assessment.[225] However, only two ICTY cases eventually analysed and applied the leadership factor, both leading to no final conviction for the crime of genocide.

In *Sikirica et al. (Judgement on Defence Motions to Acquit)*, the Trial Chamber referred to leadership as a "significant section of the group" whose selective victimisation due to their special qualities may impact the group's survival and be indicative of genocidal intent.[226] The Trial Chamber defined leaders as persons:

> "who, whether by reason of their official duties or by reason of their personality, had this special quality of directing the actions or opinions of the group in question, that is those who had a significant influence on its actions".[227]

However, the Trial Chamber did not establish any evidence that victims, among whom there were "taxi-drivers, schoolteachers, lawyers, pilots, butchers and café owners" were the community's leaders, i.e., "persons with any special significance to their community".[228] The Trial Chamber also rejected the argument that active resistance members should *per se* be treated as leaders, since considering otherwise would render "a definition of leadership so elastic as to be meaningless".[229] Otherwise in the case, there was no evidence showing that the disappearance of targeted victims would have a significant impact on the group's survival due to their leadership status or other reasons.[230] The defendant was thus acquitted of genocide.

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[224] *Ibid*.
[225] *Jelisić* (Trial Judgement), para. 82; *Krstić* (Trial Judgement), para. 587; *Tolimir* (Trial Judgement), para. 749, footnote 3138, and para. 777.
[226] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), paras 76-77.
[227] *Ibid*, para. 78.
[228] *Ibid*, para. 80.
[229] *Ibid*, para. 81.
[230] *Ibid*, para. 82.

The second case, *Tolimir (Trial)*, concerned allegations of genocide in the case of the killing of three local Bosnian Muslim leaders of the Žepa municipality, namely the mayor and president of the war presidency, colonel and local Bosnian Army's brigade commander, and the civil protection unit's head.[231] The Chamber acknowledged that the three victims were "among the most prominent leaders of the enclave".[232] Although this finding was not underpinned by the immediate explanation, previously the Chamber established that the municipal life in the Žepa municipality was at that time under examination, organised by the War Presidency that the mentioned individuals were members of,[233] which is presumably and arguably why their role was essential to the community's functioning.

The majority in the Trial Chamber ruled that Bosnian Serb forces targeted three victims exactly because of their status as leading Bosnian Muslim figures in the municipality.[234] According to the Trial Chamber, despite the limited number of three killings, targeted persons were the core of local civilian and military leadership, key to the small community's survival.[235] One of the victims had a special status of the Bosnian Muslim population's defender, and his targeting, according to the Chamber, "had a symbolic purpose for the survival of the Bosnian Muslims of Eastern [Bosnia and Herzegovina]".[236]

The corroborating argument was the overall context in the area not to be isolated from the killings (namely other Bosnian Serb forces' operations, including killings and deportations in and from Srebrenica), as well as the fate of the remaining Bosnian Muslim population facing the forcible removal from Žepa combined with the destruction of homes and a mosque.[237] The combination of killings of prominent leaders and accompanying

[231] *Tolimir* (Trial Judgement), para. 778.
[232] *Ibid*, para. 778.
[233] *Ibid*, para. 599.
[234] *Ibid*, para. 779.
[235] *Ibid*, para. 780.
[236] *Ibid*.
[237] *Ibid*, paras 779, 781.

discriminatory acts thus ensured that the Bosnian Muslim community in Žepa was unable to reconstitute itself.[238]

In the dissenting and separate concurring opinions, Judge Prisca Matimba Nyambe dissented from the majority. The dissent was not dictated by legal findings on the relevance of the leadership factor to the substantiality assessment, but by factual circumstances. The dissent pointed to the lack of evidence that three victims were targeted specifically because of their status as leaders, but other potential alternative considerations (e.g., long-standing hostility between Bosnian Serb and Bosnian Muslim forces and revenge for years of armed hostilities), making the killings opportunistic.[239] Although official positions held might have been connected with the motive for the killings, importantly, Bosnian Serbs did not eliminate the totality of leadership despite the opportunity presented.[240] Judge Prisca Matimba Nyambe called the finding of genocidal intent based on the three group leaders "just a step too far".[241]

Tolimir (Appeal) followed essentially the same line of reasoning. The Appeals Chamber did not dispute the Trial Chamber's accuracy of legal findings on the leadership factor.[242] It also concluded that the finding of genocide does not necessarily require physical elimination (i.e., through killing) of all group leaders.[243] This was supplemented by the reservation that the leadership factor does not entitle leaders to "special, stronger protection than the other members": rather, it aims at protecting the group as such from the crime of genocide, not leaders as individuals.[244] The Appeals Chamber, however, acquitted the accused of genocide based on the factual findings claiming the lack of evidence on the impact of the leaders' disappearance "on the survival of the Bosnian Muslim population from Žepa".[245] Particularly, the Appeals Chamber pointed to the lack

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238 *Ibid*, para. 781.
239 *Ibid*, Dissenting and separate concurring opinions of Judge Prisca Matimba Nyambe, paras 81-82.
240 *Ibid*, para. 81.
241 *Ibid*.
242 *Tolimir* (Appeal Judgement), paras 262-263.
243 *Ibid*, para. 264.
244 *Ibid*, para. 263.
245 *Ibid*.

of evidence that the killing of leaders aimed at intimidating the Bosnian Muslim population, expediting its removal, preventing its return, or otherwise impacting the ability to reconstitute themselves as a group.[246]

The foundational sources outlined above provide for several important takeaways for the sound interpretation of the personal prominence factor within a broader substantiality assessment. They likewise pose certain interpretative challenges to be addressed.

First, it appears undisputed that genocidal intent may be manifested through a limited targeting of persons selected due to their significance or special role to the group's existence and functioning. In other words, these persons constitute a fabric that binds the group together. Their disappearance may lead to the group's destruction even if individual members survive (see Section 2.2.2 below). The group leadership may thus also fall under the *Krstić (Appeal)* test for the qualitative assessment of substantiality, since leaders can be seen as prominent members of the group, in the sense that, depending on circumstances, they are both emblematic and essential to the group's survival.

Second, the concept of leadership by definition seems both restrictive and fluid depending on the group's dynamic.[247] It may incorporate various societal strata depending on the context, such as administrative and political, cultural, intellectual and academic, business, and military leaders. The jurisprudence seems evidently clear that any person who, due to their role or status, is capable of influencing the group, its opinions and actions, and who is instrumental in holding the group together, may qualify as a leader.

Hence, the leadership status is not reserved for those holding a merely "formal" or "official" leading position. It may include any person who meets the aforementioned criteria. Taking *Sikirica* as an example, the mere fact that targeted persons were "taxi-drivers, schoolteachers, lawyers, pilots, butchers and café owners"[248] was not in itself

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[246] *Ibid*, paras 266-267.
[247] Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024) 25-26.
[248] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 80.

indicative of the absence of genocidal intent (e.g., because of the lack of the official status of a certain kind. Rather, the *evidence did not establish* that they qualified as "persons with any special significance to their community",[249] which is a factual assessment and, depending on circumstances, each of them could otherwise potentially qualify as a leader. For example, targeting educational personnel (such as teachers) or business owners may – depending on the context – be a strong indicator of genocidal intent, given the role these persons play in the community's (and, thus, broader group's) operation.

On the other hand, the concept of leadership is not all-encompassing. *Sikirica* was clear on the caution not to make the concept overly elastic to the degree of futility when rejecting the argument that every combatant as a community's defender qualified as a leader.[250] At the same time, such a determination universally rejects the potential role of defenders as leaders. Depending on the circumstances, active group defenders may qualify as leaders if their disappearance impacts the group's survival, rendering the group defenceless.[251]

Naturally, it will not and must not encompass every defender or resistance fighter (in the context of armed conflicts): considering otherwise will mean that legitimate elimination of combatants may fall under the substantiality assessment in every given case. An interesting basis for the analysis was provided by the European Court of Human Rights ("ECtHR") in *Drėlingas v Lithuania*, where the Court upheld the legality of the Lithuanian Supreme Court's ruling stating that:

> "Lithuanian partisans, their liaison persons and their supporters − had represented a significant part of the Lithuanian population, as a national and ethnic group, because the partisans had played an essential role when protecting the national identity, culture and national self-awareness of the Lithuanian nation".[252]

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[249] *Ibid*.
[250] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 81.
[251] S/1994/674, para. 94.
[252] *Drėlingas v Lithuania*, App. no. 28859/16 (12 March 2019), para. 103.

There seemingly is room to accommodate the group defenders' status under the leadership factor, taking into account each individual case and defenders' significance to the group's survival. Plainly speaking, killing of combatants in the realm of the international armed conflict is an unfortunate yet inherently common reality of hostilities, and such elimination as such must not be indicative of genocidal intent.

This leads to the third, closely interconnected point: the determining factor will always be an individual's influence on the group's actions and opinions, as well as the impact of their disappearance on the group's functioning and/or survival. The leadership status – and thus its relevance to the determination of the intent – must always be viewed through these lenses.

Fourth, the definition of the leadership factor will always necessarily depend on the type of the protected group and the internal dynamics of every protected group.[253] For example, if it is accepted that a racial group is based on "the hereditary physical traits […] irrespective of linguistic, cultural, national or religious factors",[254] leaders may be claimed to have an insignificant or entirely absent role for the maintenance of the group's survival or its identity, since intangible features are not determinative of the way the racial group exists. On the other side, this statement may prove erroneous in other contexts if a numerically limited racial minority within a country relies strongly on its political or spiritual leaders for protection and if the disappearance of such persons will leave the group unconsolidated and defenceless.

Similarly, taking the aforementioned hypothetical case of Catholic priests presented by Adrian Fisher as an example,[255] elimination of a religious group's (e.g., Catholic) leaders within a country will undoubtedly have a significant impact on the religious group's life and survival. The impact of religious leaders' disappearance will arguably be less significant in cases involving other groups, such as national or ethnic groups, given

[253] Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024) 27-28.
[254] *Akayesu* (Trial Judgement), para. 514.
[255] US Senate Hearings (1950) 262-263.

the different characteristics that underpin their identities. At the same time, even in such a case, if a particular religious denomination or mode of worship plays an important role in maintaining the cultural identity of an ethnic group, the destruction of religious leaders may also be a sufficiently relevant factor to consider.

In turn, national groups can arguably be the most susceptible to the effects of targeting and disappearance of leaders, given the inherently intangible nature of the bonds uniting members of national groups together. For national groups, leaders can serve as a "connective tissue" that binds the group together. Hence, their disappearance is highly likely to lead to the group's dissolution and destruction.

A notable example of such effects were presented in the Raphael Lemkin's analysis of the Soviet plan to destroy the Ukrainian national group and national project, which Lemkin considered to be "the classic example of Soviet genocide".[256] Lemkin argued that the Soviet authorities – understanding that the Ukrainian nation is "too populous to be exterminated completely with any efficiency", decided to focus instead on targeting the nation's "leadership, religious, intellectual, political, its select and determining parts" being "quite small and therefore easily eliminated".[257] The three selected objects of destruction within leadership included intelligentsia (as the nation's brain), the Church and clergy (as the nation's soul), and farmers (as the nation's body and "the repository of the tradition, folklore and music, the national language and literature, the national spirit").[258] A successful completed disappearance of these three categories, in Lemkin's view, would have led to the nation's disappearance as if every member of the national group had been killed, since it would have made a nation a mere mass of people.[259]

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[256] Roman Serbyn (ed), Olesia Stasiuk (comp), *Raphael Lemkin. Soviet Genocide in Ukraine. The article in 33 languages* (Marko Melnyk Publishing House 2020) <https://holodomormuseum.org.ua/wp-content/uploads/2022/12/Lemkin.pdf> accessed 2 January 2026 (hereinafter – "*Lemkin. Soviet Genocide in Ukraine*") 47. See also an analysis in Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024) 26-27.
[257] *Lemkin. Soviet Genocide in Ukraine* 48.
[258] *Ibid* 48-50.
[259] *Ibid* 51.

In this respect, the leadership factor remains an important indicator for evaluating genocidal intent, both from the perspective of substantiality and personal prominence and beyond, especially so for national groups.

Apart from the leadership factor, the jurisprudence provides for additional considerations relevant to the special significance of certain strata of the population for the group's survival. They emanate from the finding of genocide in *Krstić* concerning the killing of around 7,000 to 8,000 Bosnian Muslim men in the Srebrenica municipality.

Krstić (Trial) established that the selective destruction of Bosnian Muslim men in Srebrenica "would have a lasting impact upon the entire group".[260] In contrast to the leadership, however, the Bosnian Muslim men's significance did not lie solely in the power of their influence on the group's actions and opinions but rather their fundamental importance to the group's social structure and further biological survival. In order to establish this, the prosecution relied on the significance of men to the Bosnian Muslim patriarchal society where the male representatives had "more education, training and provided material support to their family".[261] Therefore, their disappearance, in prosecution's words, disrupted the group's social and cultural foundations and left a community "in despair" and "lacking leadership".[262]

The Trial Chamber sided with the prosecution's argument, ruling that the destruction of "two or three generations of men would have [a catastrophic impact] on the survival of a traditionally patriarchal society", leading to the irreparable dismemberment of the families.[263] The disappearance of men made it "almost impossible" for the Bosnian Muslim survivors to recapture Srebrenica and re-establish their lives, as well as for Bosnian Muslim women to remarry, given the religious and societal limitations due to the

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[260] *Krstić* (Trial Judgement), para. 595.
[261] *Ibid*, para. 592.
[262] *Ibid*.
[263] *Ibid*, paras 595 and 90.

men's missing status.[264] The remainder of the population additionally suffered severe personal trauma.[265]

The Appeals Chamber upheld the Trial Chamber's reasoning, stating that in the patriarchal society, the destruction of men amounting to one fifth of the overall community's size would indeed "inevitably result in the physical disappearance of the Bosnian Muslim population" of the Srebrenica community.[266] The Chamber ruled that with the missing status of men, women were unable to remarry and have new children, which would have "severe procreative implications" for the community, "potentially consigning [it] to extinction".[267]

Unlike the Trial Chamber, though, the Appeals Chamber clarified that the men themselves did not constitute "a substantial part of the group": their extermination was another indicator for the inference of genocidal intent to eliminate the Bosnian Muslims of Srebrenica as a substantial part of the group.[268] Thus, the reading of *Krstić (Appeal)* indicates that male victims of killings were not, in themselves, an object of the personal prominence assessment within the substantiality evaluation. Although their extermination was a critically relevant factor for the intent's determination (as will be further analysed in Section 3.1), as such they did not qualify as a substantial part of the group, whereby a broader Bosnian Muslim community of Srebrenica did. This brings the analysis to another approach to assessing the substantiality: **the communal or territorial prominence factors**.

Krstić (Appeal) opened a different dimension for the substantiality assessment, focusing on prominence not in its "personal" dimension (i.e., the previously defined leadership factor in jurisprudence) but in the sense of the prominence of a particular territory or community as a substantial part of the whole group.

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[264] *Ibid*, paras 595, 90 and 93.
[265] *Ibid*, para. 93.
[266] *Krstić* (Appeal Judgement), para. 28.
[267] *Ibid*, para. 28.
[268] *Ibid*, para. 19.

Krstić (Appeal) refuted the defence's reading of *Krstić (Trial)*, whereby defence claimed that the Trial Chamber impermissibly focused on substantiality of Bosnian Muslims as a part of the group, which led to an erroneous compertmentalisation assessing the substantiality of a sub-part (men) towards a bigger part (Srebrenica community) instead of a whole (Bosnian Muslim population in Bosnia and Herzegovina).[269] The Appeals Chamber stated that the only part to be considered substantial upon the evidence's examination was the Bosnian Muslim community of Srebrenica, not its male population that became a victim of the underlying acts.[270]

According to the Appeals Chamber, although the Srebrenica community represented "only a small percentage of the overall Muslim population of Bosnia and Herzegovina at the time" (i.e., around 2,9 percent), the numerical size was not decisive for the substantiality evaluation and the importance of the Srebrenica community "[was] not captured solely by its size".[271] Rather, its prominence was defined by a combination of multiple social and political factors. First, Srebrenica and the surrounding areas were of "immense strategic importance" to both the Bosnian Serb leadership and the Bosnian Muslim leadership's efforts to build a viable state.[272] The loss of Srebrenica would preclude such efforts, leaving the ethnically Serb state of Republica Srpska fragmented and, respectively, impeding the Bosnian Muslim forces' military efforts to secure a viable political entity and "continued survival of the Bosnian Muslim people".[273]

Second, Srebrenica was an emblematic enclave given that most Muslims at the moment of its elimination had sought refuge within it, and the elimination of the enclave "would have accomplished the goal of purifying the entire region of its Muslim population".[274] Srebrenica was thus prominent both in Bosnian Muslims' and international community's eyes as a "safe area" established by the UN Security Council subjected to

[269] *Ibid*, para. 18.
[270] *Ibid*, para. 19.
[271] *Ibid*, para. 15.
[272] *Ibid*.
[273] *Ibid*.
[274] *Ibid*.

significant media attention.[275] Its destruction would "serve as a potent example to all Bosnian Muslims of their vulnerability and defen[c]elessness in the face of Serb military forces", and "the fate of the Bosnian Muslims of Srebrenica would be emblematic of that of all Bosnian Muslims".[276]

Subsequent Chambers, including in *Mladić (Trial)* and *Karadžić (Trial)*, upheld this reasoning considering that the prominence of Bosnian Muslims in Srebrenica was highlighted by such factors as the locality's significant strategic importance to Bosnian Serbs (e.g., given its close proximity to Serbia), its importance as a refuge hub for Bosnian Muslims in the area, its status as a UN "safe area" – all supporting the finding of qualitative substantiality.[277]

Treating the prominence of the community – rather than its individual members – as a factor in the substantiality assessment appears to be a rather "unconventional" way of approaching substantiality, especially in cases where the perpetrator does not have control over the overall group but only its territorially limited parts. This has to be read into the consistent pronouncements of various judgements stating that the commission of genocide is possible within a geographically limited zone.[278]

In this respect, the Chambers consistently held – following *Krstić (Appeal)* – that the "area of the perpetrators' activity and control, as well as the possible extent of their reach" should be additional considerations factored into the assessment of the intent.[279] It is thus possible that although the perpetrators harboured the intent to destroy the group "in whole" as such or, at least, to destroy the group on a broader geographic area, their opportunities were only limited by the extent of their control.

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[275] *Ibid*, para. 16.
[276] *Ibid*.
[277] *Mladić* (Trial Judgement), para. 3554; *Karadžić* (Trial Judgement), para. 5672.
[278] *Jelisić* (Trial Judgement), para. 83; *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 68; *Krstić* (Trial Judgement), paras 589-590; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 199; *Croatia v Serbia*, para. 142.
[279] *Krstić* (Appeal Judgement), para. 13; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 199; *Tolimir* (Trial Judgement), para. 749; *Croatia v Serbia*, para. 142; *Mladić* (Trial Judgement), paras 3528, 3550; *Karadžić* (Trial Judgement), para. 555.

Such a scenario is nevertheless only possible if the substantiality of the targeted part is priorly established. The opportunity presented must always be evaluated against the substantiality factor, for example, the opportunity available may be so limited that the substantiality is absent[280] even if the initially harboured intent encompassed the destruction of a sufficiently significant number of group members. This can be a case, e.g., where perpetrators control only several villages, with a total of several dozen members of a group, while the overall number of thousands or millions of members spans the entire country. Here, the numeric factor too plays a role, although, once again, it differs from the threshold required to establish the quantitative substantiality as such. As with the qualitative assessment of prominence, where the assessment of numeric considerations precedes, this threshold is significantly lower than at the quantitative assessment stage and requires demonstrating that a somewhat numerically sufficient number was targeted. The exact threshold is again impossible to establish, as it depends on the peculiarities of each case and the targeted groups.

The judgement in *Mladić (Trial)* serves as an illustration of the limits of the "opportunities" factor. The Chamber established that Bosnian Serbs harboured genocidal intent to destroy Bosnian Muslims in several municipalities,[281] which were the only part of the protected group within their area of control and reach.[282] However, since each analysed community "formed a relatively small part of the Bosnian-Muslim population in the Bosnian-Serb claimed territory or in Bosnia-Herzegovina as a whole" and did not demonstrate the signs of "special significance or [being] emblematic in relation to the protected group as a whole" (unlike the Srebrenica community), the finding of genocide was precluded.[283]

At the same time, the "territorial/communal" approach to evaluating the substantiality of the targeted part may attract certain criticism. First, on the one hand, one

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[280] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 199.
[281] *Mladić* (Trial Judgement), paras 3503-3526.
[282] *Ibid* 3527-3535.
[283] *Mladić* (Trial Judgement), para. 3535.

may argue that such an approach, putting a strong emphasis on the "communal" rather than "individual" prominence, better suits the nature of the crime of genocide, protecting human groups rather than individual humans. On the other hand, it may also be seen as placing an oddly strong emphasis on the special characteristics of territories (areas) rather than on the group members residing in or constituting such areas. This is, for example, illustrated by the fact that although in certain passages of the judgements Chambers did refer to the prominence of the Srebrenica "community" of Bosnian Muslims,[284] in other instances, they likewise focused on the characteristics of the Srebrenica "region", "town" or "enclave"[285] – the notions that refer to the administrative territorial notions rather than categories representing the social characteristics of entities as constituents of the overall group (such as "the community").

In other words, instead of focusing on the qualities of individuals forming a part of the group (e.g., leaders binding the group together), the approach focuses on factors that exist independently of, or beyond, the will and control of the group members. Taking Srebrenica as an example, characteristics underpinning the community's prominence, namely strategic political importance or increased media attention, emerged and existed beyond the will of the Bosnian Muslim members of the Srebrenica community. Moreover, such a group's members may probably not necessarily even realise that they were a part of a prominent part in certain respects, or particular features underpinning that prominence.

Furthermore, it leads to a preposterous situation, whereby genocide can be established in certain geographic areas but not the others even though victim group members possessed similar personal background, characteristics, or status, and were simply distinguished by their belonging to what may be seen as a "prominent part" because of the external policy considerations (e.g., strategic importance or media attention). Put it another way: applying the "territorial/communal prominence" approach

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[284] *Krstić* (Appeal Judgement), para. 15.
[285] *Ibid*, paras 15-16; *Mladić* (Trial Judgement), paras 3551, 3553.

may lead to a finding of genocide in Srebrenica, whereas, elsewhere, in situations with the same objective characteristics (*modus operandi*, number of victims, etc.), it will not, because such external policy considerations are lacking.

Second, the selection of factors relevant to the determination of "territorial/communal" prominence may appear rather arbitrary. While it is true that "personal substantiality" also rests upon a number of subjective or perceived qualities of individual human beings within the group, indicia of the "territorial/communal" prominence seem far more erratic. First, if political factors (such as strategic importance) underpin the part's prominence in relation to the group "in whole", such factors can be overly context-dependent and then arbitrarily deduced or rejected in every given situation without much uniform guidance in the jurisprudence or doctrine. While the Chambers made consistent efforts to emphasise that the weight of every factor underpinning the substantiality finding is fluid, not predetermined and case-specific, qualitative considerations – as they appear in international jurisprudence – may be criticised for opening an overly permissive backdoor for the substantiality assessment, where every individual case may offer a myriad claims for qualitative considerations to be confirmed or disregarded on a rather arbitrary basis.

As a hypothetical example, one may consider the situation in which in the course of an international armed conflict, perpetrators occupy several small localities (such as villages and towns) and destroy members of a particular ethnic community in each of them forming just an insignificant portion of the overall group numbers' number (e.g., two hundred persons out of the overall number of several millions). One potential argument would suggest that territorial/communal prominence is established and substantiality requirement is met in view of, e.g., the notorious nature of the foreign invasion, widespread media attention and coverage, strategic nature of the occupied territories to any further war effort, and that the perpetrators' opportunities were only limited to such occupied territories, even if it formed a very numerically limited part of the whole group. A counterargument would suggest that, as indicated above, the factor of opportunities is not sufficient on its own, and that some numeric threshold is a prerequisite for assessing the opportunities presented. However, it is unclear whether the outlined prominence considerations in the context of occupation outweigh the numeric considerations. If not, the question becomes what number is sufficient in order to, given the outlined prominence considerations, to meet the substantiality threshold: if two hundred members out of the overall several million is insufficient, at what stage does it become sufficient? In other words, as with the qualitative substantiality, such an exact numeric threshold is impossible to establish.

Illustrative is the assertion provided by the Appeals Chamber in *Krstić* that the elimination of Bosnian Muslims in Srebrenica "would serve as a potent example to *all* Bosnian Muslims of their vulnerability and defen[c]elessness in the face of Serb military forces [and] fate of the Bosnian Muslims of Srebrenica would be emblematic of that of all Bosnian Muslims".[286] However, the assertion seems questionable for several reasons, particularly because Bosnian Serb control never extended to the group "in whole" (neither did the intent to capture and eliminate Bosnian Muslims in the entirety of Bosnia and Herzegovina). Therefore, it remains unclear how the fate of Bosnian Muslims of Srebrenica could signal to the remainder of the group the feeling of their vulnerability and defencelessness or potentially a similar fate awaiting them. Likewise, it is unclear whether and how – even in view of the alleged strategic importance of the Srebrenica community to the efforts of the Bosnian Muslim state to ensure its viability – a community was "essential to survival" of the *group as such, not the Bosnian Muslim state as a political entity.*

As a provisional conclusion, despite ambiguities and contradictions, territorial/communal prominence remains the only approach successfully applied by the international tribunals in evaluating qualitative substantiality (with personal prominence cited, yet never applied directly, and the *Tolimir (Trial)* judgement overturned on appeal). Given the previously established indicia of such prominence, the argumentative nature of

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[286] *Krstić* (Appeal Judgement), para. 16.

the indicia does not, overall, undermine the core undisputed proposition that qualitative substantiality can be established if a targeted, geographically limited part of the group (e.g., a community) is emblematic of the group or essential to its survival. In addition, a number of other factors (e.g., perpetrators' opportunities, control and reach) may influence the determination of such substantiality, although the limits of their interplay with the prominence considerations and their mutually reinforcing or disproving relative weight remain ambiguous.

2.1.2.3. Methodology of evaluating substantiality

Having established *what* the essence of the substantiality requirement requires both in quantitative and qualitative dimensions, another important question becomes *how* exactly the substantiality should be evaluated. In this respect, two fundamental questions arise. First, what the targeted part's substantiality should be juxtaposed against (i.e., necessarily and always the group in whole or its more limited subparts, e.g., communities or particular geographic localities)? Second, what exact effect on a broader group does the targeting of a part require to amount to genocide (i.e., threatening its existence or survival on the one hand, or having a lesser yet substantial effect on it as such on the other)?

If genocidal destruction of the group in part requires the targeted part to be substantial, a logical next question arises: ***what must the targeted part be substantial towards?*** In other words, what is the broader part of the group that the targeted part must be juxtaposed against in terms of substantiality? International jurisprudence offers several clues pointing to four seemingly conflicting approaches, namely juxtaposing:

(i) targeted persons (victims of underlying acts) towards a geographically limited community evaluated as the "whole";

(ii) targeted persons (victims of underlying acts) as a targeted part themselves towards a group "in whole";

(iii) targeted persons (victims of underlying acts) towards a targeted geographically limited community, *and* such community as a part towards the group "in whole";

(iv) targeted geographically limited part towards the group "in whole", whereby targeted persons (victims of underlying acts) are analysed as a separate indicator of genocidal intent.

The validity of every approach, as well as the proposition of the soundest possible reconciliation of seemingly conflicting narratives in the jurisprudence, is addressed in sequence below.

The first possible reading of the substantiality requirement implicit in jurisprudence may seemingly suggest the evaluation of the substantiality of persons directly targeted by underlying acts towards the geographically limited community they belong to, not the group "in whole". This approach can be titled "**victims of underlying acts towards a territorially limited community evaluated as the "whole"**". Based on a hypothetical example, it will entail analysing whether the targeted selection of certain prominent members of community X met the substantiality requirement in light of the effects of their disappearance on that community.

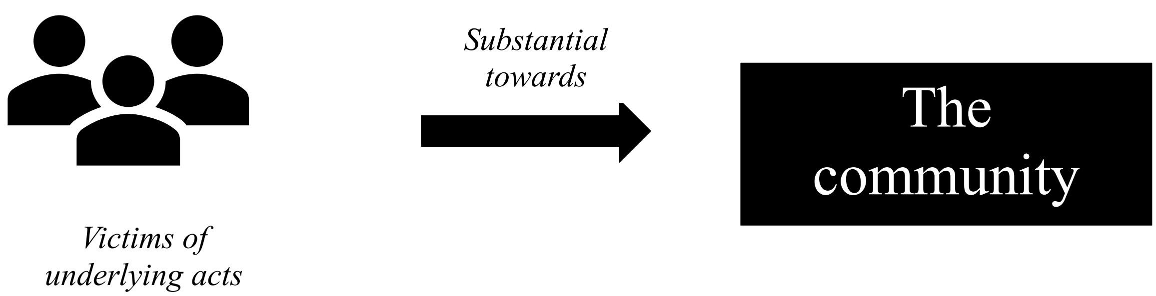

Illustration 2.1. Examined approach to evaluate the substantiality of targeted persons (victims of underlying acts) towards a geographically limited community evaluated as the "whole".

This approach may be implicitly inferred from the initial key judgements regarding the personal prominence of the group leaders (i.e., the "leadership factor"), namely *Jelisić*, *Sikirica* and *Tolimir*. *Krstić (Trial)*, considering personal prominence from a different angle (i.e., men in the patriarchal community), may as well be read to feed into the present approach, although *Krstić (Appeal)* refuted such a reading.

For example, *Jelisić (Trial)* discussed the substantiality in the context of targeting leaders by stating that genocidal intent can take the form of seeking to harm "the most representative members of the targeted *community* [emphasis added]".[287] This may imply that assessment relates to the substantiality of persons towards the community. At the same time, the other parts of the same passage contradict this reading. The Trial Chamber referred to "a more limited" destruction of individuals "selected for the impact that their disappearance would have upon the survival of the *group as such* [emphasis added]".[288] This rather points to the alternative approach of evaluating the substantiality presented below, whereby targeted persons (victims of underlying acts) are being evaluated as a sub-part towards a broader part of a group in whole, and the eventual endpoint of the assessment is the "whole", not the geographically limited community.

Sikirica (Trial) was more explicit. While evaluating the numeric substantiality of victims in the Keraterm camp, the Trial Chamber juxtaposed them against Bosnian Muslim and Bosnian Croat groups "as a whole in the Prijedor municipality".[289] Thus, the Trial Chamber expressly treated group members within one geographically limited municipality as the group in whole towards which the substantiality of victims of underlying acts should have been evaluated. The Trial Chamber further indicated that it would be erroneous to evaluate the substantiality of targeted victims in the camp towards the total number of group members in the camp.[290] The qualitative assessment of substantiality (i.e., the evaluation of the leadership factor) also involved juxtaposing the

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[287] *Jelisić* (Trial Judgement), para. 82.
[288] *Ibid*.
[289] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 68.
[290] *Ibid*.

targeted victims towards the geographically limited community they belonged to, thus implying that such a community was treated as the group "in whole".[291]

Tolimir (Trial) may seem, at first, to reinforce the same approach. The destruction of the three leaders in the Žepa enclaves was evaluated in view of the effect their disappearance had on the remaining protected group in Žepa,[292] creating a plain impression that the Trial Chamber assessed the substantiality of the leaders as a part of the group in the Žepa municipality. This reading is, however, confusing in view of the preceding passages, where the Trial Chamber stated that this is "the Bosnian Muslims of Eastern Bosnia", including Žepa, constituting "a substantial component of the entire group" of Bosnian Muslims,[293] not the leaders of the Žepa municipality *per se*.

Tolimir (Appeal) further fuels the same confusion. The Appeal Chamber upheld that "selective targeting of leading figures of a *community* may amount to genocide" [emphasis added],[294] and focused its further respective analysis on the impact the killing of leaders had "on the *Žepa* civilian population [emphasis added]".[295] The discussion by the Appeal Chamber further interchangeably uses references to the Bosnian Muslim "group" and Bosnian Muslims in Žepa[296] (particularly in the context of "the ability of the Bosnian Muslims from Žepa to survive[297]"), creating additional confusion.

Certain passages in *Krstić (Trial)* present further support of the current approach to the substantiality assessment. This approach stems from *Krstić (Trial)*, where the Chamber stated that "the physical destruction may target only a part of the geographically limited part of the larger group because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue".[298] Upon the examination of evidence, the Trial Chamber concluded that the

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[291] *Ibid*, paras 79-80.
[292] *Tolimir* (Trial Judgement), paras 777-782.
[293] *Ibid*, paras 774-775.
[294] *Tolimir* (Appeal Judgement), para. 263.
[295] *Ibid*, para. 266.
[296] *Ibid*, paras 266-269.
[297] *Ibid*, para. 269.
[298] *Krstić* (Trial Judgement), para. 590.

object of the destruction was the Srebrenica community and referred to the "intent by the Bosnian Serb forces to target the Bosnian Muslims of Srebrenica as a *group* [emphasis added]".[299] This may seem as either intended or negligent consideration of the Srebrenica community "as a whole". The Trial Chamber abstained from the explicit explanation as to what part it treated as substantial, yet the inferences indicate that it was "the Bosnian Muslim men", given the arguments provided as to the importance of men for the survival of the patriarchal Srebrenica community and Bosnian Muslims' Their death precluded any effective ability to recapture the territory and re-establish themselves there.[300] The Trial Chamber did not examine whether the Srebrenica community was as such substantial towards the whole group (Bosnian Muslims in Bosnia) or whether the targeted men could be substantial towards the group "in whole". While the Appeals Chamber further refuted the reading of men constituting a substantial part, instead focusing of the Srebrenica community versus the whole group,[301] the plain reading of the Trial Chamber's pronouncement may as well support approach one, whereby targeted men due to their personal prominence to the group's survival could be considered a substantial part of the community they belonged to that was an object of the destruction.

Finally, the current approach was applied by the Defence in *Krstić (Trial)* as one of the alternative arguments to refute the substantiality of the targeted men. The Defence claimed that 7,000-8,000 targeted men could not only be regarded as substantial in relation to the Bosnian Muslim group "in whole" in the entire Bosnia and Herzegovina, but likewise in relation to around 40,000 Bosnian Muslims in the Srebrenica community itself.[302]

While the aforementioned authorities make the reading of the first approach plausible at first glance, they undoubtedly suffer from ambiguity and failure to properly and unambiguously situate personal prominence in the assessment of substantiality. None

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[299] *Ibid*, para. 595.
[300] *Ibid*.
[301] *Krstić* (Appeal Judgement), paras 15-16.
[302] *Krstić* (Trial Judgement), para. 593.

of the forecited pronouncements directly and explicitly supported the first approach. They all – to a greater or lesser extent – seem to consistently confuse references to the group as such (allegedly implying the group "in whole") and targeted communities. In the worst scenario, some of the passages even imply treating a targeted community as a "whole" itself.

The first approach to evaluating the substantiality seems unequivocally erroneous. While selected targeting of prominent group members can be indicative of genocidal intent, there is no well-founded indication that the substantiality assessment should juxtapose targeted victims of underlying acts against a geographically limited community as "a whole". Such an approach will defy any meaningful boundaries between the two alternative forms of intent (i.e., to destroy "in part" or "in whole"), leading to an endless compartmentalisation of the protected group into multiple possible territorial sub-entities. The essence of the substantiality requirement is to evaluate the part towards the group "in whole", and the definition of the "whole" is the basic starting point for the evaluation. In other words, the definition of the "whole" can never be contracted to the geographically limited community.

Considering otherwise would lead to a manifestly absurd result where multiple standalone findings of genocide would be possible in various separate territorially limited localities (e.g., villages and towns), even where each of them individually or all of them together do not meet the substantiality requirement towards the whole group.

Therefore, the first possible approach, juxtaposing the substantiality of individual victims of underlying acts with the territorial limitations of the communities they belong to, is an erroneous approach.

The second approach suggests evaluating the substantiality of individual victims targeted for underlying acts towards the group "in whole" (i.e., labelled as "**targeted persons (victims of underlying acts) as a part towards a group in whole**"). In a hypothetical example, it will involve considering whether a selected targeting of certain prominent members of a protected group (e.g., leaders) met the substantiality requirement in light of their disappearance's effects on the group "in whole", not merely the geographically limited community they belong to.

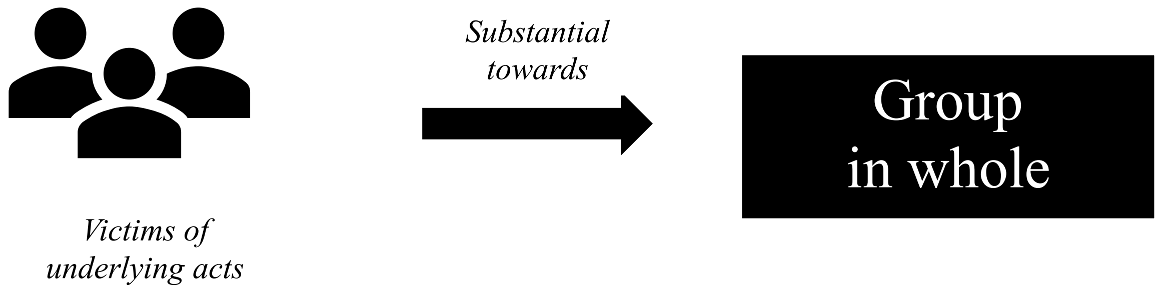

Illustration 2.2. Examined approach to evaluate the substantiality of targeted persons (victims of underlying acts) as a targeted part themselves towards a group "in whole".

This approach emanates from the alternative, and apparently – more substantiated – reading of the pronouncements on the personal prominence factor in *Jelisić*, *Sikirica* and *Tolimir*. As indicated in the previous Section, the Chambers in every case pronounced that selected targeting of the group's prominent members may constitute genocide in light of the impact their disappearance would have on "the group", or – where Chambers were more precise – on the group "as such".[303] Disregarding the confusing injection of references to the "communities" as analysed in the preceding Sections, it would entail that the substantiality requirement can be manifested in targeting of individuals, given the impact their disappearance would have *on the entire group*, i.e., the group "in whole", not geographically limited communities they belong to. Even where in relevant passages of judgements the Chambers made references to communities, they were always accompanied by references to "the group" or "the group as such", highlighting once again the imposed confusion between the entire group (the group "in whole") and its territorially limited constituents.

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[303] *Jelisić* (Trial Judgement), para. 82; *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), paras 76-77; *Tolimir* (Trial Judgement), para. 777; *Tolimir* (Appeal Judgement), paras 261-263.

This reading juxtaposing selected members targeted for destruction against the entire group may seemingly be supported by other authorities, notably the 1994 Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992), frequently cited by Chambers, that became one of the landmark sources for the inspiration in the interpretation of the leadership factor. The Report indicated that genocide may occur if "essentially the total leadership of a *group* is targeted" in view of "the fate of the rest of the *group* [emphasis added]".[304] The references to the "group" may indicate the intention to refer to the entirety, i.e., the group "in whole". At the same time, further factual analysis in the Report seems to be rather supportive of the first outlined approach discussed before, since the Commission focused on the elimination of leaders within respective "communities", rather than the group "in whole".[305] Like with the Chambers in *Jelisić*, *Sikirica* and *Tolimir*, cited previously, it remains unclear whether the references to the "group" were made in relation to the group "in whole" or its presence within the territorial constituent.

Further, the Defence in *Krstić (Trial)* unsuccessfully tried to refute the proof of genocidal intent in Srebrenica based on the fact that the targeted 7,000-8,000 men do not meet the substantiality requirement when evaluated towards the Bosnian Muslim group in whole (i.e., about 1,4 million people), not its territorially limited component.[306]

The second approach – unlike the first– is not, *per se*, an erroneous model to assess substantiality. Yet, it seems valid for a very limited number of cases. It is hypothetically possible that where perpetrators established a full or, at least, a substantial enough control over an entire group that is likely to be numerically limited, the prominent category of targeted victims may satisfy the substantiality test. For example, drawing inspiration from the aforementioned Fisher's example on targeting religious leadership, in a country where religious group A constitutes a minority of several thousand individuals, targeting the entirety of the clergy and spiritual leaders is highly likely to satisfy the substantiality

[304] S/1994/674, para. 94.
[305] See, e.g., *ibid*, para. 175.
[306] *Krstić* (Trial Judgement), para. 593.

requirement towards the whole group. However, this would only be so because of the perpetrators' control over a territorially limited and numerically insignificant religious group that qualifies as a group "in whole" within a single country. The same argument would not work if the perpetrators sought to eliminate religious leaders in a limited locality under their control while the majority of the entire group remains intact. In this case, numerically, religious leaders will remain too insignificant to meet the substantiality factor, given the absence of a substantial impact on the entire group.

Hence, it is theoretically possible that substantiality can be met when targeted persons are juxtaposed against the entire group. However, such cases would arguably be limited only where the totality of leadership is targeted because of the perpetrators' control over the group as such.

The third approach may suggest doing a double substantiality assessment, namely evaluating (i) the substantiality of direct victims of underlying acts towards the geographically limited community, and (ii) the substantiality of the geographically limited community towards the group "in whole". In short, the approach in question can be labelled as "**targeted persons (victims of underlying acts) as a sub-part towards a targeted geographically limited community as a part of the group in whole**".

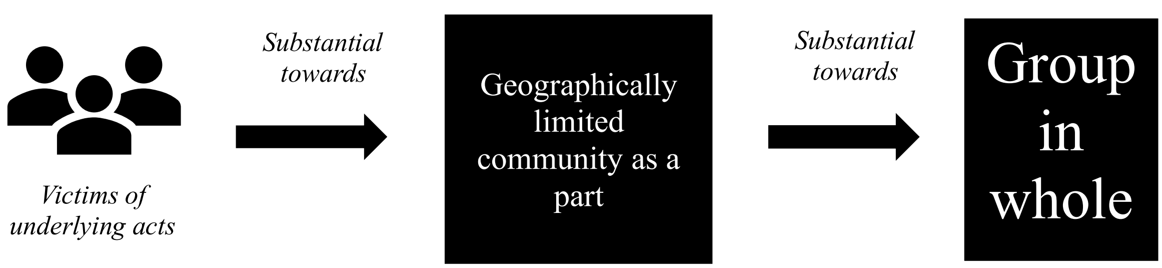

Illustration 2.3. Examined approach to evaluate the substantiality of targeted persons (victims of underlying acts) towards a targeted geographically limited community, and such community as a part towards the group "in whole".

Unlike other approaches, this approach lacks explicit or implicit acknowledgement or support in the jurisprudential analysis. It stems from one short passage in *Krstić (Trial)*, where the Chamber stated that "the physical destruction may target *only a part of the geographically limited part of the larger group* because the perpetrators of the genocide regard the intended destruction as sufficient to annihilate the group as a distinct entity in the geographic area at issue [emphasis added]".[307] The passage hints at compartmentalising a protected group into several sub-parts (a part of a part of a whole).

The approach thus may also seem substantiated if read through the lenses of combining the Trial and the Appeal Chamber's reasoning in *Krstić*, where the former focused on the special significance of targeted men to the Bosnian Muslim community in Srebrenica and the latter focused on the substantiality of the Srebrenica community towards the whole Bosnian Muslim group.

Further, *Tolimir (Trial)*, while focusing on Bosnian Muslims of Eastern Bosnia as "a substantial component of the entire group", extensively analysed the special significance of the group leaders in the Žepa community (without, however, explicitly considering them a substantial sub-part).[308] This may potentially be read as a further endorsement of the third approach.

As such, the third approach may seem useful for several reasons. It incorporates both personal and territorial/communal prominence considerations within a single substantiality analysis. By doing this, it acknowledges both the personal significance of a certain section of the group to the survival of their respective community, as well as the prominence of the community within the group. This way, it may be seen as reconciling conflicting or confusing interpretations of the prominence considerations in the jurisprudence.

At the same time, the approach suffers from several flaws. Firstly, it lacks a sufficient foundation in jurisprudence. It is unclear whether the vague passage in *Krstić*

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[307] *Krstić* (Trial Judgement), para. 590.
[308] *Tolimir* (Trial Judgement), paras 774-782.

(Trial) was intended to introduce exactly the present approach or should be interpreted otherwise. Once again, *Krstić (Trial)* pronouncements contain hints to several conflicting narratives, as demonstrated in the analysis of the previous approaches.

Secondly, the approach leads to a dangerous compartmentalisation of a protected group into multiple segments, potentially endlessly. This risks a dangerous dilution of the substantiality requirement, whereby every section of the group – regardless of its size, even an individual human being – can be regarded as substantial towards a broader part of a bigger part of an even more sizeable part of the "whole". The traditional idea behind the substantiality requirement dictates that there must be *a part* targeted that is substantial towards the "whole", not multiple parts, substantial to each other until the analysis reaches the "whole". Further, *Krstić (Appeal)* refuted the possibility of such compartmentalisation, stating that targeted Bosnian Muslim men in Srebrenica could not be viewed as a "separate, smaller part" of the substantial part – Srebrenica community – of the group.[309]

Thirdly and finally, the approach may unreasonably raise the substantiality threshold, requiring double (or multiple) proof of substantiality rather than merely the geographically limited part towards the "whole". Alternatively, if the approach claims that proving one prong of substantiality is sufficient, it duplicates the first approach (for the prominent members of the community), demonstrated to be erroneous, or the next, fourth approach (for territorial/communal prominence only).

Thus, the third approach should be considered equally erroneous as the first. In conclusion, the substantiality analysis does not require a double proof of the substantiality of both victims of the underlying acts towards the geographically limited community *and the* geographically limited community towards the group "in whole".

The last, fourth approach to the substantiality assessment involves evaluating whether a territorially limited part of the group was substantial towards the group "in whole". In this analysis, personal prominence of targeted victims of underlying acts is not a marker of substantiality *per se*, yet an important indicator of genocidal intent to destroy

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[309] *Krstić* (Appeal Judgement), paras 18-19.

the group in part. Otherwise, the approach can be labelled as "**targeted geographically limited part towards the group in whole, whereby targeted persons (victims of underlying acts) are analysed as a separate indicator of genocidal intent**".

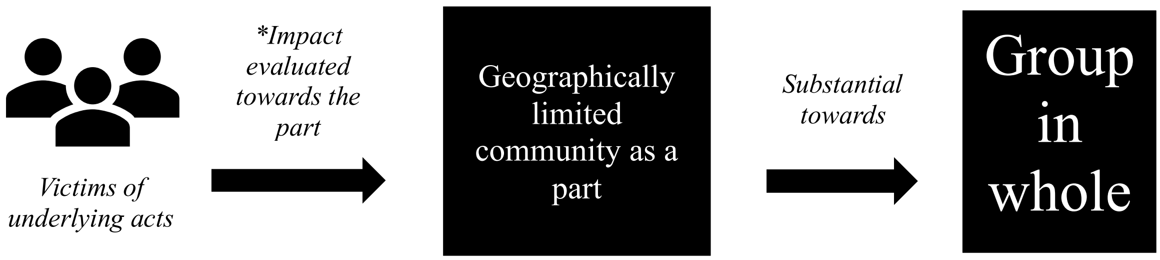

Illustration 2.4. Examined approach to evaluate the substantiality of the targeted geographically limited part towards the group "in whole", whereby targeted persons (victims of underlying acts) are analysed as a separate indicator of genocidal intent.

This approach appears to be the most prevalent and well-founded in jurisprudence. It stems from the *Krstić (Appeal)*, where the Appeals Chamber indicated that Srebrenica as a community constituted a substantial part of the Bosnian Muslim group "in whole".[310] The Appeals Chamber disregarded that targeted Bosnian Muslim men could be "as a separate, smaller part" of the substantial part:[311] rather, their destruction due to the special qualities they possessed to the survival of the community served as a strong indicator of genocidal intent.

The same logic was later followed by subsequent chambers.[312] For example, *Popović et al. (Trial)* recognised "the Muslims of Eastern Bosnia" as a substantial part of the group, while treating "the killing of all of the male members […] [as] a sufficient basis to infer [genocidal] intent".[313] *Tolimir (Trial)* only recognised "Bosnian Muslims of

[310] *Ibid*, paras 18-19.
[311] *Ibid*.
[312] *Tolimir* (Trial Judgement), para. 774; *Popović et al.* (Trial Judgement), paras 865-868; *Mladić* (Trial Judgement), para. 3554; *Karadžić* (Trial Judgement), para. 5672; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 296; *Croatia v Serbia*, para. 406.
[313] *Popović et al.* (Trial Judgement), paras 865-868

Eastern Bosnia" as "a substantial component of the entire group", while not labelling the evaluation of personal prominence of leaders as a substantiality assessment *per se* – rather an indicator of genocidal intent.[314]

The fourth approach to evaluating substantiality seems to be the most well-established and justified. It finds consistent support in jurisprudence and equally allows for avoiding the risks associated with other approaches, particularly compartmentalisation of the definition of the group "in whole" and "in part" and dilution of the substantiality requirement.

It also allows for accommodating both personal and territorial/communal prominence considerations in the evaluation of intent. These considerations simply play a different role. Territorial/communal prominence is in itself indicative of substantiality. At the same time, personal prominence, while not directly related to substantiality, is a strong indicator of genocidal intent to destroy the group in part, expressive of what can be labelled as "destructive potential".[315] The essence of this element will be discussed in Section 3.1 below summarising the most important indicia of genocidal intent.

In summary, international jurisprudence offers four potential readings of the methodology to evaluate the substantiality requirement. Two of them, namely evaluating the substantiality of targeted persons towards the geographically limited part (e.g., the community) or of targeted persons towards the geographically limited part (e.g., the community) *and* such limited part towards the whole group, are ill-founded and erroneous. One of them assessing the substantiality of targeted persons towards the group "in whole" due to their personal prominence is not erroneous *per se*, yet seems only applicable in cases where perpetrators hold full or substantial enough control of the whole group and are capable of affecting the "whole" through targeting prominent members. The most well-founded and substantiated approach dictates evaluating the substantiality of the geographically limited parts towards the "whole", whereby the prominence of targeted

[314] *Tolimir* (Trial Judgement), paras 774-782.
[315] The term "destructive potential" was first designed by Jeremy Pizzi during the discussions underpinning the present study.

persons (e.g., leaders or otherwise essential categories) may serve as an indicator of genocidal intent in view of the destructive potential their removal has at the part of the group.

Having established the components of the substantiality evaluation (i.e., the object to juxtapose the targeted part against), the next question requires the examination of **what exact *effect* targeting of the part requires towards the "whole"**. The key expression of the substantiality requirement is that targeting of the part must in some form affect the entirety of the group. Yet, what form should this effect undertake? Is it required that targeting of the part impact the very *survival* of the "whole"? Or is it sufficient to demonstrate a lesser effect, whereby targeting of the part impacts the entirety, yet not threatening its existence?

Interpretations of the effects requirement in jurisprudential and doctrinal authorities presents conflicting narratives.

Certain judgements cited the position of the United States expressed by the Nixon and Carter administrations arguing that substantiality requires "such numerical significance that the destruction or loss of that part would cause the *destruction of the group as a viable entity* [emphasis added]".[316] *Jelisić (Trial)* particularly expressed the substantiality requirement with the reference to "the impact that [the prominent members'] disappearance would have upon the *survival* of the group as such [emphasis added]".[317] *Sikirica* and *Tolimir (Appeal)* readopted the "impact on the survival" test too without any elaboration of its substance.[318]

Krstić (Trial) appealed to the "lasting impact upon the entire group" that the disappearance of men in Srebrenica had, as well as to the "catastrophic *impact* that [their] disappearance […] would have on the *survival* of a traditionally patriarchal society [emphasis added]".[319] However, from the analysis, it remains unclear whether by "the

[316] *Jelisić* (Trial Judgement), para. 82, footnote 112.
[317] *Jelisić* (Trial Judgement), para. 82.
[318] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), paras 77, 82; *Tolimir* (Appeal Judgement), para. 266.
[319] *Krstić* (Trial Judgement), para. 595.

entire group" and "the society" the Chamber met the whole Bosnian Muslim group or a part of it in Srebrenica.

In contrast, Raphael Lemkin claimed that the part is substantial where its destruction is capable of "*affect[ing]* the entirety [emphasis added]".[320] *Krstić (Appeal)* similarly indicated that a targeted part "must be significant enough to have an *impact* on the group as a whole [emphasis added]".[321] This very formulation was further upheld by subsequent Chambers, as well as by the ICJ.[322] The 1994 Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992) speaks even more broadly of "the fate of the rest of the group" when discussing the leadership factor, mentioning as an example suffering from "heinous acts" in view of defencelessness.[323]

Hence, there are two alternative interpretations of the effect requirement. The higher threshold would require targeting of the part to affect the survival of the "whole". The lower threshold would be satisfied if targeting of the part simply had an impact on the "whole".

There are convincing reasons that the latter interpretation – a lower threshold – should prevail. Firstly, it finds a more consistent support in the jurisprudence of both the ICTY and the ICJ, including a notable consistency in the latest jurisprudence. For example, the destruction of Bosnian Muslims in Srebrenica did not and was not capable of affecting the survival of Bosnian Muslims in Bosnia and Herzegovina as a whole. Instead, the impact of the destruction was manifested by the community's immense strategic importance, public prominence and "emblematic fate" to the rest of the group.[324] By this analogy, impact on the "whole" must not necessarily be physical or biological but can as well be intangible (e.g., symbolic). For example, if a particular part of the group bore special significance to the entire group in view of historical, geographical, or other

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[320] US Senate Executive Sessions of the Senate Foreign Relations Committee (Historical Series) (1976) 370.
[321] *Krstić* (Appeal Judgement), para. 10.
[322] Trial Judgement), para. 831; *Popović et al.* (Appeal Judgement), para. 419; *Tolimir* (Trial Judgement), para. 749; *Tolimir* (Appeal Judgement), para. 266; *Mladić* (Trial Judgement), para. 3437; *Karadžić* (Trial Judgement), para. 555; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 198.
[323] S/1994/674, para. 94.
[324] *Krstić* (Appeal Judgement), paras 15-16; *Mladić* (Trial Judgement), para. 3554; *Karadžić* (Trial Judgement), para. 5672.

considerations, its destruction may be regarded as having an impact on the group without threatening physical survival or existence of the entirety.

Second, requiring targeting of the part to impact *survival* as a whole defies the very notion of genocidal intent having two alternative forms, namely to destroy the group *in whole or in part.* Contrary to a view that partial destruction merely refers to the scale of committed crimes and the actual extent of destruction achieved, not to the form of intent which always requires aiming at the "whole", destruction "in whole" is a separate form of *mens rea*.[325] Therefore, the part of the group and the whole group must be treated as two separate potential objects for destruction. If it is assumed that targeting of the part must affect the survival of the "whole", then the intent to destroy the group in part simply becomes futile, as the whole group will always be the object of intended destruction. This interpretation will impermissibly reduce partial destruction to the mere definition of the scale of committed crimes.

Moreover, implying that destruction of the part must necessarily affect the survival of the "whole" will defy the very nature of the qualitative assessment of substantiality. As discussed above, the essence of the qualitative assessment allows for establishing the substantiality, even where the targeted part is numerically insufficient to reach the required threshold. Requiring that targeting a part must impact the survival of the "whole" necessarily entails high numbers in an absolute sense and the degree of criminality. This makes the qualitative assessment of substantiality lose its entire essence. Such reading is also confirmed by the definition of the prominence factor within the substantiality requirement, which can be manifested by the targeted part not only being "essential to [the group's] survival" but also "emblematic of the overall group".[326]

Thus, the substantiality requirement will be satisfied if targeting the part of the group is capable of impacting the "whole" without necessarily threatening its very survival.

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[325] *Krstić* (Trial Judgement), paras 583-584.
[326] *Krstić* (Appeal Judgement), para. 12.

2.1.3. Conclusions on the scope of intent to destroy the group "in whole" or "in part"

The previous Sections elaborated in detail on the substance of various elements necessary to establish genocidal intent to destroy a protected group "in whole" or "in part". They likewise highlighted the main inconsistencies in the interpretation of these elements stemming from international jurisprudence. The present Section aims at concisely summarising the key findings on the soundest possible interpretations – often reconciliatory of conflicting jurisprudential narratives – of the core elements defining the intent to destroy a group "in whole".

- It is universally uncontested that the scope of genocidal intent exists in duality and may be directed at destroying the group either "in whole" or "in part" which form two alternative forms of *mens rea* of the crime.
- Establishing the methodology for defining the group "in whole" is fundamental to understanding how to evaluate the "part". This methodology entails several considerations. First, geographical factors can shape what the group "in whole" represents. International jurisprudence offers two approaches to accounting for geographical considerations. The "universalist" approach suggests defining the "whole" universally, encompassing every group member worldwide. The "territorialist" approach suggests limiting the "whole" to a particular state's borders (or, at most, the region encompassing the territories of several states). Both approaches may apply depending on the nature and structure of every protected group in question. For example, members of religious groups may indeed share a universal identity. At the same time, some groups, particularly national groups, are, by their very nature, more concentrated in and bound to the territory of a particular state, which justifies their definition in terms of that connection.
- Second, both victims' and perpetrators' subjective perceptions of a targeted group's identity in light of a particular political, social and cultural context play an important role in how the "whole" is defined. The targeted group's members' perceptions may help establish how they view the contours of the group and whether they perceive

themselves as members of a separate human group in light of cultural, social, historical, or other differences with other human groups. Also, the perpetrators' perspective may help determine the scope of the "whole" as the intended target of destruction.

- All in all, national groups "in whole" are best defined with the connection to individual states' borders (e.g., the Ukrainian national group in Ukraine).
- As to the intended partial destruction, international jurisprudence and its doctrinal interpretations are in agreement that the intent to destroy the group "in part" requires a targeted part to be substantial. Substantiality can be evaluated via two approaches: quantitative and qualitative.
- The quantitative approach evaluating the numeric significance of the targeted part is a starting point of the analysis. Numeric significance can be assessed both in absolute terms (i.e., particularly high number of victims regardless of the overall percentage of the group they represent) and relatively to the overall size of the group (i.e., if targeted persons represent a considerable percentage of the targeted group even if the numbers do not appear to be "massive"). However, there is no universally accepted numeric or percentage threshold establishing substantiality. For example, international jurisprudence has established that targeting slightly less than half of the group met the substantiality requirement, while targeting around 2-3% did not.
- The qualitative approach evaluates the prominence (i.e., special qualities) of the targeted part in relation to the protected group, whose destruction is capable of affecting the entirety. The prominence can be manifested by the targeted part being either emblematic of the whole group or essential to its survival. Prominence can be viewed through two lenses, namely personal prominence and territorial/communal prominence. The qualitative approach nevertheless, requires at least a certain numeric significance of the targeted part (i.e., for a number not to

be negligible): yet, this numeric threshold is undoubtedly lower than the one required to demonstrate quantitative substantiality.

- Personal prominence focuses on the special qualities of particular group members, binding the group together ("connective tissue"). For example, targeting of the group's leadership, i.e., persons whose official position or special qualities allow them to influence the group's actions or opinions, may be indicative of personal prominence (the "leadership factor"). The leadership can comprise various persons (i.e., political, administrative, religious, business, military, cultural, or other leaders), and its definition will necessarily vary depending on the particular protected group in question, especially in view of intangible social bonds uniting different group's members. For example, for national groups, which are inherently built on intangible bonds of mutual rights and duties based on the will to cohesion and joint deep ties of self-determination, political, administrative, or cultural leaders may play a more significant role than for religious groups, where targeting the clergy is particularly capable of affecting the group's structure. Apart from leaders, other protected group's members (e.g., the male population) can likewise qualify as personally prominent – even in the absence of otherwise special personal qualities – where their disappearance is capable of affecting the group.
- Territorial/communal prominence focuses on the special qualities of a particular geographically limited part of a group (i.e., a community) that is an object of targeting. Considerations underpinning the territorial/communal prominence are multiple and fluid. For example, international jurisprudence considered the strategic importance of a particular geographically limited part to the rest of a protected group and perpetrators, increased public attention to the fate of such a community and the emblematic character of the destruction the community suffered towards the rest of the group as relevant factors establishing prominence and substantiality, respectively.

- International jurisprudence presents conflicting narratives on the methodology for substantiality assessment, mostly stemming from negligence or confusion about how a protected group and its parts are defined and assessed in relation to each other. Two approaches appear to be the soundest and the most well-founded. Firstly, it is possible to examine the substantiality of targeted prominent members of a group towards the group "in whole", given the destructive potential their targeting has on the entire group. However, the application of this approach seems limited to cases where perpetrators possess full or somewhat substantial control over the entire group. The second approach, which is the most supported by the jurisprudence, requires evaluating the substantiality of the targeted geographically limited part towards the entire group, whereby the personal prominence of victims targeted by underlying acts is treated as a separate indicator of genocidal intent. Two approaches that jurisprudence at least hinted at are erroneous. It is incorrect to assess the substantiality of the targeted victims of underlying acts towards the geographically limited communities they belong to, or to make a double (or multiple) substantiality assessment of the victims towards their respective communities and such communities towards broader parts of the group or the group "in whole". This leads to a dangerous compartmentalisation of a protected group and dilution of the substantiality requirement.
- Finally, the substantiality assessment requires proof that targeting the part affected the whole group. Contrary to the suggestions by certain judgements that such targeting must affect the "survival" of the whole group, such an approach seems entirely erroneous, at least because it confuses the intent to destroy "in whole" and the intent to destroy "in part". The required effect need not entail an actual threat to the survival of the "whole"; it is sufficient that targeting the part simply *affected* the entirety of the group.

2.2. The meaning of the term "to destroy" the national group as such within the definition of genocidal intent

In addition to the sub-element related to the potential scope of genocidal intent (i.e., destruction "in whole" or "in part"), another fundamental question relates to the meaning of what the intended "destruction" of the group as such entails. The notion "as such" has generally not encountered significant legal debate as to its meaning or contours. It denotes that the object of the crime of genocide is a human *group* whose existence is being denied[327] as a separate and distinct entity,[328] and not the accumulation or collection of its individual members.[329] It is therefore the life of the group that is being protected by the criminalisation.[330] The intent extends beyond a mere targeting of an individual member by an underlying act but pursues an ulterior purpose to target the group whose member the victim is.[331] It is not an identity of a particular individual that matters but rather an individual's membership in a group, which makes targeting an individual "an incremental step in the overall objective of destroying the group".[332] In contrast to the crime against humanity of persecution, for instance, perpetrators of genocide do not simply target individuals because of their membership of the group: its ultimate object is the group.[333]

At the same time, at the core of the intent element lies another fundamental ingredient – the result sought, which is manifested in the wording "to destroy". A critical question in defining the exact meaning behind this wording is what form of desired destruction the genocidal intent requires. Traditionally, there have been two alternative

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[327] UNGA Res 96(I) (11 December 1946).
[328] *Jelisić* (Trial Judgement), para. 79; *Stakić* (Appeal Judgement), para. 521; *Krstić* (Trial Judgement), para. 552; *Akayesu* (Trial Judgement), para. 522; *Kayishema and Ruzindana* (Trial Judgement), para. 99; *Popović et al.* (Trial Judgement), para. 821. See also ILC Draft Code with Cmts (1996) 45, para. 7.
[329] *Tolimir* (Trial Judgement), para. 747; *Stakić* (Appeal Judgement), para. 20; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 187.
[330] *Sikirica, Dosen and Kolundzija* (Judgement on Defence Motions to Acquit), para. 89; *Krstić* (Trial Judgement), para. 553.
[331] *Akayesu* (Trial Judgement), paras 521-522.
[332] ILC Draft Code with Cmts (1996) 45, para. 6.
[333] *Jelisić* (Trial Judgement), para. 79; *Krstić* (Trial Judgement), para. 553. See also ILC Draft Code with Cmts (1996) 45, para. 6; *Bosnia and Herzegovina v Serbia and Montenegro*, paras 187-188; *Croatia v Serbia*, para. 139.

approaches to defining the prohibited destruction sought within the intent[334] (with the wording of the Genocide Convention providing space for both[335]). One approach holds that intended destruction is necessarily limited to physical and/or biological forms (i.e., the requirement to achieve the group's elimination in physical and/or biological terms). Another – broader – approach states that while the destruction sought can be physical or biological, it is also possible that the destruction can seek the elimination of a protected group *as a social unit or entity* (i.e., amount to its social disintegration). Various arguments have been made in support and criticism of both approaches, while international jurisprudence and legal commentaries have failed to provide a consistent, uniform and well-founded guidance on this matter. This Section will thus focus on analysing the content of the term "to destroy" within the definition of the intent in light of the history of its drafting and application in order to conclude whether social destruction of the group may likewise constitute a manifestation of genocidal intent.

2.2.1. <u>The term "to destroy" in light of the fundamental rules of treaty interpretation</u>

The ordinary meaning of the term "to destroy"[336] – an essential first step in the interpretative process[337] – associates it with several synonymous terms such as "ruin[ing] the structure, organic existence, or condition of",[338] "put[ting] out of existence",[339] "damage[ing] something, especially in a violent way, so that it […] no longer exists"[340] or "caus[ing] so much damage to that [something] is completely ruined or does not exist any more".[341] Equally, other constructions semantic to the verb "destroy" are associated with

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[334] For further detailed discussion see Maksym Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' [2025] 11 *Kyiv-Mohyla Law and Politics Journal* 91 (hereinafter – "Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025)") 91-93.

[335] See, e.g., Jeßberger in Gaeta (2009) 107; Lena Herzog, 'The Yazidi Genocide Before the German Federal Court of Justice' [2023] 66 *German Yearbook of International Law* 355, 366.

[336] See the analysis in Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 94.

[337] Tams, Berster, Schiffbauer (2014) 17.

[338] 'Destroy' (*Merriam-Webster*) <https://www.merriam-webster.com/dictionary/destroy> accessed 17 January 2026.

[339] *Ibid*.

[340] 'Destroy' (*Cambridge Dictionary*) <https://dictionary.cambridge.org/dictionary/english/destroy> accessed 17 January 2026. See also 'Destroy' (*Oxford Learner's Dictionary*) <https://www.oxfordlearnersdictionaries.com/definition/english/destroy> accessed 17 January 2026.

[341] 'Destroy' (*Collins Dictionary*) <https://www.collinsdictionary.com/dictionary/english/destroy> accessed 17 January 2026.

the verbs "killing", "annihilating", and "vanquishing".[342] Based on the semantics only, nothing in the construction of the term "to destroy" necessarily limits the destruction in the meaning of the crime of genocide to physical or biological forms only. To the contrary, it appears plausible that destruction can occur in other ways, including through the disintegration of the group's social structure. The ordinary meaning of the term "to destroy" thus seemingly encompasses a broad reading inclusive of the social manifestations of the intended destruction.[343]

However, without any context regarding the term's adoption history, the ordinary meaning leaves its interpretation ambiguous. Before turning to the practice of the term's use in the contemporary case-law, it is critical to provide the lenses of its conceptualisation at the very stage of the Convention's development.

Defining the essence of special intent was at the heart of Raphael Lemkin's 1944 *magnum opus* "Axis Rule in Occupied Europe". Raphael Lemkin provided several possible scenarios for how national (or other) groups can be eliminated. One of them was mass physical and biological extermination of all group members,[344] which necessarily echoed the horrors of the Nazi-led Holocaust against the Jewish people. However, Lemkin did not consider mass extermination to be the only way to eliminate the group. He argued that the destruction of a nation should not necessarily be immediate to amount to genocide.[345] According to Lemkin, genocide of a national group could likewise consist of a "coordinated plan of different actions" targeting "essential foundations" of the nation's life and aiming at annihilating the group.[346]

In his description of techniques to achieve the group's destruction, Lemkin went beyond physical or biological methods of extermination. Describing what he labelled as "essential foundations" of the group's existence, Lemkin did not merely focus on the

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[342] 'Destroy' (*Merriam-Webster*) <https://www.merriam-webster.com/dictionary/destroy> accessed 17 January 2026.
[343] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 93-94.
[344] Lemkin (1944) 79.
[345] *Ibid*.
[346] *Ibid*.

pillars necessary for the literal physical survival of human beings. In Lemkin's view, those could also include "political and social institutions, […] culture, language, national feelings, religion", as well as pillars of "the economic existence of national groups" and "personal security, liberty, health, dignity, and even the lives of the individuals belonging to [human] groups".[347]

This marks the origins of the idea of social disintegration as an intended outcome of genocide. For the destruction of the nation, Lemkin outlined several ways used by German occupiers for "a concentrated and coordinated attack upon all elements of nationhood".[348] Lemkin labelled them as "techniques" and viewed them as a part of a broad *modus operandi* for targeting a nation for destruction. Those included the following sets of techniques:

- Political (destruction of local self-government, imposition of German pattern of administration, removal of reminders of "former national character" (i.e., seemingly Lemkin means independent nationhood), renaming streets and localities, setting up administrative bodies to promote "Germanisation", establishment of Nazi organisations and dissolution of local political associations, removal of local populations to provide space to German settlers and imposing incentives on the latter to encourage them to stay).[349]
- Social (abolition of local laws and courts and their replacement with oppressor's ones, weakening "the national spiritual resources" through targeting and/or removal of intelligentsia and clergy as a basis of national leadership and anti-Nazi resistance).[350]
- Cultural (prohibition to use oppressed group's language in education and publishing, placing German teachers in schools, introduction of Nazism principles to the curriculum, precluding oppressed group's youth from studying liberal arts,

[347] *Ibid*.
[348] *Ibid* 82.
[349] *Ibid* 82-83.
[350] *Ibid* 83.

control of cultural activities and activists, deprivation of cultural values through destruction of artistic galleries, museums, archives, libraries, etc. or removing artefacts therefrom).[351]

- Economic (undermining the development or causing a retrogression of a national group by destroying its economic basis, e.g., by lowering living standards leading to the impediment of cultural and spiritual development, deprivation of means of sustenance, confiscation of property, expulsion of the oppressed population from trade in favour of the oppressor's population, etc.).[352]
- Biological (depopulation through decrease of childbearing in national groups of "non-related blood" (e.g., by separation of sexes, including through their deportation, decline of nutrition quality) and encouragement of childbirth of the oppressor's representatives (e.g., through subsidies).[353]
- Physical (rationing of food in favour of the oppressor's population resulting in health decline, deprivation of elemental essentials for life (e.g., warm clothes, blankets, medicine, fuel), creation of living and transfer conditions threatening physical well-being (overcrowded housing, lack of fresh air and heating, etc.), mass killings (particularly of intellectuals).[354]
- Religious (in especially religious communities, facilitating children's renunciation of their religious identity, pillage and destruction of property belonging to religious institutions, persecution of religious leadership).[355]
- Moral (in order to weaken resistance, concentrating the group's attention around base instincts instead of "national thinking").[356]

The combination of techniques would not be identical in every case and would vary depending on political needs and realities. For example, in cases of some groups that were

[351] *Ibid* 84-85.
[352] *Ibid* 85-86.
[353] *Ibid* 86-87.
[354] *Ibid* 87-89.
[355] *Ibid* 89.
[356] *Ibid* 89-90.

"of related blood" (i.e., closer to the oppressor in terms of descent, ethnicity or language), the application of some of these measures were conditional on the targeted persons' acknowledgment of their belonging to the oppressor's group (as Lemkin illustrates, Luxembourgers acknowledging "German elements in themselves").[357] If they consented and promoted the oppressor's national pattern, they would be shielded from the various aforementioned techniques.[358]

Lemkin also described two phases in which the destruction of the nation can take place.[359] The first phase entailed destroying the oppressed group's "national pattern".[360] The second phase presupposed the imposition of the oppressor's own national pattern on the oppressed group (either direct imposition on the remaining part or through colonising the territory with the oppressing group's members).[361] In Lemkin's logic, while in the first phase, a part of the national group can be targeted for destruction, the same fate should not necessarily concern every individual member of the group. The remainder group can remain alive but be subjugated and destroyed by imposing the oppressor's national pattern.

For Lemkin, thus, "acts falling within the purview of genocide" were multiple and non-exhaustive, which need to be seen as a whole regardless of whether they constitute violations of express prohibitions in international treaties (e.g., related to the rules of warfare).[362] Lemkin's initial vision of the concept of genocide was thus not limited by physical and biological techniques only, but seemingly concerned a broad range of methods leading to a group's destruction.

Lemkin's vision was significantly trimmed in the process of the Convention's shaping, with many of the outlined techniques being clearly dismissed from the discussion on the crime's definition. What remained, however, is the notion of "cultural genocide",

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[357] *Ibid* 86.
[358] *Ibid*.
[359] *Ibid* 79.
[360] *Ibid*.
[361] *Ibid*.
[362] *Ibid* 92.

causing some of the most heated discussions. Moreover, in the process of the Convention's development, the discussions about the scope of the form of the destruction required for the purpose of the intent were largely fragmented.[363] On multiple occasions, they reflected the common confusion (discussed in detail below) between destruction in the meaning of underlying acts and destruction in the sense of the intended outcome.

For example, in one of the earliest Convention's drafts, the delegation of Saudi Arabia proposed to define genocide as, *inter alia*, "planned disintegration of the political, social or economic structure of a group, people or nation".[364] The wording apparently testifies to a broad reading of the destruction's scope – both in the sense of underlying acts and the intended outcome. The proposal did not find any express future support in subsequent drafts, yet its logic was mirrored in multiple further discussions and proposals. Particularly, one of the most influential first drafts of the Convention, prepared by three experts (including Lemkin himself) on behalf of the UN Secretariat, defined genocide as acts "with the purpose of destroying it in whole or in part, or *of preventing [the group's] preservation or development* [emphasis added]".[365] In further specification of the underlying acts of genocide, the proposal divided prohibited conduct into three distinct categories, namely acts related to physical, biological, and cultural destruction.[366]

Certain manifestations of what was colloquially labelled as "cultural genocide" clearly embodied the elements of social disintegration as an intended outcome. Beyond merely targeting the group's important cultural attributes, the group of three experts also defined prohibited conduct as "forced and systematic exile of individuals representing the culture of a group", whose disappearance would turn the group into "an amorphous and defenceless mass" of individuals.[367] Likewise, the group of experts described the underlying act of "forced transfer of children" as the one "bring[ing] about the

[363] For additional analysis, see Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 96-98.
[364] A/C.6/86, 1.
[365] Secretariat's Draft E/447, 5 (Article I(II)).
[366] *Ibid* 5-7.
[367] *Ibid* 28.

disappearance of the group as a cultural unit in a relatively short time”,[368] without necessarily impacting the group physically or biologically.

The arguments that were further advanced in favour and against the inclusion of “cultural genocide” within the Convention do reveal certain insights potentially relevant for the assessment of the viability of the group’s social dissolution as one of the possible intended outcomes. The arguments against the criminalisation of “cultural genocide” were mainly centred on the difference in severity between cultural and physico-biological forms of destruction[369] and the vagueness of the notion of cultural destruction.[370] The arguments in favour primarily focused on the tantamount outcome achieved by cultural destruction on the one hand and physico-biological destruction on the other,[371] as well as the claims that genocide could happen through the group’s physico-biological disappearance or – likewise – via the destruction of the group’s special traits leaving the physical lives or being of the group members intact.[372] Some delegates highlighted that despite the difference in underlying conduct, three forms of destruction were equally capable of leading to the group’s disappearance.[373] Eventually, after prolonged considerations and multiple arguments advanced, “cultural genocide” was excluded from the crime’s scope by 25 votes in favour, 16 votes against, 4 delegations abstaining and 13 delegations absent from the vote.[374] However, the descriptions of draft concepts pertaining to “cultural genocide”, as well as arguments related to both supporting and undermining its inclusion, mostly related to attempting to define underlying acts rather than the scope, meaning and direction of genocidal intent itself.

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368 *Ibid* 27.

369 See, e.g., A/401/Add.2, 5; E/621, 48; E/AC.25/SR.14 10; UNGA ‘Fortieth meeting, Held at Lake Success, New York, on Thursday, 2 October 1947 at 11 a.m.’ (2 October 1947) UN Doc. A/C.6/SR.40, 27; E/SR.218, 707; UNGA ‘Sixty-fourth meeting Held at the Palais de Chaillot, Paris, on Friday, 1 October 1948, at 10.30 a.m.’ (1 October 1948) UN Doc. A/C.6/SR.64, 15; E/AC.25/W.1, 4.

370 E/SR.219, 727; A/C.6/SR.63, 8; A/C.6/SR.65, 29; UNGA ‘Eighty-third meeting Held at Palais de Chaillot, Paris, on Monday, 25 October 1948, at 3 p.m.’ (25 October 1948) UN Doc. A/C.6/SR.83 (hereinafter – “A/C.6/SR.83”) 203.

371 E/AC.25/SR.5, 5.

372 E/AC.25/W.1, 4; A/C.6/SR.65, 27; A/C.6/SR.66, 32-33; A/C.6/SR.83, 193 and 205; E/AC.25/7, 2.

373 A/C.6/SR.83, 203-204.

374 *Ibid* 206.

At the same time, there were a few interesting cues pointing to the potential role of social disintegration within the scope of intent. For example, some delegations argued that genocide did not entail the destruction of every individual member of the group, whereby even with the group members surviving physically or biologically, the group may disappear.[375] Therefore, genocide cannot be confined to the group members' physical disappearance because they may continue their existence even where "the group as such had been killed off".[376] In one of the illustrations, New Zealand indicate that genocide can take the form of physical elimination of the older group members, leaving the younger group members intact with their subsequent ideological conversion and alteration of their identity.[377] This intervention served as a unique insight into the understanding that the group's disappearance may occur even without the physical or biological elimination of all or most of its members if the social cohesion of the group is dismantled by the physical or biological extermination of the representative section of the group.

However, the *travaux* did leave the question of the type of destruction sought by the intent unresolved. The uncertainty further migrated to contemporary jurisprudence.

2.2.2. Interpretation of the term "to destroy" in the contemporary jurisprudence

Contemporary jurisprudence has operated on several commonly accepted premises. It is uncontested that the so-called "cultural genocide" (*i.e.,* acts targeting the linguistic, religious or cultural identity characteristics of the group for destruction) is not and cannot be a part of the crime's definition.[378] Cultural destruction of the group's identity only falls outside the definition of the crime of genocide. The ICTY Chambers thus consistently stated that destruction within the definition of genocide is limited by "acts seeking the physical or biological destruction" and excludes "attacking only the cultural or

[375] UN ECOSOC 'Ad Hoc Committee on Genocide, Second Meeting, Lake Success, New York, Monday 5 April 1948, at 3 p.m.' (6 April 1948) UN Doc. E/AC.25/SR.2, 4; E/AC.25/SR.14, 2-3; E/AC.25/SR.13, 13; E/AC.25/SR.4, 7.
[376] E/AC.25/SR.4, 7.
[377] A/C.6/SR.73, 94.
[378] See, e.g., ILC Draft Code with Cmts (1996) 45, para. 7.

sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community".[379]

The statement that genocide requires physical and/or biological destruction of the protected group that has permeated both the jurisprudence and doctrine has left a broad range of potential interpretations. While it is uncontested that cultural methods of destruction were excluded from the crime's definition (limiting the underlying acts to the five forms representing physical and biological methods only), it is not necessarily indicative of the nature of the intent required. The uncertainty gave rise to two polar interpretations.

In the stricter adopted reading of the intent, the ICJ stated that every underlying act must be accompanied by the intent to achieve physical or biological destruction of the group, including those underlying acts which by their nature do not result in the physical or biological elimination of an individual human victim (e.g., infliction of serious mental harm or child transfer).[380] This statement remains rather standalone and has not been similarly explicitly voiced by other international courts and tribunals, particularly the ICTY.

Adopting a more flexible approach, certain national jurisdictions (further endorsed by the ECtHR) interpreted genocidal intent as potentially encompassing the social dissolution of a group (i.e., destruction of a group as a social unit). This interpretation is most notably rooted in the *Jorgić* case, adjudicated by the German courts. Nikola Jorgić was a member of the Bosnian Serb paramilitary forces tried on the genocide charges in Germany for killing more than 20 Bosnian Muslims. In the reasoning of German lower-level courts, which was later upheld by the German Constitutional Court, genocidal intent may take a form of destroying a protected group "as a social unit with its special qualities, uniqueness and its feeling of togetherness, not exclusively their physical-biological

[379] See*, inter alia*, *Krstić* (Trial Judgement), *para*. 580; *Semanza* (Trial Judgement), para. 315; *Gacumbitsi* (Trial Judgement), para. 253; *Prosecutor v Muhimana* (Trial Judgement), ICTR-95-1B-T (28 April 2005) (hereinafter – "*Muhimana* (Trial Judgement)"), para. 497; *Popović et al.* (Trial Judgement), para. 822; *Tolimir* (Trial Judgement), paras 741, 746; *Tolimir* (Appeals Judgement), para. 230.
[380] *Croatia v Serbia*, para. 136.

annihilation".[381] In the reasoning of the German Constitutional Court, the prohibition and criminalisation of genocide protects "a legal interest that lies beyond the individual, namely the social existence of a group" (which is additionally justified by the requirement that the intent must be directed at a "group as such").[382]

When faced with Jorgić's application, the ECtHR confirmed the validity of the German courts' interpretation from the standpoint of the legality principle while refuting the Applicant's arguments that acts committed with the intent falling short of physical or biological destruction, such as "ethnic cleansing", do not meet the definition of genocide.[383] The ECtHR argued that as long as the development of the law by the domestic criminal law system aligns with the essence of the offence on the international level, domestic jurisdiction preserves an inevitable "element of judicial interpretation" to clarify the law.[384] Therefore, German courts validly interpreted genocidal intent as encompassing the sought destruction of the group as a social unit,[385] and it should have been foreseeable to the applicant that genocidal intent may undertake the form in question since various legal authorities at the time of the commission of the offence supported such an interpretation (despite certain level of disagreement).[386] The authorities cited by the ECtHR primarily encompassed German scholars' commentaries.[387]

At the same time, the reasoning in *Jorgić* was not supported by the ICTY. The Chamber in *Krstić (Trial)* cited both the findings in *Jorgić* and Lemkin's broad understanding of "destruction" encompassing, *inter alia*, social techniques of targeting only to conclude that "customary international law limits the definition of genocide to those acts seeking the physical or biological destruction of all or part of the group".[388]

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[381] Federal Constitutional Court of Germany, No. 2 BvR 1290/99, Order of 12 December 2000 <https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2000/12/rk20001212_2bvr129099en.html> accessed 31 January 2026, para. 20.
[382] *Ibid*, para. 22.
[383] *Jorgic v Germany*, App no. 74613/01 (12 July 2007), paras 92-93.
[384] *Ibid*, para. 101.
[385] *Ibid*, para. 109.
[386] *Ibid*, paras 113-114.
[387] *Ibid*, para. 36.
[388] *Krstić* (Trial Judgement), paras 575-580.

Since then, this vision has remained prevalent in the international criminal law jurisprudence. However, several judgements did attempt to present alternative visions that remained rather marginal. For example, the Chamber in *Krajisnik (Trial)* stated that genocidal intent is not necessarily limited only to physical and biological destruction sought since "the group […] can be destroyed in other ways", particularly "by severing the bonds among its members".[389] As a social entity, the group is "amenable to" destruction that is neither physical nor biological since the bonds uniting group members as inherently physical or biological beings, such as its culture or beliefs, are intangible.[390] Although the case did not result in a genocide conviction based on the facts presented, it does offer an alternative approach to view the scope of the intent going beyond physical or biological destruction sought.

Further, in *Blagojević and Jokić (Trial)*, the Trial Chamber stated that the fact of the exclusion of "cultural genocide" from the definition of genocide "does not in itself prevent that physical or biological genocide could extend beyond killings of the members of the group".[391] Since "a group is comprised of its individuals, but also of its history, traditions, the relationship between its members, the relationship with other groups, the relationship with the land", acts like forcible transfer of adults can equally be encompassed by the notion of "destruction", especially when it precludes the group's ability to reconstitute itself.[392] While the judgement is important in highlighting the role of intangible bonds necessary for the group's existence and survival, it nevertheless suffers from an erroneous interpretation of the destruction in the sense of underlying acts trying to expand the list by conduct beyond the exhaustive list in the form of forcible transfer of adults. While such acts may fall under the definition of "ethnic cleansing", they will fall short of the crime of genocide.[393]

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[389] *Prosecutor v Krajisnik* (Trial Judgement) IT-00-39-T (27 September 2006), para. 854.
[390] *Ibid*, footnote 1701.
[391] *Prosecutor v Blagojević and Jokić* (Trial Judgement) IT-02-60-T (17 January 2005), para. 658.
[392] *Ibid*, paras 665-666.
[393] See, e.g., *Stakić* (Trial Judgement), para. 519; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 190.

2.2.3. Arguments in favour and against social disintegration as a potential manifestation of genocidal intent

Despite the lack of clear and unequivocal jurisprudential support of the interpretation of genocidal intent as encompassing social disintegration alongside physical and biological destruction as a potential form of intended outcome (in addition to the ICJ's rather direct refutation of such a reading), there are convincing reasons to adopt a broader reading incorporating social destruction as a potential intended outcome. It seems that the uncertainty in the jurisprudence stems from the consistent confusion between the type of destruction as a *process, modus operandi in the sense of the five underlying acts* and destruction in the sense of *an outcome sought in the meaning of the intent.*[394] The former is indeed limited to physical and biological forms only (as the exclusion of cultural genocide clearly indicates). The latter, however, may extend to broader variations, including social dissolution, *if achieved via one or several of the five underlying acts* (which must always be a prerequisite element of the crime). This Section will evaluate the arguments both in favour and against this proposition.

There are at least six major arguments supporting the inclusion of social disintegration as a potential outcome sought by the intent "to destroy".[395] First, the object of the crime of genocide is the life of a human group, not its individual members. While the UN GA Resolution 96(I) that initially recognised genocide as a crime under international law made a comparison between genocide as denying the groups' right to exist with the denying of the right to life of an individual human being via homicide,[396] and groups undoubtedly exist through its individual human members, the death of the group can be achieved by methods going beyond blatant physical or biological elimination of individual members. If the prohibition of genocide protects the groups' right to exist,[397]

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[394] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 105.

[395] For a detailed discussion see Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 103-107.

[396] UNGA Res 96(I) (11 December 1946).

[397] Tams, Berster, Schiffbauer (2014) 81; *Reservations to the Convention on Genocide* (Advisory Opinion) [1951] ICJ Rep 15, 23.

social disintegration is undoubtedly capable of threatening not in a lesser (if not in a greater) way than physical or biological destruction is.[398] Since every protected group is distinguished by a set of intrinsic and mainly intangible traits creating strong social bonds between humans (e.g., language, culture, religion, national aspirations, the groups die with the disappearance of these traits and respective social bonds. Therefore, genocide does not and cannot require perpetrators to continue targeting until the physical or biological elimination of every real or perceived member of the group: the group can die far before this is achieved.

Moreover, since every protected group represents a social entity, it is difficult to imagine how *a group as such, not its individual members,* can be eliminated physically or biologically without requiring the extinction of every single group member. A human group is an amorphous concept that indeed exists through the lives of its members and tangible objects, but dies out in an intangible way. Therefore, as any social construct, a protected group cannot die in any other way than through social disappearance. Unlike exterminating biological species, its physical or biological elimination is simply impossible to comprehend.

Second, the commission of genocide does not require the act of killing (particularly massive killing) to be a prerequisite of the crime.[399] Each of the five underlying acts within the definition of genocide is alternative, and while genocide is often associated with the massive (often blanket) brutal killings (like the Holocaust or Rwanda), not every genocide should necessarily be committed using this methodology. Genocide can theoretically be perpetrated through a combination of relatively low numbers of killings and other, more widespread, underlying acts that do not result in physical death.[400]

Among the five underlying acts, only one act, i.e., killing, does require the result in the form of actual physical destruction of a human being by causing death. The only other

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[398] Kreß (2006) 486.
[399] See also Jeßberger in Gaeta (2009) 107.
[400] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 103-104.

underlying act (i.e., deliberate infliction of deadly conditions of life) explicitly incorporates the subjective element requiring the inflicting to be "calculated to bring about *physical* destruction [emphasis added]".[401] One potential reading of this specification may indicate that the intended destruction must be physical or biological only, and the same subjective intent element should equally apply to other underlying acts. At the same time, a counterargument would suggest that the explicit inclusion of this particular element within the formulation of an underlying act seems rather specific and uncommon in the wording of other underlying acts, representing an exception rather than a general rule to be extrapolated to other underlying acts. Therefore, its effective interpretation would entail that this underlying act is the only one requiring the direction of the intent at achieving *physical* destruction, while other underlying acts lack such specification simply because they do not require similar direction of the intent,[402] and, thus, can aim at social disintegration of the group. Put differently, the underlying act can be seen as introducing an additional *mens rea* element while leaving the overall category of "destruction" within the genocidal intent open to a broader reading that "extends to dissolving the social bonds".[403] Moreover, it can be argued that even a special *mens rea* element requiring conditions of life to be "calculated to bring about physical destruction" speaks simply of the intended result in relation to individual *victims*, not the overall intent aiming at the *group*. Conditions of life must indeed be calculated to cause the physical destruction of human beings, not the group, and thus they can be part of the overall campaign conducted with the intent to disintegrate the group, whose overall destruction must not be physical or biological.

Additionally, other underlying acts do not by their nature lead to physical or biological destruction of the group, leaving its individual members intact, even despite physical consequences suffered. For instance, the underlying act of inflicting serious

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[401] Genocide Convention, Article II(c).
[402] Kreß (2006) 486-487. See also *Krstić* (Appeal Judgement), Partial Dissenting Opinion of Judge Shahabuddeen, para. 47.
[403] Tams, Berster, Schiffbauer (2014) 82.

mental harm does not affect the physis of the group.[404] Some commentators rightfully argue that if it were only the group's physical or biological survival protected by the prohibition of genocide, there is no reasonable explanation as to how the criminalisation of causing serious mental harm would fit into the goal.[405] Therefore, a cohesive interpretation would require including "detrimental effects on a group's social texture" as a potential intended outcome.[406] Likewise, causing serious bodily harm does not in itself lead to physical destruction,[407] even though it requires a long-lasting and severe impact on a human being.

The situation with other underlying acts is similar. While the prevention of births and transfer of children are typically qualified as the methods of biological destruction, each of them leaves the possibility of the group members' physical existence or survival intact (e.g., potential parents surviving and continuing their physical existence, even despite the measures aimed at preventing births or transferring of children). The only scenarios where the two underlying acts in question are capable of leading to the biological destruction of the group in the "pure" form involve situations of (relatively) small groups under the perpetrators' full control. In such cases, measures of birth prevention should be large-scale and systematic targeting any possibility of procreation to lead to the group's biological death, while the act of child transfer has to either involve consistent taking of every child away from the group (leading to its gradual biological extinction) or be closely combined with other underlying acts (such as physical extermination of parents or prevention of births) to lead to a group's intended disappearance in a biological sense. In other cases, the application of underlying acts in question – like infliction of serious bodily or mental harm – leaves the possibility of the group members' biological survival even where the group is dissolved as a social entity. Therefore, the definition of genocide was not construed to require such absolutist scenarios requiring every underlying act to

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[404] *Ibid* 81; Lars Berster, 'The Alleged Non-Existence of Cultural Genocide' [2015] 13(4) *Journal of International Criminal Justice* 677 (hereinafter – "Berster (2015)") 689.
[405] *Ibid*.
[406] Tams, Berster, Schiffbauer (2014) 82; Berster (2015) 689.
[407] Gerhard Werle, Florian Jessberger, *Principles of international criminal law* (4th edn, OUP 2020) 364.

achieve physical or biological destruction of the group, and the formulation of underlying acts is open to encompass social dissolution as a manifestation of the intent "to destroy".[408]

Third, the actual pattern of analysis employed by international jurisprudence supports the inclusion of social disintegration as a possible manifestation of the intent "to destroy" despite the lack of express recognition thereof. Taking Srebrenica as an example, 7-8.000 men (around 1/5 of the overall Srebrenica community) were subjected to physical destruction via an underlying act of killing, while the remainder of the community (women and children) were removed from the area via forcible transfer. The consistent focus of the Chambers was on the patriarchal nature of the Bosnian Muslim society and the importance of men for the social structure, which was capable of impacting the group's biological procreation. However, the Chambers also kept a consistent focus on Srebrenica as a "community".[409] The destruction of men combined with the transfer of women and children "eliminat[ed] even the residual possibility that *the Muslim community in the area* could *reconstitute* itself" [emphasis added].[410] At the same time, despite the catastrophic effect on the survivors, the majority of the targeted part survived and continued their physical existence in other areas as a part of the broader group (e.g., children of the group could continue the group's biological procreation). Therefore, as implicitly stems from the Chambers' reasoning despite the lack of express recognition and attempts to portray the intended destruction through biological lenses, the intended outcome behind the Serb forces' actions (and the outcome actually achieved) was the destruction of the Bosnian Muslim *community of Srebrenica as a separate and distinct social entity* leaving the majority of the members surviving even where the targeted group in part was gone.

Judge Shahabuddeen's dissenting opinion in *Krstić (Appeal)* reflected this logic.[411] According to his reasoning, "allow[ing] a substantial number of Bosnian Muslims to survive" precluded the intent to destroy the group physically or biologically despite the

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[408] *Ibid*.
[409] See, e.g., *Krstić* (Appeal Judgement), paras 28, 31.
[410] *Krstić* (Appeal Judgement), para. 31.
[411] *Krstić* (Appeal Judgement), Partial Dissenting Opinion of Judge Shahabuddeen, para. 46.

Appeals Chamber's considerations leaning to the contrary.[412] Despite the contention shared by commentaries that "the intended destruction must always be physical or biological", a principal aspect that is usually overlooked concerns the distinction between destruction pertaining to the nature of underlying acts and destruction in the construction of genocidal intent.[413] While underlying acts indeed encompass physical or biological forms of targeting only, the intent does not need to "need not always lead to a destruction of the same character".[414] Hence, it is not unclear why genocidal intent cannot be directed at achieving a "non-physical or non-biological destruction" through one or several of the five underlying acts.[415] According to Judge Shahabuddeen, the object of the crime of genocide is the group, not an individual member, so since every group is defined by various, often intangible, traits "binding together a collection of people as a social unit", it is unreasonable to consider that destroying such traits via underlying acts "effectively obliterating the group" should not be encompassed by the construction of genocidal intent.[416]

Fourth, accepting the premise that genocidal intent has to seek physical or biological destruction of the group only, leaves an important question unanswered: how can a human group *actually* be destroyed in a physical or biological sense? In other words, how does physical or biological destruction of the group as an accomplished act look like? The only immediate scenario that comes to mind involves physical or biological extermination of every or nearly every group member. However, everything falling short of this scenario, where individual members are left surviving and with even the slightest potential to continue survival and procreation, can doubtedly be seen as physical and biological destruction. This is a trap presented by the ICJ's reasoning in *Croatia v Serbia*, whereby even acts that do "not directly concern the physical or biological destruction of members of the group" nevertheless require "the intent of achieving the physical or biological

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[412] *Ibid*.
[413] *Ibid*, para. 47.
[414] *Ibid*.
[415] *Ibid*, para. 48.
[416] *Ibid*, para. 49.

destruction of the group" or entail "consequences for the group's capacity to renew itself, and hence to ensure its long-term survival".[417] What percentage of the group members has to disappear physically or biologically to declare that the destructive goal was achieved in a physical or biological sense? How many group members that survived physically or biologically are enough to refute the finding of the intent? While these types of questions are inherent to various uncertain fields of the law of genocide, they become particularly acute when defining the form of the intent sought. The premise that genocide does not require the type of elimination of group members ending their physical or biological existence is hardly reconcilable with the requirement that intent must require physical or biological elimination of the group only. Otherwise, with the members of the group who survived physically, there will always be room for an argument undermining the perpetrator's intent to bring the group's existence to an end in a physical or biological sense. The inclusion of social disintegration helps to bridge this gap.

Fifth, not only does the actual logic stemming from the jurisprudence support the inclusion of social destruction within the definition of the intent, but so does the overview of historical precedence.[418] The emergence of the criminalisation of genocide was indeed influenced by the horrors of the Holocaust and its massive, blatant, systematic, most brutal and dehumanised forms of physical elimination. Similarly, the genocide in Rwanda was distinguished by widespread bloodshed and blatant physical targeting of a significant number of persons in the span of a relatively short period. However, such campaigns of massive, blatant physical and biological destruction, wiping human groups off the face of the Earth, are relatively rare, especially in the modern age. Even in such cases, e.g., in Rwanda, the perpetrators' atrocities never actually succeeded in achieving the complete elimination of the group (both in Rwanda and other neighbouring countries across which the targeted group of *Tutsi* was scattered).

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[417] *Croatia v Serbia*, para. 136.

[418] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 104.

Instead, in the era of media, access to information and increased public scrutiny, perpetrators tend to employ more sophisticated methods of selective targeting, including those sparing their resources. As acknowledged by *Krstić (Appeal)*, the fact that Bosnian Serb forces in Srebrenica did not eliminate women and children in the same way as they did eliminate men was explained by the "sensitivity to public opinion" and "an increased risk of attracting international censure".[419] Therefore, the crime of genocide does not require perpetrators to employ "the most efficient method to accomplish his objective of destroying" the group, instead leaving a space for the situations where the selected method "will not implement the perpetrator's intent to the fullest, leaving that destruction incomplete".[420] The risk of retribution, including due to public and/or international attention, may force perpetrators to abstain from implementing the plan to destroy in the most direct and efficient way.[421] This serves as an additional indication that the intended outcome should not always encompass physical or biological destruction of the group, instead leaving its social disintegration through selective physical or biological targeting as one of the alternative forms of destructive outcomes. Otherwise, it would be nonsensical to allow perpetrators to escape responsibility simply because they succeeded in bringing about the group's destruction via developing a more sophisticated, selective campaign of targeting instead of blatant and massive killing. Any other way, the finding of genocide would always require perpetrators in every case to keep destruction unfolding until actual physical or biological elimination of a sufficient level is achieved.[422]

Sixth, the "leadership factor" offers additional support to a broader reading of the intent, inclusive of social disintegration as a potential intended outcome.[423] Jurisprudence accepts that genocidal intent may take a form of "the desired destruction of a more limited number of persons selected for the impact that their disappearance would have upon the

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[419] *Krstić* (Appeal), para. 31.
[420] *Ibid*, para. 32.
[421] *Ibid*.
[422] See also Berster (2015) 687-688.
[423] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 104-105.

survival of the group".[424] This inevitably entails that selective physical or biological targeting of representative group members (such as leaders) may lead to the group's disappearance, even with the remainder (even the majority) of the group surviving or left physically or biologically intact. Targeting the totality of the group's leadership may serve as a strong indicator of genocidal intent "regardless of the actual numbers killed" in light of the fate of the rest of the group (e.g., defenselessness in the face of other heinous acts falling short of physical or biological targeting).[425]

The "leadership factor" presupposes that targeting leaders poses a threat to the group's very structure and, by extension, its existence as a distinct and separate social entity, whereby leaders serve as a connective tissue for the group as such. Targeting of leaders via underlying acts coupled with a broader range of socio-cultural measures of targeting may bring the group's existence to an end, the same way as blatant physical targeting would, even despite a (potentially significant) part of the group left physically unharmed.

Finally, the arguments presented above are especially relevant in cases where national groups are targeted for destruction. Given the degree to which national groups are often bound by inherently intangible bonds linked to national identity and self-identification, the exclusive physical or biological destruction of the national groups is especially difficult to comprehend. More likely, destruction of the national groups is particularly easy to be achieved by selective targeting of the strata representing the connective tissue of the group (e.g., its leaders binding other group members together with the shared identity), whose elimination is highly likely to result in the group's disintegration as a social entity and its death, with its (former) members surviving.

Nonetheless, certain arguments may also undermine the inclusion of social disintegration within the definition of the intent as a potential outcome sought.[426] The first

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[424] *Jelisić* (Trial Judgement), para. 82.
[425] S/1994/674, para. 94. For further detailed discussion see Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024).
[426] Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' (2025) 105-106.

argument is usually centred around the fact of the exclusion of cultural genocide from the Convention.[427] The ICJ relied on this argument in *Croatia v Serbia*, to state that the exclusion of "cultural genocide| from the scope of the definition of genocide testified to the fact that even underlying acts that do not directly result in the physical or biological destruction of an individual must be committed "with the intent of achieving the physical or biological destruction of the group".[428] This argument suffers from interpretative inaccuracy. The discussion around "cultural genocide" at the stage of the Convention's drafting was primarily centred around its inclusion among the list of underlying acts divided by the three methodologies (or, as Lemkin labelled them, techniques of genocide), grouping acts by physical, biological or cultural forms of destruction. The issues surrounding "cultural genocide" should thus primarily be seen through the lenses of the *methods/techniques of destruction, modus operandi, underlying acts*, not through the lenses of the intended outcome. The exclusion of cultural genocide from the Convention clearly indicates that genocide cannot be perpetrated through the techniques targeting the group's cultural foundations. It does not, however, indicate that genocide cannot be committed via underlying acts representing forms of physical or biological destruction aiming at the destruction of the group via intended social disintegration resulting in the group's death.

Another argument focuses on the risk that a broader reading of the intent presents to delimiting the lines between genocide and mere persecution. The reservation indicates that the inclusion of social dissolution within the intent's scope may result in a case where one killing or the commission of another underlying act in furtherance of the campaign aimed at the group's disintegration via inherently persecutory conduct (e.g., imprisonment of group members or destruction of their culture) will lead to the genocide charge.[429] This, in turn, may defy the very essence of the crime of genocide, opening a broad door to bringing borderline discriminatory campaigns under the genocide umbrella.

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[427] Schabas (2025) 233-236.
[428] *Croatia v Serbia*, para. 136.
[429] Kreß (2006) 487.

At the same time, the counterargument indicates that the modes of liability of incitement to genocide or an attempt to commit genocide may justify the charges.[430] The line between the extreme cases, on the one hand, and borderline examples, on the other hand, is always a difficult one to draw. As with multiple other elements of the crime, it may be difficult to pinpoint the exact moment or threshold when an inherently persecutory campaign aimed at undermining the social system of the group evolves into a genocidal campaign aimed at the group's destruction via a combination of different methods, including physico-biological and socio-cultural targeting together. This difficulty in determination is, however, important to accept as a fortunate or an unfortunate normalcy in the law of genocide. There are extreme cases that are rather clear-cut: blatant and massive physical elimination of almost every group member will most likely qualify as genocide, while the killing of a few group members within the predominantly persecutory campaign that is not directed at the group's disappearance will not. The cases in between will always lie in the interpretative shades depending on the evidence available. Excluding social disintegration from the scope of the intent will not resolve this dilemma.

2.2.4. Conclusions on the meaning of the intended "destruction" of the national group as such

In addition to evaluating the scope of the group that genocidal intent is directed at (i.e., the "whole" or the "part"), another contentious question relates to the type of destruction sought. International jurisprudence and doctrine have developed two alternative approaches to addressing this issue. A narrower approach suggests that intended destruction is limited to the physical and/or biological elimination of the group only. A broader approach suggests that the outcome sought may as well encompass social disintegration or dissolution of the group (i.e., its destruction as a social unit). Several key conclusions stem from the analysis above:

[430] Tams, Berster, Schiffbauer (2014) 83.

- The ordinary meaning of the term "to destroy" is not limited to physical or biological forms of elimination only. It leaves a space for other methods by which a group may face its end, including by means of social disintegration.
- While Raphael Lemkin initially advocated for a broad range of techniques to achieve the group's destruction, including methods going beyond physical or biological targeting, the process of the development of the Genocide Convention eventually trimmed a great part of Lemkin's initial proposals. However, the *travaux* to the Genocide Convention are equally unhelpful in evaluating the scope of the destruction sought within the meaning of the intent. Most of the discussions during the preparatory process focused on "cultural genocide" as a form of underlying acts rather than the scope of the intent.
- Contemporary jurisprudence and doctrine have accepted one premise unequivocally. "Cultural genocide" is not encompassed by the definition of genocide. Respectively, genocide is limited to physical and biological destruction only. However, the meaning of these findings does not actually address the question regarding the scope of the intended destructive outcome. Most chambers seem to have confused the destruction in the sense of underlying acts (which are limited to physical and biological forms of targeting) with destruction as an outcome sought in the sense of intent. The findings in jurisprudence primarily relate to the first notion and do not fully address the second one.
- There are convincing arguments to suggest that social disintegration of the group is encompassed by the potential scope of the element of genocidal intent. First, the object of the crime of genocide is a protected group, and not an individual human member thereof. The group may be destroyed even if its individual members survive as human beings. Second, except for the underlying acts of killing and imposition of deadly life conditions, other underlying acts do not require physical or biological elimination as an intended outcome. They also leave the possibility of individual members surviving even where the group as such disappears. Third,

international jurisprudence establishing the responsibility for the commission of genocide concerned cases where the majority of the targeted part of the group survived physically and biologically, even though the targeted part as a community was gone.

- Fourth, the premises that genocide does not require physical or biological elimination of individual group members but requires the intent to seek physical or biological elimination of the group seem irreconcilable. Except in cases where all or nearly all members of the targeted group are physically or biologically eliminated, it is impossible to comprehend how a human group, as an inherently social entity, can be physically or biologically eradicated. Fifth, the commission of genocide does not require perpetrators to employ the most efficient or effective methods, realising their potential to the fullest: genocide can be perpetrated with the omission of the blatant and massive killing of the group members, especially in light of the perpetrators' fear of retribution or scrutiny of public attention. Sixth, if it is accepted that genocidal intent can be manifested through the selective targeting of representative group members (such as the group's leaders), it necessarily leaves the possibility for the remainder of the group to avoid the targeting and therefore survive physically or biologically, even where leaders, as a connective tissue of the group, are disappeared. All these factors are especially relevant in cases of targeting national groups bound primarily by intangible features, the disappearance of which can lead to the group's destruction even when its members survive physically or biologically.
- Finally, the two prevalent arguments against considering social disintegration as a potential manifestation of the intended outcome seem unconvincing. First, the fact that "cultural genocide" was excluded from the scope of the crime of genocide primarily related to the scope of prohibited underlying acts (and thus *modus operandi*) of destruction, not the intended outcome. Second, while the argument suggesting that adopting a broader reading of the intended outcome risks blurring

the line between genocidal and essentially prosecutorial campaigns, the inherently contextualised assessment of the intent will always preserve an element of this risk. It is undeniable that a case of several killings within a predominantly persecutory campaign will never reach the threshold of genocide. This, however, equally does not mean that genocidal intent requires a complete physical or biological elimination as an intended outcome. Situations in between will always be within interpretative shades depending on the evidence available: the broader reading of the intent neither boosts nor eliminates the risk in question.

CHAPTER 3

THE METHODOLOGY FOR THE ASSESSMENT OF GENOCIDAL INTENT DIRECTED AGAINST NATIONAL GROUPS

The previous chapter provided key considerations relevant to evaluating genocidal intent from the substantiality perspective in cases of partial destruction. However, substantiality remains only one of the important considerations in the assessment of the intent and is reserved solely for the cases of partial destruction. Apart from it, the list of indicators or criteria relevant to the evaluation of the intent (relevant to destruction both "in whole" and "in part") is not exhaustive, and the assessment will depend on the specificity of every particular case.[431] Since direct evidence pertaining to the determination of the existence of genocidal intent is rare (or often impossible to obtain), the proof of the intent can equally rest on circumstantial evidence taken together.[432] It is only the accused who possesses the first-hand knowledge of the true mental state in the commission of the crime, and therefore is unlikely to admit to the possession of genocidal intent.[433] Where circumstantial evidence is relied upon to evaluate *mens rea*, genocidal intent has to be the only reasonable inference available.[434]

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[431] *Krstić* (Appeal Judgement), para. 14; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 201; *Popović et al.* (Trial Judgement), para. 831; *Tolimir* (Trial Judgement), para. 749; *Karadžić* (Trial Judgement), para. 555.

[432] *Akayesu* (Trial Judgement), para. 523; *Rutaganda* (Trial Judgement), para. 398; *Prosecutor v Jelisić* (Appeal Judgement) IT-95-10-A (5 July 2001) (hereinafter – "*Jelisić* (Appeal Judgement)"), para. 47; *Krstić* (Appeal Judgement), paras 20, 33-35; *Popović et al.* (Trial Judgement), para. 823; *Popović et al.* (Appeal Judgement), para. 468; *Prosecutor v Kayishema and Ruzindana* (Appeal Judgement) ICTR-95-1-A (1 June 2001) (hereinafter – "*Kayishema and Ruzindana* (Appeal Judgement)"), para. 159; *Semanza* (Trial Judgement), para. 313; *Rutaganda v Prosecutor* (Appeal Judgement) ICTR-96-3-A (26 May 2003) (hereinafter – "*Rutaganda* (Appeal Judgement)"), para. 525; *Gacumbitsi* (Trial Judgement), para. 252; *Brdjanin* (Trial Judgement), para. 970; *Muhimana* (Trial Judgement), para. 496; *Stakić* (Appeal Judgement), para. 55; *Gacumbitsi v Prosecutor* (Appeal Judgement) ICTR-2001-64-A (7 July 2006) (hereinafter – "*Gacumbitsi* (Appeal Judgement)"), para. 40; *Prosecutor v Hategekimana* (Trial Judgement) ICTR-00-55B-T (6 December 2010) (hereinafter – "*Hategekimana* (Trial Judgement)"), para. 669; *Hategekimana v Prosecutor* (Appeal Judgement) ICTR-00-55B-A (8 May 2012) (hereinafter – "*Hategekimana* (Appeal Judgement)"), para. 133; *Prosecutor v Ndindabahizi* (Trial Judgement) ICTR-2001-71-I (15 July 2004) (hereinafter – "*Ndindabahizi* (Trial Judgement)"), para. 454; *Prosecutor v Ntagerura, Bagambiki, Imanishimwe* (Trial Judgement) ICTR-99-46-T (25 February 2004) (hereinafter – "*Ntagerura, Bagambiki, Imanishimwe* (Trial Judgement)"), para. 663; *Tolimir* (Trial Judgement), para. 745; *Tolimir* (Appeal Judgement), paras 246-247; *Mladić* (Trial Judgement), para. 3457; *Karadžić* (Trial Judgement), para. 550; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 373; *Croatia v Serbia*, para. 148.

[433] *Akayesu* (Trial Judgement), para. 523; *Popović et al.* (Trial Judgement), para. 823 relying on *Gacumbitsi* (Appeal Judgement), para. 40.

[434] *Krstić* (Appeal Judgement), para. 41 referencing *Prosecutor v Vasiljević* (Appeal Judgement) IT-98-32-A (25 February 2004), para. 121; *Prosecutor v Vasiljević* (Trial Judgement) IT-98-32-T (29 November 2002), para. 68; *Prosecutor v Krnojelac*

The standard of proof against which "the only reasonable inference" is evaluated will necessarily differ depending on the author and purpose of the analysis.[435] In the context of final judicial determination (e.g., establishing individual criminal responsibility at trial or state responsibility), the existence of the intent – as the only reasonable inference – has to be proven beyond a reasonable doubt.[436] However, other actors, such as international fact-finding mechanisms, may operate upon less demanding standards, particularly "reasonably grounds to conclude" the existence of "the only reasonable inference".[437] "The only reasonable inference" standard for "qualifying the (logical) process of drawing inferences from circumstantial evidence, i.e., describing a process of deduction", has to therefore be distinguished from the standard of proof, i.e., "the necessary standard for the evaluation of evidence with a view to a certain procedural/judicial stage".[438]

Respectively, a combination of various contextual factors can facilitate the inference of the special intent.[439] The present Section will complement the analysis by summarising some of the key indicia relevant to evaluating the genocidal intent.

3.1. Destructive potential

One of the first and most important steps in evaluating genocidal intent is assessing the destructive potential that various factors, taken together, have on the group's survival. Put differently, destructive potential characterises the impact that different conditions –

(Trial Judgement) IT-97-25-T (15 March 2002), para. 83. See also *Gacumbitsi* (Appeal Judgement), para. 43; *Brdjanin* (Trial Judgement), para. 970; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 373; *Croatia v Serbia*, para. 148. For a more extensive discussion, see Marko Milanovic, 'Proving Genocide' (*EJIL.Talk!*, 18 September 2025) <https://www.ejiltalk.org/proving-genocide/> accessed 19 March 2026; Kai Ambos, 'Proving Genocide: A Follow-up to Marko Milanovic' (*EJIL.Talk!*, 1 October 2025) <https://www.ejiltalk.org/proving-genocide-a-follow-up-to-marko-milanovic/> accessed 19 March 2026.

[435] Marko Milanovic, 'Proving Genocide' (*EJIL.Talk!*, 18 September 2025) <https://www.ejiltalk.org/proving-genocide/> accessed 19 March 2026; Kai Ambos, 'Proving Genocide: A Follow-up to Marko Milanovic' (*EJIL.Talk!*, 1 October 2025) <https://www.ejiltalk.org/proving-genocide-a-follow-up-to-marko-milanovic/> accessed 19 March 2026.

[436] *Gacumbitsi* (Appeal Judgement), para. 41; *Stakić* (Appeal Judgement), para. 55.

[437] Kai Ambos, 'Proving Genocide: A Follow-up to Marko Milanovic' (*EJIL.Talk!*, 1 October 2025) <https://www.ejiltalk.org/proving-genocide-a-follow-up-to-marko-milanovic/> accessed 19 March 2026.

[438] *Ibid.*

[439] Maksym Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' [2025] 92(5) *Uzhhorod National University Herald. Series: Law* 102 (hereinafter – "Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025)") 105.

alone or in combination – have on the group's destruction. This involves analysing multiple variables, including *how* exactly the group was targeted and *who* was targeted within the overall group composition. Therefore, factors relevant to the determination of destructive potential can broadly be grouped into two categories, namely those related to the methodology of destruction or *modus operandi* (e.g., methods, means, patterns of conduct) and those related to the identity of victims of underlying acts whose targeting was capable of affecting the group or its part.[440]

As to the first category, international jurisprudence has consistently emphasised that genocidal intent can be inferred from a combination of various facts and circumstances, particularly:[441]

- General context on the ground.[442]
- Perpetration of other culpable acts systematically directed against the group or their property.[443]
- The extent of actual destruction,[444] the (collective) scale and nature of atrocities committed,[445] including their brutal character.[446]

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[440] *Ibid.*
[441] See also a summary *ibid.*
[442] *Jelisić* (Appeal Judgement), para. 47; *Gacumbitsi* (Trial Judgement), para. 252; *Gacumbitsi* (Appeal Judgement), paras 40-41; *Akayesu* (Trial Judgement), para. 523; *Rutaganda* (Trial Judgement), paras 398, 400; *Rutaganda* (Appeal Judgement), paras 528, 530; *Popović et al.* (Trial Judgement), para. 823; *Hategekimana* (Trial Judgement), para. 669; *Hategekimana* (Appeal Judgement), para. 133; *Muhimana* (Trial Judgement), para. 496; *Tolimir* (Trial Judgement), para. 745; *Tolimir* (Appeal Judgement), paras 246, 253; *Mladić* (Trial Judgement), para. 3457; *Karadžić* (Trial Judgement), para. 550.
[443] *Jelisić* (Appeal Judgement), para. 47; *Krstić* (Appeal Judgement), para. 33; *Gacumbitsi* (Trial Judgement), paras 252-253; *Gacumbitsi* (Appeal Judgement), paras 40-41, 44; *Rutaganda* (Appeal Judgement), para. 528; *Popović et al.* (Trial Judgement), para. 823; *Popović et al.* (Appeal Judgement), para. 468; *Hategekimana* (Trial Judgement), para. 669; *Hategekimana* (Appeal Judgement), para. 133; *Muhimana* (Trial Judgement), para. 496; *Tolimir* (Trial Judgement), para. 745; *Tolimir* (Appeal Judgement), paras 246, 253; *Mladić* (Trial Judgement), para. 3457; *Prosecutor v Blagojević and Jokić* (Appeal Judgement) IT-02-60-A (9 May 2007), para. 123.
[444] *Brdjanin* (Trial Judgement), paras 972-979.
[445] *Jelisić* (Appeal Judgement), para. 47; *Gacumbitsi* (Trial Judgement), para. 252; *Gacumbitsi* (Appeal Judgement), paras 40-41; *Akayesu* (Trial Judgement), para. 523 recited in *Rutaganda* (Trial Judgement), para. 398; *Popović et al.* (Trial Judgement), para. 823; *Popović et al.* (Appeal Judgement), para. 468; *Hategekimana* (Trial Judgement), paras 669, 680, 687; *Hategekimana* (Appeal Judgement), para. 133; *Ntagerura, Bagambiki, Imanishimwe* (Trial Judgement), para. 663; *Semanza* (Trial Judgement), para. 313; *Muhimana* (Trial Judgement), para. 495; *Tolimir* (Trial Judgement), para. 745; *Tolimir* (Appeal Judgement), para. 246; *Mladić* (Trial Judgement), para. 3457; *Karadžić* (Trial Judgement), para. 550.
[446] *Ndindabahizi* (Trial Judgement), para. 461; *Karadžić* (Trial Judgement), para. 5668.

- The number of those targeted by underlying or other culpable acts.[447]
- Systematic, organised, concerted, methodical, consistent manner, as well as repetitive, widespread and continuous character of the massacres (a systematic pattern both geographically and temporally, as well as the involvement of multiple perpetrators)[448] [with each adjective bearing its standalone important meaning].
- The existence of a plan and strategy[449] [for a more detailed discussion of the policy factor see Section 3.5 below].
- The means (e.g., weapons) and methods used for the acts' perpetration,[450] e.g., attacks on unarmed victims,[451] or indiscriminate killing regardless of age, gender, health conditions or other features of victims' profile,[452] or refusal to provide opportunity for escape.[453]
- Extent of consequences, particularly bodily injury.[454]

Each of these factors – alone or viewed in combination with others – may be indicative of the existence of the genocidal intent, as well as destructive potential as one of the crucial determining factors. In other words, they are all variables capable of increasing or decreasing the degree of destructive potential capable of affecting the survival of the group in whole or its part.

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[447] *Kayishema and Ruzindana* (Trial Judgement), para. 531; *Kayishema and Ruzindana*, (Appeal Judgement), paras 148-149; *Gacumbitsi* (Trial Judgement), para. 253; *Popović et al.* (Appeal Judgement), para. 468; *Hategekimana* (Trial Judgement), para. 680, 687; *Ndindabahizi* (Trial Judgement), para. 461.

[448] *Kayishema and Ruzindana* (Trial Judgement), paras 534-536, 543-545; *Kayishema and Ruzindana* (Appeal Judgement), paras 148-149, 162; *Jelisić* (Appeal Judgement), para. 47; *Gacumbitsi* (Trial Judgement), para. 253; *Gacumbitsi* (Appeal Judgement), paras 40-41; *Akayesu* (Trial Judgement), para. 523; *Rutaganda* (Trial Judgement), paras 398, 400; *Rutaganda* (Appeal Judgement), para. 529; *Popović et al.* (Trial Judgement), paras 823, 856-861; *Hategekimana* (Trial Judgement), paras 669, 687, 694; *Hategekimana* (Appeal Judgement), para. 133; *Ntagerura, Bagambiki, Imanishimwe* (Trial Judgement), para. 663; *Semanza* (Trial Judgement), para. 313; *Muhimana* (Trial Judgement), para. 496; *Brdjanin* (Trial Judgement), paras 983-984; *Tolimir* (Trial Judgement), para. 745; *Tolimir* (Appeal Judgement), para. 246; *Mladić* (Trial Judgement), para. 3457; *Karadžić* (Trial Judgement), paras 550, 5668.

[449] *Kayishema and Ruzindana* (Trial Judgement), para. 529.

[450] *Kayishema and Ruzindana* (Trial Judgement), para. 537; *Tolimir* (Trial Judgement), para. 253.

[451] *Kayishema and Ruzindana* (Trial Judgement), para. 529; *Popović et al.* (Appeal Judgement), para. 471; *Hategekimana* (Trial Judgement), paras 694-695.

[452] *Kayishema and Ruzindana* (Trial Judgement), para. 532.

[453] See, e.g., *Tolimir* (Appeal Judgement), para. 251.

[454] *Gacumbitsi* (Trial Judgement), para. 253; *Gacumbitsi* (Appeal Judgement), para. 40; *Muhimana* (Trial Judgement), para. 496.

For example, the more systematic, repetitive, widespread and continuous the commission of underlying acts is, the bigger destructive potential grows. Likewise, the more group members are affected by underlying acts (especially in a brutal, notorious way), the higher the degree of the destructive potential growth. To the contrary, even if a certain group members suffered from the most heinous acts, yet such acts constituted a single isolated incident not supportive of the finding of the pattern of treatment, such a factor may point to the lower degree of destructive potential in relation to the group in question.

The second category relevant to the determination of the destructive potential relates not just to *how* the group was targeted, but rather *who* – among the group members – was targeted. This factor relates to a special significance of certain strata of the population for the group's survival and existence. In this regard, this consideration is reminiscent of – or even very closely related to – the personal prominence considerations outlined above. It is possible that due to special qualities a certain stratum within the group can qualify as a substantial part of the group targeted for destruction (yet, in light of the limitations described above). However, if it does not meet the substantiality requirement *per se*, its targeting may still serve as an important indicator of the destructive potential.

The case of Srebrenica is once again illustrative in this respect.[455] As explained above, while *Krstić (Trial)*'s reading may leave doubts as to what exactly constituted a substantial part of the Bosnian Muslim group (i.e., the Srebrenica community or Bosnian Muslim men as victims of underlying acts), *Krstić (Appeal)* made it clear that the substantiality assessment related merely to Srebrenica as a territorial community.[456] Nevertheless, the killing of men served as a strong indicator of an inference of the genocidal intent in light of the internal dynamics of the targeted communities described by the Chambers, where the men in the patriarchal society were deemed essential for the group's survival, recreation and procreation.[457] In this respect, the selection of men as a

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[455] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 105.
[456] *Krstić* (Appeal Judgement), paras 15-27.
[457] *Ibid*, para. 28.

special stratum of the group for destruction posed a sufficient destructive potential to affect the group and lead to the determination of the existence of the intent, even though the men as a targeted section could not themselves be regarded as a substantial part.

The same logic applies to the leadership factor.[458] As argued above, leaders of the group may hypothetically themselves qualify as a substantial part (e.g., if perpetrators effectively hold control over the whole group). However, where leaders of the group do not reach the substantiality threshold (e.g., because of the otherwise impermissible compartmentalisation of the group on multiple sub-parts), targeting of the leaders within a territorially substantial part of the group may be a strong indicator of genocidal intent since it may represent sufficient destructive potential.[459]

The evaluation of a destructive potential is inherently linked to another factor – the fate of the group. Destructive potential cannot be evaluated in abstract but should be analysed based on what happened to the group (or its part) as a result of targeting its members (or what could have happened, e.g., if the attacks continued on the same scale and magnitude but were terminated due to external circumstances independent from the perpetrator's will). For example, *Tolimir (Appeal)* quashed the Trial Chamber's determination that killings of three local leaders in the Žepa community amounted to genocide due to the lack of evidence that such killings "had any impact "on the survival of the group as such"".[460] As one of the reasons for this determination, the Appeals Chamber stated that the forcible transfer of the Žepa Bosnian Muslim population had finished before the killing of leaders, and there was no indication that the loss of three leaders did affect the ability of the Bosnian Muslims to survive following the transfer.[461] At the same time, the 1994 Report of the Commission of Experts established pursuant to Security Council Resolution 780 (1992) provided that genocidal intent may be inferred from the fact that in addition to the extermination of leadership, "at the same time or in

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[458] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 106.
[459] See discussion in Vishchyk, 'Targeting of the protected group's leadership and otherwise representative members as an indicator of genocidal intent' (2024) 28.
[460] *Tolimir* (Appeal Judgement), paras 267-269.
[461] *Ibid*, para. 269.

the wake of that […] a relatively large number of the members of the group killed or subjected to other heinous acts, for example deported on a large scale or forced to flee”.[462]

Therefore, the destructive potential evaluated in light of the group's fate is always hyper-context-specific. It seems justified to state that the identity of those targeted, on its own, cannot be sufficient to properly evaluate the destructive potential; it must be linked to broader factors, particularly those related to magnitude, systematicity, methodology, repetition, and the number of victims. For example, targeting of “the total leadership”[463] of the group obviously possesses a higher destructive potential than selective, almost random targeting of a section of leadership. Likewise, the combination of targeting leadership with other widespread and planned heinous acts against the remainder of the group Similar to the discussion regarding the leadership factor in the substantiality assessment above, the destructive potential posed by targeting leaders (or other emblematic strata of the population) will vary depending on the protected group in question and its internal dynamics. Returning to one of the aforementioned examples of eliminating the priests, targeting of religious leaders will obviously pose a higher destructive potential for religious groups than it will for, e.g., the racial groups distinguished by primarily physical features. At the same time, targeting religious leaders may have equally destructive potential for national or ethnic groups if, e.g., a particular religion, way of worship, or denomination plays an essential role in defining the identity of a protected group. Additionally, for national groups, the destruction of other leaders (e.g., political leaders) may pose a greater destructive potential than for other protected groups.

Finally, but no less importantly, the evaluation of destructive potential – in addition to victims’ social roles – should take into account the intragroup gender and age dynamics. The aforementioned ICTY’s focus on the role of men in what the Chamber characterised as a “patriarchal” society can serve as one such example of forming the methodology for

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[462] S/1994/674, para. 94.
[463] *Ibid*.

evaluating special intent that is inclusive of gender dynamics specific to the group. While the accuracy and reliability of the Chamber's evaluation of the Bosnian Muslim societal structure in *Krstić (Trial)* can be doubted, the Chamber based its reasoning on the inability of survivor women "to successfully re-establish their lives" in the circumstances of the elimination of men.[464] The Islamic State's genocide against Yazidis represents another emblematic example. The execution of Yazidi men and adolescent boys who refused to convert to Islam, coupled with the parallel or subsequent subjecting of Yazidi women and girls, as well as minor boys,v to other heinous acts, including those constitutive of underlying acts of genocide, constituted another example of destroying the group with the exploitation of its gender dynamics.[465]

All in all, the assessment of destructive potential is one of the critical steps in evaluating genocidal intent, especially when it is based on inferences and circumstantial evidence. Destructive potential is highly context-specific, dependent on the combination of multiple factors viewed together in light of the identity of a particular protected group and its internal dynamics.

3.2. Acts of socio-cultural destruction

Another factor highly relevant for the assessment of genocidal intent is acts of socio-cultural destruction accompanying underlying acts.[466]

Despite the initial proposals of state delegates and experts during the drafting stages, the notion of "cultural genocide" (i.e., acts perpetrated with the intent to destroy the group's language, religion or culture[467]) was excluded from the scope of the protection of the Genocide Convention.[468] Nevertheless, the acts of socio-cultural destruction may serve as a significant indicator of the existence of genocidal intent. International jurisprudence has consistently held that even though attacks limited to the group's

[464] *Krstić* (Trial Judgement), paras 91-93.
[465] UN HRC, '"They came to destroy": ISIS Crimes Against the Yazidis' (15 June 2016) UN Doc. A/HRC/32/CRP.2, particularly paras 100-165.
[466] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 106.
[467] ILC Draft Code with Cmts (1996) 46, para. 12.
[468] A/C.6/SR.83, 206.

"cultural or sociological characteristics" underpinning its distinct identity do not technically fall under the definition of the crime of genocide, attacks on the group's cultural and religious property and symbols that occur simultaneously to the acts of physical or biological destruction "may legitimately be considered as evidence of an intent to physically destroy the group".[469]

For example, in *Krstić (Trial)* and subsequent jurisprudence on the Srebrenica genocide, the Chamber considered that in addition to physical killing of the male population, genocidal intent could also be inferred from the simultaneous forcible transfer of the rest of the population (particularly women and elderly),[470] although it did not qualify as an underlying physico-biological act of genocide. Likewise, destruction of Bosnian Muslim homes and mosques soon after the commission of underlying acts was equally regarded as a valid and important indicator of the intent.[471] Such acts were capable of having "demonstrative effect" on the ultimate fate of the remaining part of the group.[472] Additionally, according to *Krstić (Trial)*, another strong indicator of the intent was the concealment of corpses in mass graves in a way that prevented "any decent burial in accord with religious and ethnic customs" and caused "terrible distress to the mourning survivors".[473]

There are various possible acts of socio-cultural destruction that may potentially be indicative of genocidal intent. Inspiration may be drawn from the conduct commonly referred to as "cultural genocide" (despite its initial exclusion from the list of underlying acts). Among them, the International Law Commission mentioned prohibition on the use of the group's language in daily activities, education, or publications, destruction or prevention of the use of education, cultural or religious institutions, objects and

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[469] *Krstić* (Trial Judgement), para. 580; *Tolimir* (Trial Judgement), para. 746; *Tolimir* (Appeal Judgement), para. 230; *Mladić* (Trial Judgement), para. 3553; *Karadžić* (Trial Judgement), para. 553; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 344.

[470] *Krstić* (Trial Judgement), para. 595; *Mladić* (Trial Judgement), para. 3553.

[471] *Krstić* (Trial Judgement), paras 580, 595; *Mladić* (Trial Judgement), paras 3463-3464, 3467-3469, 3472-3473, 3477, 3479, 3494-3496, 3499-3500, 3502.

[472] *Mladić* (Trial Judgement), para. 3553.

[473] *Krstić* (Trial Judgement), para. 596.

heritage.[474] One of the initial drafts of the Convention developed by a group of three experts on behalf of UN Secretariat also referred to, *inter alia*, “forced and systematic exile of individuals representing the culture of a group; […] prohibition of the use of the national language even in private intercourse; […] systematic destruction of books printed in the national language or of religious works or prohibition of new publications; […] systematic destruction of historical or religious monuments or their diversion to alien uses, destruction or dispersion of documents and objects of historical, artistic, or religious value and of objects used in religious worship”.[475]

On a broader scale, going beyond targeting the group’s culture alone, other culpable acts of social disintegration may likewise support the inference of genocidal intent. For example, it may include the act of forcible removal of the group members from the territory where the destruction through undergoing acts is ongoing.[476]

In addition to the inferences of genocidal intent, acts of socio-cultural destruction may also potentially fall under the qualification of certain underlying acts. For example, forcible transfer of adults may reach the threshold of serious mental harm depending on the accompanying circumstances (e.g., the context of the forcible removal, its close relation to the commission of underlying acts against other members of the group, victims’ profiles and lived experiences, etc.).[477] On a similar basis, there is room for an argument that forcible transfer of adults may – in combination with the commission of other underlying acts – constitute a part of the underlying act in the form of inflicting conditions of life calculated to bring about the physical destruction of the group.[478]

The consideration of socio-cultural acts of targeting as an indicator of the genocidal intent plays a particularly vital role in cases where national groups are alleged to be the object of the destruction. Even through cultural attributes do not form the core of the

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[474] ILC Draft Code with Cmts (1996) 46, para. 12.
[475] Secretariat Draft E/447, 6-7, Article I(II)(3).
[476] See, e.g., *Krstić* (Appeal Judgement), para. 33; *Tolimir* (Trial Judgement), para. 254; *Popović et al.* (Trial Judgement), para. 824.
[477] See, e.g., *Tolimir* (Trial Judgement), paras 757-759. See also *Bosnia and Herzegovina v Serbia and Montenegro*, para. 190; *Croatia v Serbia*, para. 434.
[478] See, e.g., *Tolimir* (Trial Judgement), para. 766.

definition of national identity to the same extent as they do in cases of ethnic identities (primarily premised on shared culture and language), national groups are nevertheless highly dependent on the intangible bonds uniting its members, such bonds are frequently deeply rooted in the shared material and immaterial culture, symbols, heritage, as well as other social considerations forming the basis for the ties uniting the group members. Therefore, targeting such objects and such a basis may facilitate the destruction brought about by the underlying acts, thus having an additional impact on the evaluation of the destructive potential, as discussed above.

Lastly, international jurisprudence has consistently paid attention not merely to the realities of the social intra-group dynamics (e.g., specificity of the patriarchal society of Bosnian Muslims) but also to the impact such dynamics had on the lived experiences of victims. In the evaluation of the consequences inflicted upon the survival, as well as their seriousness, the Chambers took note of, in particular, the impact of underlying acts on the victims' personal, family, social, financial, professional and other life circumstances.[479] Thus, the influence affecting such a specific internal group's dynamic through underlying and other culpable acts has on individual victims serves as an additional important consideration in the evaluation of the intent.

3.3. Opportunities, area of control and reach, as well as the efficiency of means or methods used for the destruction

As already briefly discussed in the substantiality analysis above, "the area of the perpetrators' activity and control, as well as the possible extent of their reach", forms an important consideration that informs the analysis of the intent.[480] In other words, the finding of genocidal intent will be undermined if, within their area of control and reach, perpetrators did not exploit available opportunities to achieve or attempt to achieve the destruction of the group or its part.[481] For example, in *Krstić (Appeal)*, the evaluation of

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[479] See, e.g., *Krstić* (Trial Judgement), paras 90-94; *Tolimir* (Trial Judgement), para. 763.

[480] See, *inter alia*, *Krstić* (Appeal Judgement), para. 13; *Tolimir* (Trial Judgement), para. 749; *Popović et al.* (Trial Judgement), para. 832; *Karadžić* (Trial Judgement), para. 555; *Mladić* (Trial Judgement), para. 3437; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 199; *Croatia v Serbia*, para. 142.

[481] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 105.

the intent was supported by the fact that "the ambit of the genocidal enterprise […] was limited to the area of Srebrenica" and from the perpetrators' perspective "the Muslims of Srebrenica were the only part of the Bosnian Muslim group within their area of control".[482] Although *Krstić (Appeal)* and subsequent judgements usually cited this finding in the substantiality assessment, it is equally relevant to the broader considerations of the intent.

International jurisprudence provides for several illustrative examples when the finding of genocidal intent was precluded on the basis of the factor in question. In *Jelisić (Trial)*, the finding of genocidal intent was refuted, in particular because of the fact that the accused performed the executions of victims "randomly" and released certain victims despite possessing an opportunity to subject them to underlying acts.[483] These factors, in conjunction, indicated that the accused did not fully avail himself of the opportunities available to him within his area of control and reach to (attempt to) bring about the group's destruction.

Albeit in a different context, the ICJ reached a similar conclusion in *Croatia v Serbia*. The Court refuted the finding of the genocidal intent to destroy the Croatian group by the Yugoslav and Serb forces due to the facts of, *inter alia*, evacuation of the Croat civilians and sparing certain captured Croat combatants from executions and granting them a prisoner-of-war status.[484] In this case too, the fact that perpetrators did not use available opportunities to destroy the group members within their control or reach but spared them instead (victims in both military and civilian status) was considered as a factor undermining the finding of genocidal intent. An additional important argument the Court relied on was comparing the size of the targeted section of the group (i.e., victims of underlying acts) to the overall size of the part of the group under the perpetrators' control.[485] The Court noted that the number of those targeted appeared insignificant in relation to those under the perpetrators' forces' scope of control, activity and reach, which

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[482] *Krstić* (Appeal Judgement), para. 17.
[483] *Jelisić* (Trial Judgement), para. 106.
[484] *Croatia v Serbia*, para. 436 relying as well on *Prosecutor v Mrksić et al.* (Trial Judgement) IT-95-13/1-T (27 September 2007), paras 145-155, 157-160, 168, 204, 207.
[485] *Croatia v Serbia*, para. 437.

additionally indicated that perpetrators did not avail themselves of the opportunities presented to destroy a part of the group.[486]

At the same time, the consideration of opportunities within the area of activities, control and reach has to be reconciled with the question as to whether perpetrators necessarily employed the most effective or efficient means or methods available to achieve the group's destruction. One argument – especially based on the ICJ's approach in *Croatia v Serbia* – would dictate that failure to apply the most effective or efficient means or methods at the disposal may strongly underline the finding of the intent. If perpetrators had real capacities to seek and achieve destruction but did not utilise them sufficiently, one may use this fact as a strong indicator of the absence of genocidal intent.

However, *Krstić (Appeal)* introduces another consideration that seemingly does not fully support this logic. The defence argued that the Bosnian Serb forces' decision to spare women and children of the Srebrenica community by transferring instead of killing them effectively undermined the finding of genocidal intent.[487] In other words, the defence claimed that had the intent been to achieve the group's destruction in whole or in part, the perpetrators would have been indiscriminate in targeting and would therefore have availed themselves of the opportunities presented to secure effective destruction. The Appeals Chamber disagreed, stating that the finding of genocide does not require a choice of the most efficient or effective methods to achieve destruction, and even where chosen methods would leave destruction incomplete, the finding of the intent remains possible.[488] In the opinion of the Appeals Chamber, in the case of Srebrenica, increased international attention to the situation in Srebrenica and the UN presence prevented the perpetrators from implementing the destruction plan in "the most direct and efficient way", forcing them to adopt the tactic that would minimise the risk of retribution.[489]

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[486] *Ibid*.
[487] *Krstić* (Appeals Judgement), para. 30.
[488] *Ibid*, para. 32.
[489] *Ibid*.

This finding of the Appeals Chamber introducing the “efficiency of methods” consideration can be interpreted in several ways. From one perspective, it seems to enter into conflict with the “opportunities” factor. If the consideration of whether perpetrators availed themselves of the presented opportunities to destroy is one of the relevant indicia of the genocidal intent, then the choice of relatively inefficient or ineffective methods of destruction may inherently point to the absence of the intent. Otherwise, if perpetrators truly sought to achieve destruction, why would they not take the opportunity to employ methods efficient enough to secure its destruction? From the other perspective, the “efficiency of methods” consideration may in itself be a part of the “opportunities” factor. It may be argued that various circumstances (including susceptibility to public opinion and retribution) necessarily limit the scope of opportunities presented to perpetrators, and – accordingly – the scope of available methods of destruction. There is thus a room to reconcile both the “efficiency of methods” consideration and the “opportunities” factor: while it is crucial to examine whether perpetrators realised presented opportunities to accomplish destruction, such opportunities may likewise limit the choice of methods available for destruction excluding those that may seem to be the most efficient and effective (e.g., large-scale indiscriminate targeted through killing). This is particularly relevant for the intent to destroy the group “in part”, which may take a form of selected, well-calculated targeting of persons through underlying acts rather than a blatant, widespread destruction of the part as such.

Therefore, the two outlined perspectives remain a valuable part of the intent evaluation. On the one hand, it is important to consider whether, in view of the opportunities presented within the perpetrators’ area of activities, control and reach, they did avail themselves of such opportunities. Otherwise, if there are strong indicators that they did not, it may refute the finding of the intent. On the other hand, the “opportunities” factor should not be read in absolute terms, requiring the perpetrators to adopt the most effective and efficient (and often, the most brutal, cruel and blatant) way of destruction. The crime of genocide is always contextualised, given the realities on the ground, and sometimes perpetrators' opportunities may be limited not merely by the objective set of circumstances (such as available means and resources) but also subjective considerations (e.g., plausible deniability or public scrutiny considerations). Therefore, the fact that perpetrators did not employ the most "objectively" efficient method to eliminate the group or its part under their control is not necessarily indicative of the absence of the intent to destroy.

3.4. Hate speech, propaganda, and discriminatory or inflammatory language

Genocidal intent may be additionally inferred from the rhetoric used by individual perpetrators or – more broadly – the forces they belong to, as well as public meetings held by the perpetrators.[490]

The ICTR, among various international courts and tribunals, has probably most extensively relied on the use of inflammatory and eliminationist rhetoric by perpetrators as a ground for inferring genocidal intent. For example, the ICTR held that utterances by perpetrators before, during or after the attack (particularly derogatory language) served as one of the indicators of the intent.[491] For example, it concerned inflammatory enemies depicting the victims as "enemies of the country", "cockroaches", "filth or dirt" that had to be "removed", "dogs" and other phrases instigating the attackers and encouraging the extermination.[492] In other situations, the utterances supporting the proof of the intent consisted of direct incitement to discriminate killing of group members.[493] Even utterances falling short of express calls for physical destruction may nevertheless be indicative of genocidal intent.[494]

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[490] See, *inter alia*, *Tolimir* (Trial Judgement), para. 745 relying on *Gacumbitsi* (Appeal Judgement), para. 43; *Kajelijeli* (Trial Judgement), para. 531; *Kamuhanda v Prosecutor* (Appeal Judgement) ICTR-99-54A-A (19 September 2005), paras 81-82; *Prosecutor v Karera* (Trial Judgement) ICTR-01-74-T (7 December 2007), para. 542. See also *Stakić* (Appeal Judgement), para. 52; *Prosecutor v Karadžić* (Appeal Judgement) MICT-13-55-A (19 March 2019) (hereinafter – "*Karadžić* (Appeal Judgement)"), para. 745. See also Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 106.

[491] *Kayishema and Ruzindana* (Trial Judgement), paras 538-540, 542; *Kayishema and Ruzindana* (Appeal Judgement), paras 148-149; *Gacumbitsi* (Trial Judgement), para. 252; *Gacumbitsi* (Appeal Judgement), para. 40; *Muhimana* (Trial Judgement), para. 496.

[492] *Kayishema and Ruzindana* (Trial Judgement), paras 538-539, 542; *Kayishema and Ruzindana* (Appeal Judgement), para. 158; *Gacumbitsi* (Appeal Judgement), para. 42.

[493] *Gacumbitsi* (Appeal Judgement), paras 42-43.

[494] *Stakić* (Appeal Judgement), para. 52; *Karadžić* (Appeal Judgement), para. 745.

At the same time, the rhetoric factor has to be treated with sufficient caution.[495] International jurisprudence on various occasions has established that even the rhetoric characterised as "openly nasty, hateful, intolerable, repulsive and disgraceful" (even openly calling for killings of the members of other groups) may indeed point to the presence of "discriminatory intent" which is, however, falling short of genocidal intent.[496] The same relates to the rhetoric inciting war or armed confrontation.[497] At least a part of the reasoning lies in the fact that such inflammatory and discriminatory public speeches potentially could as well point to the intent different from a genocidal one (e.g., intimidating members of the protected groups into leaving the territory, for example, for the purpose of ethnic cleansing).[498] In *Stakić (Trial)*, the Chamber unequivocally ruled that despite the spreading of the allegedly inflammatory rhetoric, "the intention to displace a population is not equivalent to the intention to destroy it".[499] Equally, the evidence of ethnic biases is not necessarily indicative of genocidal intent, regardless of how reprehensible they are.[500] Utterances, speeches and statements have to always be properly evaluated within their specific context.[501]

For instance, in *Croatia v Serbia*, for the purposes of deducing genocidal intent, Croatia attempted to rely on factors such as the political doctrine of expansionism, demonising statements of public officials and state propaganda, as well as ethnically derogatory language used in the course of underlying acts.[502] Even despite the often violent, discriminatory or derogatory nature of such rhetoric or speeches, the ICJ was unable to deduce genocidal intent from them as the only reasonable inference.

Even the rhetoric "degrading" another group, portraying it as "the historic enemies", referring to other historic inter-group grievances, or exacerbating ethnic tensions is not

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[495] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 106.
[496] See, e.g., *Brdjanin* (Trial Judgement), paras 985-988 and 323-332 in combination.
[497] See, e.g., *ibid*, para. 988.
[498] See, e.g., *ibid*, para. 327 in conjunction with paras 972-984; *Stakić* (Appeal Judgement), para. 52; *Karadžić* (Appeal Judgement), para. 745.
[499] *Stakić* (Trial Judgement), para. 554. See further *Stakić* (Appeal Judgement), para. 52.
[500] *Stakić* (Appeal Judgement), para. 52.
[501] *Ibid*; *Karadžić* (Appeal Judgement), para. 745.
[502] *Croatia v Serbia*, para. 408.

necessarily indicative of genocidal intent but may be explained by the intention to ensure ethnic homogeneity of the territory by expelling or facilitating the expulsions of members of "enemy" groups, inciting fear in them or mobilising people.[503] Likewise, calling into question the identity of a protected group as a "nation" or "people" equally does not automatically indicate the existence of the intent to destroy, as it may be explained by the political context underpinning the conduct of hostilities.[504] Therefore, even isolated references to words such as "disappearance", "extinction", or "elimination" may not necessarily, in the overall context, point to the existence of special intent since they can also constitute a political warning of severe bloodshed, chaos and extreme violence resulting from hostilities.[505]

Therefore, while the utterances of individual perpetrators or public propaganda and statements on behalf of the forces they belong to may be useful for evaluating intent, they must always be approached with caution in light of their context. Especially if allegations of genocide arise in the course of an ongoing armed conflict, the circumstances in question may present multiple reasons for practices to engage in hateful rhetoric.

3.5. Plan or policy

Another factor highly relevant in the context of evaluating the intent is the existence of a plan or policy.[506] International jurisprudence has consistently recognised that while the existence of a plan or policy is not an inherent, necessary legal ingredient of the elements of the crime of genocide, "it may become an important factor in most cases" and "facilitate proof of the crime".[507]

At the same time, this position remains contested by certain commentators. W. Schabas, for instance, insisted that the ICTY's disregard of the policy element as a necessary ingredient of the crime of genocide was erroneous, "entirely speculative and

[503] *Karadžić* (Trial Judgement), paras 2596, 2598, 2603.
[504] See, e.g., *ibid*, paras 2597-2603.
[505] *Ibid*, paras 2599-2603.
[506] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 107.
[507] *Jelisić* (Trial Judgement), para. 100; *Jelisić* (Appeal Judgement), para. 48; *Popović et al.* (Trial Judgement), paras 826-830; *Brdjanin* (Trial Judgement), paras 980-982; *Tolimir* (Trial Judgement), para. 745, footnote 3123; *Mladić* (Trial Judgement), para. 3457; *Karadžić* (Trial Judgement), para. 550.

hypothetical" – "a results-oriented political decision rather than a profound analysis of the history of [the crime]".[508] First, Schabas considered the analysis conducted by Chambers brief, superficial and not well-founded on the extensive number of authoritative sources, particularly lacking compelling analysis of *opinio juris*.[509]

Second, in Schabas' view, in practice, the element of policy or plan has mainly been typical of all international precedents of the commission of genocide.[510] Schabas concludes that "there have been few if any [international cases] involving entrepreneurial villains who have exploited a situation of conflict in order to advance their own perverse personal agendas".[511] It is thus "nearly impossible to imagine genocide that is not planned and organi[s]ed either by the State itself or a State-like entity, or by some clique associated with it".[512] Schabas additionally cites *Kayishema and Ruzindana (Trial)* noting that although a plan is not an element of the crime, "it would appear that it is not easy to carry out a genocide without a plan or organi[s]ation".[513] According to Schabas, the same logic is directly or indirectly inferred from the works of the ILC and the Rome Statute's Elements of Crimes.[514]

Third, Schabas also contends that the policy element allows for reconciling individual responsibility with state responsibility for the commission of genocide, avoiding the situations where the commission of underlying acts by an individual perpetrator harbouring genocidal intent would allow for attributing his conduct to a state in the same manner as if the whole state apparatus was involved.[515]

One of the accused in *Popović et al. (Trial)* relied on Schabas' article too, trying to establish the necessity of proving the policy element within the genocidal intent.[516]

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[508] William A. Schabas, 'State Policy as an Element of International Crimes' [2008] 98(3) *Journal of Criminal Law and Criminology* 953 (hereinafer – "Schabas (2008)") 956, 959.
[509] *Ibid* 967, 981.
[510] *Ibid* 954.
[511] *Ibid*.
[512] *Ibid* 966.
[513] See also *Kayishema and Ruzindana* (Trial Judgement), para. 94.
[514] Schabas (2008) 966-967.
[515] *Ibid* 968-971.
[516] *Popović et al.* (Trial Judgement), paras 826-830.

However, the Trial Chamber refuted both the position raised by Schabas and the accused, particularly calling Schabas' "view that the issue of State policy was not addressed by the drafters of the Convention because it was self-evident" as a "speculation".[517]

While the jurisprudence remains rather consistent and uniform on this issue, certain Schabas' contentions are undoubtedly justified and relevant. It is indeed difficult to call the Chambers' analysis on the state of the law of genocide (including in customary international law, as well as with the use of subsidiary means of interpretation) as well-founded and detailed. Rather, it migrated from one judgement to another without a prerequisite careful consideration. Even if taken as well-founded, Schabas seems right that it is hard to imagine the commission of genocide that was not preceded and accompanied by some sort of state policy or plan, especially on a large scale. It remains theoretically possible that, e.g., in cases of a small tribal community with a lot of contextual factors surrounding the situation (e.g., long-standing history of violence, bias and hatred), a group of perpetrators from the ethnic majority suddenly become triggered by a particular event and decide to take revenge by fully exterminating the tribe. However, such "chaotic" or "spontaneous" genocide once again appears to be a merely hypothetical, highly contextual and uncommon possibility. In most other cases, especially when bigger groups are targeted on a large scale, a policy or plan would appear to be a necessary component.

This is especially relevant for cases involving national groups, whose destruction is premised on multiple complex considerations. As various sections above demonstrate, effective destruction of national groups would require considering what distinct features are fundamental to their identity, how one can dismantle those distinctive features, what combination of acts of destruction (physical, biological and socio-cultural) it requires, what methods and persons targeted bear the highest destructive potential, how one ensures that the targeted part is substantial enough to affect the entirety, etc. All these questions inherently require sophisticated methodologies and at least some degree of planning and

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[517] *Ibid*, para. 828.

strategising. It seems simply impossible to accomplish the intent to destroy a national group without the element of a policy: otherwise, as Schabas points out, it would be possible that a single soldier harbouring genocidal intent to destroy a national group can commit an act of genocide attributable to a state even by executing several individuals.

Therefore, while international jurisprudence does rather unequivocally proclaim that the presence of a plan or a policy is not a necessary ingredient for a crime, it is a highly relevant consideration for the determination of the intent. History indicates that although it may not be a necessary legal component, in practice, it would almost (if not) always be inherent in the nature of the crime. Therefore, one may even go a step further and argue that not just a plan or a policy may be indicative of genocidal intent; their absence will likewise strongly testify to the absence of the intent.

3.6. Parallel motives and countervailing intentions

The existence of a special intent has to be clearly distinguished from a motive for the crime's commission.[518] The existence of various motives, including personal ones, does not preclude the existence of special intent to destroy,[519] and thus the exact reason(s) why an accused sought to destroy a protected group "has no bearing on guilt".[520]

Therefore, the accused can be driven by different motives in their intent to destroy one of the protected groups. For example, the accused may have a private motive in the form of revenge, vengeance, lucre, political position, sexual gratification, struggle for power, economic benefits, or a broader political motive shared among their forces or the society more broadly (e.g., remedying historical grievances through targeting another group for destruction).[521]

However, it is important to bear in mind during the assessment of the intent that such motivation has no bearing on the potential existence of the intent. Therefore, for the *mens*

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[518] *Jelisić* (Appeal Judgement), para. 49; *Popović et al.* (Trial Judgement), para. 825; *Niyitegeka v Prosecutor* (Appeal Judgement) ICTR-96-14-A (9 July 2004), paras 52-53; *Kayishema and Ruzindana* (Appeal Judgement), para. 161; *Stakić* (Appeal Judgement), para. 45; *Bosnia and Herzegovina v Serbia and Montenegro*, para. 189.

[519] *Jelisić* (Appeal Judgement), para. 49; *Kayishema and Ruzindana* (Appeal Judgement), para. 161.

[520] *Popović et al.* (Trial Judgement), para. 825 referencing *Stakić* (Appeal Judgement), para. 45.

[521] See, e.g., 251. UN HRC, '"They came to destroy": ISIS Crimes Against the Yazidis' (15 June 2016) UN Doc. A/HRC/32/CRP.2, para. 158.

rea evaluation, it is irrelevant that an accused relied on a plea of, e.g., "simply killing for money" or due to personal hatred, as long as the intent to destroy the group or its part was present.

In turn, motives must not be confused with countervailing intentions potentially competing with special intent and capable of refuting its existence. It is probably easier to delineate them by suggesting that the motive usually asks a question "for what reason did a perpetrator commit an act on an individual level?" while various countervailing intentions (including special genocidal intent) relate to what the ultimate objective of the perpetrator(s) was (i.e., did it reach the threshold of the group's destruction in whole or in part). Additionally, the evaluation of countervailing intentions is directly relevant to the question of whether genocidal intent is the only reasonable inference based on the whole body of evidence available.

International jurisprudence provides multiple examples of successful and unsuccessful pleas of countervailing intentions. One of the most common ones relates to ethnic cleansing. Multiple judgements related to the wars on the territory of the former Yugoslavia refuted the finding of genocide on the basis of the fact that perpetrators' or forces' intent merely aimed at the ethnic cleansing of the territory (i.e., ensuring its ethnic homogeneity, particularly by forced direct or indirect expulsion of members of other groups).[522] The ICJ, for example, unequivocally stated that while, in certain cases, acts of ethnic cleansing may fall within the definition of one of the underlying acts, it will only amount to genocide if accompanied by the intent to destroy the group.[523] However, the group's intended destruction has to be distinguished from its expulsion or removal from a designated area leading to its mere dissolution, and destruction is not necessarily always an automatic consequence of the displacement.[524] Special intent cannot encompass the intention "to inflict damage upon [a group] or to remove it from a territory, irrespective of

[522] See, e.g., definition provided by the ICJ in *Bosnia and Herzegovina v Serbia and Montenegro*, para. 190 relying on UNSC 'Interim Report of the Commission of Experts Established pursuant to Security Council Resolution 780 (1992)' (10 February 1993) UN Doc. S/25274, para. 55.
[523] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 190; *Croatia v Serbia*, paras 162-163, 478.
[524] *Ibid*; *Tolimir* (Appeal Judgement), para. 231.

how such actions might be characteri[s]ed in law".[525] At the same time, where acts of ethnic cleansing occur in parallel with underlying acts of genocide, they nevertheless "may be significant as indicative of the presence of a specific intent (*dolus specialis*) inspiring those acts".[526]

Equally, genocidal intent has to be distinguished from a merely persecutory intent within the crime against humanity of persecution involving severe deprivation, contrary to international law, of one or several persons of their fundamental rights "by reason of the identity of a group or collectivity" or "targeting the group or collectivity as such".[527] Similarly, intent in the context of genocide has to be distinguished from the crime against humanity of extermination that only requires the killing of person(s), "including by inflicting conditions of life calculated to bring about the destruction of part of a population".[528] Despite other substantive differences in the crimes' definitions (i.e., material and contextual elements), the two crimes against humanity do not require the intent to destroy one of the four protected groups in whole or in part as such. However, it is possible that the same conduct may constitute more than one of the aforementioned crimes or three of them altogether.[529] Similarly, it is possible that persecutory conduct that does not amount to one of the five underlying acts may strongly assist in the determination of genocidal intent.

The distinction between countervailing intentions is equally possible not merely on the conceptual level of different acts' legal qualifications but on the factual level as well, stemming from the dynamics of the ground. One of the most plausible pleas in this respect arises in the circumstances where the allegations of genocide take place in the context of an armed conflict. Perpetrators are often likely to deny that their conduct bore the genocidal character by claiming that it was simply linked to the conduct of hostilities and

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525 *Croatia v Serbia*, para. 514.
526 *Bosnia and Herzegovina v Serbia and Montenegro*, para. 190. See also *Croatia v Serbia*, paras 162-163, 478.
527 See International Criminal Court 'Elements of Crimes' <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> accessed 17 January 2026 (hereinafter – "ICC 'Elements of Crimes'") 7, Article 7(1)(h). See also discussion in *Krstić* (Appeal Judgement), paras 228-229.
528 See ICC 'Elements of Crimes' 4, Article 7(1)(b). See also discussion in *Krstić* (Appeal Judgement), paras 219-227.
529 *Krstić* (Appeal Judgement), paras 219-229.

as such was not directed at any protected group, even though it did affect the civilian population in general, or that the conduct was merely aimed at eliminating the military threat. For example, perpetrators may argue that while a significant number of protected group members died in the course of the military action, this consequence resulted from the lawful or unlawful (e.g., indiscriminate or disproportionate) conduct of hostilities, deprived of any intentional targeting of the protected group as such.

Perpetrators may equally attempt to make the same argument in relation to a particular category of victims targeted by underlying acts. In the context of Srebrenica, the most common argument invoked by various defence teams stated that targeting of Bosnian Muslim men was aimed at eliminating "any future military threat" by removing potential fighters.[530] In support of this, the defence claimed that wounded men were spared from killing or group members were allowed to evacuate during the truce.[531] As an alternative, in certain situations before the ICTY, the defence of the accused also argued that the elimination of men was an act of political revenge for failing to meet the political ultimatum set by the enemy.[532]

The Chambers refuted these arguments by stating that men were eliminated regardless of their combatant or civilian status, while civilian men – even those of military age and potentially capable of bearing weapons – did not represent the same degree of a military threat as combatants.[533] It especially concerned the younger and older male members of the group outside of military age, who – even if theoretically were capable of carrying weapons – could not represent any serious threat.[534] The fact that the victims were already captured (and therefore defenceless and incapable of representing a military threat), as well as the presence of children, the elderly and the infirm among those killed, served as a corroborating factor.[535] At the same time, in other judgements outside of the

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[530] *Krstić* (Trial Judgement), para. 593; *Krstić* (Appeal Judgement), para. 26.
[531] *Krstić* (Trial Judgement), para. 593.
[532] *Krstić* (Trial Judgement), para. 593.
[533] *Krstić* (Trial Judgement), para. 594; *Krstić* (Appeal Judgement), para. 26.
[534] *Krstić* (Appeal Judgement), para. 27.
[535] *Popović et al.* (Trial Judgement), para. 860.

Srebrenica context, the fact that victims were predominantly (if not exclusively) military-aged men was viewed as a factor refuting the intent by creating an alternative plausible explanation for the destruction dictated by security grounds.[536]

Therefore, in every case, great care has to be taken in evaluating the combination of the circumstances on the ground to determine whether they may offer an alternative explanation of a countervailing intention negating the proof of genocidal intent. With regards to the "active hostilities" argument, it may be useful to examine whether perpetrators' conduct was indeed indiscriminate and affected members of the group simply because they were part of the civilian population affected, or whether the conduct was specifically directed at them and whether they were incapable of constituting a legitimate military threat. While motives are irrelevant to the determination of the intent, the existence of countervailing intentions may point to the alternative reasonable inference undermining the finding of the genocidal intent beyond a reasonable doubt (where such a standard of proof applies).

3.7. Conclusions on the factors relevant to the assessment of the genocidal intent

Since obtaining the direct proof of genocidal intent is extremely rare, if not often impossible, the intent to destroy a national group in whole or in part can be evaluated based on the inference from the multiplicity of factors:

- Destructive potential is one of the key factors for the analysis. Destructive potential represents the impact that different conditions viewed alone and in combination have on the group's destruction. Indicators relevant to the evaluation of the destructive potential are multiple and can broadly be grouped into two categories, i.e., those related to (i) the methodology of destruction, and (ii) the identity of victims of underlying acts. The former category takes into account the general context on the ground, the scale, brutality, multiplicity, systematicity, and repetition of destructive conduct, as well as the means and methods employed and/or the concerted manner of the acts' commission. The latter concerns a special

[536] *Brdjanin* (Trial Judgement), para. 979.

significance of the victims targeted by underlying acts (e.g., leaders), which will vary depending on the specific features of the targeted group in question. For example, for national groups bound by intrinsic intangible features, the elimination of the key national identity's manifesters and holders may have a broader destructive potential than the elimination of leaders of other protected groups.

- The commission of acts of socio-cultural destruction may be another important indicator of the genocidal intent. Although the so-called "cultural genocide" does not fall under the crime's definition, where the commission of underlying acts against a group is accompanied by the acts of targeting the group's social structures and cultural characteristics (e.g., language) or heritage, this may significantly support the inference of genocidal intent. While cultural attributes are not as significant to the identity of national groups as, e.g., ethnic groups whose identity is primarily premised on culture, cultural and linguistic attributes may nevertheless play a pivotal role in defining the national identity. Therefore, their targeting may strongly support the inference of genocidal intent to destroy a national group.
- Another factor relevant to the evaluation of the inference of genocidal intent concerns the perpetrator forces' range of opportunities, area of control and reach. This entails evaluating whether, within the sphere of control available, perpetrator forces made effective use of the destructive potential at their disposal. However, the evaluation of the efficiency of means or methods used for the destruction does not require such means or methods used to be the most effective or destructive: for example, fear of retribution or media attention may require perpetrator forces to make recourse to a more selected or sophisticated methodologies in comparison to blatant targeting.
- The proof of the existence of genocidal intent can additionally be supported by the hate speech and propaganda, as well as discriminatory or inflammatory language directed against the group or its individual victim members, both coming from the perpetrator forces' leadership and individual perpetrators on the ground. At the same

time, not every inflammatory rhetoric, especially in times of armed conflict, is necessarily indicative of genocidal intent and may pursue various other goals, such as degrading the enemy forces or boosting the morale of one's own forces. Likewise, although the existence of a plan or policy is not a legal ingredient of the crime, it may strongly support the inference of the intent.

- Finally, the assessment of the existence of genocidal intent has to be juxtaposed against the potential other countervailing intentions. While the question of motive is irrelevant to the existence of the intent, it is important to examine whether the perpetrator forces' motives may plausibly be explained by alternative intentions (e.g., elimination of a military threat, or reprisal in response to the military attacks, or ethnic cleansing) falling short of establishing the intent directed at the group's destruction.

CHAPTER 4
ANALYSIS OF THE RUSSIAN ATROCITIES AGAINST THE UKRAINIAN NATIONAL GROUP THROUGH THE LENSES OF THE LAW OF GENOCIDE

4.1. Introductory remarks on the Ukrainian context

Atrocities perpetrated by the Russian Federation in the course of the full-scale invasion of Ukraine after 24 February 2022 raised the discussion as to whether they may qualify as the crime of genocide. The discussion has traditionally proceeded in two dimensions: political and legal.

Politically, the Ukrainian authorities have consistently argued that the Russian Federation has been committing the crime of genocide in Ukraine. On 14 April 2022, the Verkhovna Rada of Ukraine issued the Declaration “On the Genocide Committed by the Russian Federation in Ukraine”.[537] The Declaration stated that the aim of the Russian aggression against Ukraine is to destroy “the Ukrainian people” and its identity, whereas the Declaration also indicated that Russian armed forces aim at destroying “in whole or in part, the Ukrainian people as a separate national community”.[538] The Declaration referenced the practices of Russification in education and culture in occupied territories, large-scale atrocities (particularly “murders, kidnappings, cruel deprivation of liberty of people, their torture, rape, mockery of the bodies of the killed and tortured”), systematic destruction of the civilian population and creation of deadly life conditions.[539] On a separate note, the Declaration referred to “widespread cases of physical and psychological violence” directed against Ukrainian state and local municipal officials, “and other local activists, journalists, clergymen and other authoritative figures in Ukrainian society”.[540] The Declaration also referred to the Russian actions aimed at the gradual destruction of

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[537] Verkhovna Rada of Ukraine, Statement ‘On the Declaration of the Verkhovna Rada of Ukraine “On the Genocide Committed by the Russian Federation in Ukraine”’ (14 April 2022) No. 2188-IX <https://zakon.rada.gov.ua/laws/show/2188-20#Text> accessed 17 January 2026.

[538] *Ibid*.

[539] *Ibid*.

[540] *Ibid*.

"the Ukrainian people" through targeting "economic potential and security" (e.g., due to destruction of grain storage and transport infrastructure, naval blockade, targeting of electricity and gas infrastructure, etc.). The Declaration noted the "Russia's centuries-old policy aimed at "de-Ukrainization", the absorption of the Ukrainian nation by distorting and appropriating its history, achievements in the fields of science, culture and art.[541] Based on this, Verkhovna Rada of Ukraine recognised the actions committed by the Russian armed forces, as well as Russia's political and military leadership after 24 February 2022, "as genocide of the Ukrainian people" and appealed to international organisations and foreign governments to follow with the same declarations.[542]

Representatives of other states, as well as international organisations, mirrored this position. For example, shortly after the adoption of the Declaration by the Ukrainian parliament, the parliaments of Estonia,[543] Latvia,[544] Lithuania[545] and Canada issued declarations recognising the commission of genocide in Ukraine.[546] A substantial number of state representatives worldwide, including heads of states, also publicly accused Russia of the commission of genocide.[547] Finally, genocide allegations were also voiced in the

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[541] *Ibid*.
[542] *Ibid*.
[543] 'Parliament adopts statement on Russian war crimes and genocide in Ukraine' (*Riigikogu*, 21 April 2022) <https://www.riigikogu.ee/istungi-ulevaated/riigikogu-vottis-vastu-avalduse-venemaa-sojakuritegudest-ja-genotsiidist-ukrainas/> accessed 17 January 2026.
[544] 'Saeima adopts statement on Russian aggression and war crimes in Ukraine, recognizing it as genocide against the Ukrainian people' (*Latvijas Republikas Saeima*, 21 April 2022) <https://www.saeima.lv/lv/aktualitates/saeimas-zinas/30932-saeima-pienem-pazinojumu-par-krievijas-agresiju-un-kara-noziegumiem-ukraina-atzistot-to-par-genocidu-pret-ukrainu-tautu> accessed 17 January 2026.
[545] 'The Seimas has unanimously recognised the war waged by the Russian Federation against Ukraine as genocide of the Ukrainian people' (*Office of the Seimas of the Republic of Lithuania*, 10 May 2022) <https://www.lrs.lt/sip/portal.show?p_r=35403&p_k=2&p_t=281039> accessed 17 January 2026.
[546] '44th Parliament, 1st Session. Journals. No. 59, Wednesday, April 27, 2022. 2:00 p.m.' (*Parliament of Canada*, 27 April 2022) <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-59/journals> accessed 17 January 2026.
[547] Elizabeth Whatcott, 'Compilation of Countries' Statements Calling Russian Actions in Ukraine "Genocide"' (*Just Security*, 20 May 2022) <https://www.justsecurity.org/81564/compilation-of-countries-statements-calling-russian-actions-in-ukraine-genocide/> accessed 17 January 2026.

resolutions of the Parliamentary Assembly of the Organisation for Security and Co-operation in Europe[548] and the Parliamentary Assembly of the Council of Europe.[549]

On the political front, these positions did not raise much contention. Neither did they meet universal widespread and consistent support. On various occasions, political leaders employed the term "genocide" in a rather cursory fashion, using it to label the atrocities more broadly. On the political front, the rhetoric on the commission of genocide in Ukraine slowly disappeared in vain with the flow of the war. After the initial stages of the invasion in 2022, foreign governments mostly did not follow up, echoing their previous positions on the commission of genocide. Similarly, the pronouncements of the Ukrainian officials on the matter have become increasingly rare.

The legal side of the debate followed a similar path. In 2022-2023, the international law community has seen several notable debates on whether the crime of genocide was plausibly committed in Ukraine, with the scholarly attention to the topic in question fading away over time. In April 2022, shortly after the atrocities in Bucha were uncovered and the Ukrainian parliament issued the aforementioned Declaration of the recognition of Russia's actions in Ukraine as genocide, Douglas Irvin-Erickson authored a legal blog arguing that there are plausible grounds to believe that genocide was being committed in Ukraine by the Russian forces.[550] Irvin-Erickson took Argentinian domestic justice efforts as a basis to showcase how the definition of the destruction of the national groups could be expanded by encompassing the attempts to target the very social foundations of the national group.[551] The author also focused on the diverse composition of the Ukrainian

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[548] OSCE Parliamentary Assembly 'Bucharest Declaration and Resolutions Adopted by the OSCE Parliamentary Assembly at the Thirty-First Annual Session. Bucharest, 29 June – 3 July 2024' Doc. AS (24) D E <https://www.oscepa.org/en/documents/annual-sessions/2024-bucharest/declaration-30/5029-bucharest-declaration-eng/file> accessed 17 January 2026.

[549] 'The forcible transfer and 'russification' of Ukrainian children shows evidence of genocide, says PACE' (*Council of Europe*, 26 April 2023) <https://www.coe.int/en/web/portal/-/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace> accessed 17 January 2026; PACE 'Legal and human rights aspects of the Russian Federation's aggression against Ukraine' Resolution 2556 (2024) <https://pace.coe.int/en/files/33682/html> accessed 17 January 2026.

[550] Douglas Irvin-Erickson, 'Is Russia Committing Genocide in Ukraine?' (*Opinio Juris*, 21 April 2022) <https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/> accessed 17 January 2026.

[551] *Ibid*.

national group, inclusive of, *inter alia*, ethnic Russians and Russian-speaking individuals, refuting the arguments that their killing undermined the existence of the genocidal intent to destroy the Ukrainian national group.[552] He emphasised that Russian genocidal intent was evidenced particularly by the public calls to eliminate everyone who is not willing to self-identify as Russian.[553] Finally, Irvin-Erickson highlighted the importance of continuing to have the allegations of (or discussions around) the crime of genocide within the narrative of future justice processes to secure the truth and accountability.[554]

In contrast, in September 2022, William Schabas published an article arguing that Ukraine lacks convincing arguments to prove the commission of the crime of genocide by Russia. Schabas made several key observations. First, he claimed that the publicly available evidence does not exclude possible inferences of intent other than genocidal intent.[555] Therefore, even if genocidal intent is one of the likely or plausible inferences from the pattern of conduct, it is not the only one.[556] Second, Schabas engaged in the numerical exercise. He claimed that while the number of victims of underlying acts – particularly killing – is not the only and decisive factor to evaluate the intent, it remains one of the crucial indicators.[557] Schabas provided the Rwandan example as a basis for comparison, claiming that the death toll of around 6000 civilian combat-related deaths (an official conservative estimate by the UN bodies), most of which resulted from the conduct of hostilities, is not compelling enough to evidence the genocidal intent if juxtaposed against the overall 40 million of Ukraine's population.[558] Similarly, the reported number of other underlying acts, particularly manifested through the conduct of rape, did not support the inference of being "a part of a planned or organized campaign driven by a genocidal intent for the purpose of physical destruction".[559] Schabas claimed that the fact

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[552] *Ibid*.
[553] *Ibid*.
[554] *Ibid*.
[555] William A. Schabas, 'Genocide and Ukraine. Do Words Mean What We Choose them to Mean?' [2022] 20 *Journal of International Criminal Justice* 843, 850.
[556] *Ibid*.
[557] *Ibid*.
[558] *Ibid* 850-851.
[559] *Ibid* 852.

that Ukraine did not bring proceedings before the International Court of Justice alleging the commission of genocide is indicative of Ukraine's own lack of belief in the sufficiency of evidence of the crime's commission.[560] Concluding his observations, Schabas stated that most, if not all, armed conflicts are marked by brutality and atrocities, but those should not be mistaken for the genocidal intent to destroy.[561]

Schabas' article was followed up by a few other important observations. A group of Kyiv-Mohyla Academy's legal scholars, including Denys Azarov, Volodymyr Venher, Dmytro Koval and Gaiane Nuridzhanian, undertook a more contextualised assessment of the Russian actions through the lenses of the law of genocide.[562] As a basic premise of the article, the authors indicated that "analysis 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 "West(s)plaining" and the limits it imposes on the research of legal issues related to Ukraine".[563] They argued that Russian atrocities in Ukraine can plausibly qualify as the crime of genocide. To support this claim, the authors first substantiated why the group targeted by Russian atrocities was the Ukrainian *national* group, followed by an explanation of the complexities of the internal dynamics of the diverse Ukrainian society and interplay of different group identities.[564] To substantiate the presence of genocidal intent, the authors analysed a history of Russian colonial violence against the Ukrainians and the discourse present throughout Russia's authorities' public statements denying the Ukrainians' right to exist as a separate nation.[565] The article further refers to the acts of cultural destruction, as well as the circumstances of the commission of underlying acts to infer the evidence of genocidal intent.[566]

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[560] *Ibid* 855.
[561] *Ibid* 856-857.
[562] Denys Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, 'Understanding Russia's Actions in Ukraine as the Crime of Genocide' [2023] 21(2) *Journal of International Criminal Justice* 233.
[563] *Ibid* 237.
[564] *Ibid* 239.
[565] *Ibid* 243-249.
[566] *Ibid* 253-263.

In turn, Yuliia Ioffe focused on Russia's campaign of forcible transfer of children to Russia as a potential genocidal act.[567] Upon the overview of the history of the underlying act of the transfer of children and previous instances where the transfer was attemptingly qualified as a genocidal act, the author analysed the manifestations of genocidal intent in the Russian acts on the ground and broader plan of targeting the Ukrainian national group, arriving at the conclusion of strong indicators of genocidal intent behind the child transfer.[568]

In an op-ed for the Ukrainian media outlet "Ukrainska Pravda", Wayne Jordash, KC, argued that in addition to the apparent evidence of the commission of "cultural genocide" (i.e., acts of cultural targeting), there are plausible allegations of the intent to destroy the Ukrainian national group in a physical or biological way or as a social entity.[569] This has been about to be achieved through the extermination of the nation's political leaders, coupled with the infliction of serious physical and mental harm on a remaining significant part of the population, affecting the national group in an extremely detrimental way.[570] Jordash argued that through targeting leaders of the group, Russian forces intended to make the remainder vulnerable to various forms of violence, including mass imprisonment, deportation, torture, displacement, the abduction of children, and the deprivation of the means for survival, undermining the ability to resist.[571] Jordash also alleged that given the public rhetoric, Russia's initial plan to target a relatively limited part of the group (i.e., perceived leaders) expanded to more and more sections of the population labelled as "Nazis" by the Russians in view of the resistance to war, occupation and subjugation.[572] Jordash particularly emphasised the need to pay attention to the leadership

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[567] Yulia Ioffe, 'Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?' [2023] 25(3-4) *Journal of Genocide Research* 315.
[568] *Ibid*.
[569] Wayne Jordash, 'Genocide in Ukraine' (*Ukrainska Pravda*, 28 March 2023) <https://www.pravda.com.ua/columns/2023/03/28/7395377/> accessed 17 January 2026.
[570] *Ibid*.
[571] *Ibid*.
[572] *Ibid*.

factor in the process of the *mens rea* assessment, as well as qualitative factors pointing to the targeted part's alleged substantiality.

Later, Wayne Jordash, KC, and Jeremy Pizzi, in a short yet powerful piece for "Ukrainska Pravda" make a vital claim that the crime of genocide is not "dimensional or monolithic" and "does not demand the large-scale systematic slaughter of most of the group's members".[573] Accordingly, the would be-genocidaires would attempt to mask their intent behind the claims of insufficient number of killings or the fog of conduct of hostilities – as Russian authorities do.[574] Jordash and Pizzi point to the history of Russian colonial violence against Ukraine, claiming that full-scale invasion exposed the essence of the Russian plan "to assimilate the "lesser" nation next door. If not assimilate, subjugate. And if not subjugate, exterminate and destroy what needs to be destroyed".[575]

In another contribution, Myroslava Antonovych drew links between the Holodomor and the ongoing Russian atrocities in Ukraine as manifestations of the Russian imperial intention to eradicate the Ukrainian ethnic and/or national group, all rooted in the same colonial cause.[576] This piece formed a part of the broader series of studies preceding the 2022 full-scale invasion on the qualification of the Holodomor as genocide of the Ukrainian nation, particularly authored by Myroslava Antonovych and Volodymyr Vasylenko, in which the authors provided a substantiated legal analysis of the Soviet terror and famine against the Ukrainian national group through the genocide lenses.[577]

These important pieces, accompanied by broader scholarly debate, have been among the most instrumental in shaping the discussion of the uniqueness of the Ukrainian context for consideration under the law of genocide. The present and final Chapter also aims at

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573 Wayne Jordash, Jeremy Pizzi, 'Understanding Russian destruction: Colonialism, subjugation and emerging genocide' (*Ukrainska Pravda*, 22 February 2024) <https://www.pravda.com.ua/eng/columns/2024/02/22/7443144/> accessed 17 January 2026.

574 *Ibid*.

575 *Ibid*.

576 Myroslava Antonovych, 'The Holodomor-Genocide and the Ongoing Russian Genocide in Ukraine: Intent, Victims and Perpetrators' (Saar Expert Papers, February 2023) <https://jean-monnet-saar.eu/wp-content/uploads/2023/02/Genocide_Ukraine.pdf> accessed 19 March 2026.

577 Volodymyr Vasylenko, *The Holodomor of 1932–1933 in ukraine as a crime of genocide*. *Legal evaluation* (Olena Teliga Publishing House 2009); Volodymyr Vasylenko, Myroslava Antonovych (eds), *The Holodomor of 1932–1933 in Ukraine as a crime of genocide under international law* (Publishing House "Kyiv-Mohyla Academy" 2013).

supplementing their contribution to revisiting important concepts of the law of genocide analysed in the preceding Chapters and contextualising the analysis conducted and conclusions reached to the Russian atrocities committed in Ukraine.

In other words, the present Chapter takes the Ukrainian context as a showcase to test the interpretation of the law provided previously. It will start by overviewing the evidence, potentially pointing to the commission of the five underlying acts. It will then proceed to define the targeted group as the Ukrainian national group and focus on whether available indicators may point to the intent to destroy the group "in whole" or, alternatively, "in part". It will further evaluate available indicators, both potentially supporting and refuting the allegations of genocidal intent, and conclude by offering a preliminary hypothesis on the alleged commission of genocide in Ukraine by the Russian forces.

There are also important preliminary caveats to make. Firstly, the present analysis is based solely on open-source information and does not claim to be an exhaustive or comprehensive evidentiary overview. The analysis is cautious of the fact that the most critical evidence relevant to the determination of the alleged existence of genocidal intent lies in the hands of the Ukrainian criminal justice system and has either already been obtained through the conduct of criminal proceedings (remaining confidential) or is about to be obtained and processed in the future on a nationwide level. Secondly and additionally, the present analysis does not claim to offer a final determination on the existence or absence of genocidal intent. Its intention is to demonstrate how the reading of the law on genocide related to the intended destruction of national groups outlined previously may be applied to the concrete real-life scenario. Its conclusions will be of primary relevance for the Ukrainian justice system actors investigating the alleged commission of the crime of genocide in Ukraine.

4.2. The commission of underlying acts (*actus reus*)

Throughout the full-scale invasion, Russian atrocities undertook a form of several out of five underlying acts that may amount to the crime of genocide. The first and necessary step always inevitably requires separating the conduct that *prima facie* is or is not capable of demonstrating the special intent.[578] At the initial stage of the analysis – before inquiring into the definition of the concrete protected group targeted and other considerations of *mens rea* – this entails at least separating the conduct exposing *discriminatory or persecutory* signs based on the victims' identity from the conduct that is inherently indiscriminate and could not by its very nature be directed at any protected group.[579]

A significant section of the Russian atrocities does not demonstrate such discriminatory signs since, by their very nature, they were not directed at any concretely distinguishable protected group but rather affected the Ukrainian population as such indiscriminately. These types of conduct undoubtedly fall outside of the scope of the analysis as the ones that, by their character, are incapable of demonstrating special genocidal intent. Therefore, e.g., civilian death or injury resulting from the conduct of hostilities (such as shelling of the frontline settlements or drone or missile attacks targeting civilian infrastructure) are mainly not encompassed by the analysis of the special intent (with the probable exception of targeted attacks at cultural heritage).

Similarly, various notorious incidents, such as extermination of the whole settlements (towns or villages, such as Bakhmut or Vovchansk) in the course of the hostilities, large-scale attacks on energy infrastructure during winter times, or the destruction of the Kakhovka Dam in June 2023, were – by their very nature – directed at the civilian population as a whole affecting persons belonging to various possible groups. While the discussion of the contours of defining the protected group targeted in Ukraine will follow up in Section 4.3 below, it is important to note that the protected group must not be equated to the overall civilian population of a party to an armed conflict since it would render the definition of protected groups meaningless and allow for bringing a genocidal aspect to every international armed conflict. Therefore, acts associated with the indiscriminatory conduct of hostilities should be excluded from the scope of the analysis.

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[578] Vishchyk, 'Indicators relevant for the evaluation of the alleged genocidal intent to destroy a national group' (2025) 104.
[579] *Ibid.*

The only plausible exception may *potentially* relate to the siege-related operations, such as the siege of Mariupol. It raises an important question of whether genocide can be committed not merely through the targeted and selected occupation-related offences (such as executions, torture and other forms of infliction of serious harm to individual victims within a community), or whether it can likewise encompass the contexts in which perpetrating forces besiege the locality and conduct a campaign of massive destruction that necessarily results in the elimination of the protected group's members alongside other individuals. In other words, can genocidal intent be established in a situation when the perpetrator forces blatantly target the whole civilian population in the besieged territory through extermination, while realising that this way, they would also destroy a part of the protected national group therein?

One potential argument would suggest that this would be an overly expansive interpretation. This will blur the lines between genocide and the crime against humanity of extermination and will essentially make a convincing proof of genocidal intent impossible since perpetrators lack any capacity to verify who exactly the victim of targeting was. In such a case, critics may claim, each and every instance of indiscriminate targeting may follow the same logic: perpetrators could assume that through indiscriminate conduct they – one way or another – may lead to the destruction of a protected group's members.

A counterargument may suggest a more nuanced contextual approach. On the one hand, there are situations of "sieges", defined by a technique of encirclement and bombardment that would isolate a particular locality and enemy forces therein with the aim to compel the enemy to surrender, to contain it or gain control over a locality.[580] Such situations are defined by the forces' *de facto* full "remote control" over the besieged areas. They should be distinguished from the situations (on the other hand) where the forces have the capacity to engage in the indiscriminatory conduct (e.g., long-range missile or

[580] International Committee of the Red Cross, 'Siege' <https://casebook.icrc.org/a_to_z/glossary/siege> accessed 17 January 2026.

artillery strikes against frontline areas that are not besieged) but lack the capacity to effectively maintain the area encircled and, respectively, potentially exterminate the whole or a hugely significant part of the population therein without providing them with an opportunity to leave. In the latter situation, an argument can be made that such a "remote control" gives perpetrators "full access" to attempt to destroy a protected group within a besieged locality as a part of the broader siege campaign, with the knowledge that as a part of targeting the broader civilian population, the perpetrator forces would inevitably destroy a protected group.

Such an argument is, however, premised on an important reservation. It is conditioned on the fate of the protected group's members *both* in other localities and their potential future fate once the siege is lifted. Particularly, it is important to consider siege-related types of destruction in the context of what was happening to the protected group's members in other localities under the perpetrating forces' control. For example, if, in parallel to the siege, protected group's members under the perpetrators' full physical control were subjected to underlying acts and other heinous conduct (such as executions or torture), it is plausible to argue that it did not matter to perpetrators in which way the group in a locality was about to be destroyed – be it through underlying acts against individual victims under the control or the eliminationist siege operation necessarily leading to the group's elimination. The same argument applies prospectively: if, upon the siege's completion, surviving protected group members would be subjected to underlying acts when under the complete control of perpetrators (such as, in the Ukrainian context, filtration measures involving executions and torture), the siege campaign can also be potentially regarded as a part of the genocidal campaign. Therefore, siege-type situations taken in isolation are incapable of demonstrating intent; only their attachment to parallel and later events (e.g., filtration measures applied) allow for the inference of genocidal intent from destruction. In any other instance, acts affecting the civilian population indiscriminately cannot be legitimately regarded as capable of showing genocidal intent.

With these reservations, the analysis moves to analysing available evidence of the commission of underlying acts in the Ukrainian context. The first of five underlying acts of genocide is killing,[581] requiring the infliction of death upon a person[582] that is intentional.[583] Killing can occur both through an act or an omission.[584] Therefore, the underlying act of killing can be committed through both direct (e.g., through execution by shooting) or indirect (e.g., deprivation of medical aid or imposition of inhumane conditions of life) infliction of death.[585]

According to the August 2025 Report by the UN Human Rights Monitoring Mission in Ukraine, since 24 February 2022, Russian aggression against Ukraine led to at least 50,597 verified civilian casualties, including 14,116 civilians killed and 36,481 injured.[586] The majority of the verified killings (12,308) resulted from the explosive weapons with wide area effects, while mines and explosive remnants of war caused 457 deaths and other incidents caused 1,351 deaths.[587] The latter category involved incidents in which civilians were killed "by fire from small arms and light weapons, including as a result of crossfire, sniper fire, escalation of force incidents (cases in which military opened fire on civilians whom they perceived as a threat), and wilful killings, as well as road accidents involving either military vehicles or civilian vehicles driven by military in the area of hostilities".[588] Important reservation to make is that these numbers are only inclusive of those incident that were officially verified by the Mission with the overall toll being – very likely –

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[581] Genocide Convention, Article II(a).
[582] ICC 'Elements of Crimes' 2, footnote 2.
[583] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 186.
[584] *Prosecutor v Katanga and Chui* (Decision on the Confirmation of Charges) ICC-01/04-01/07 (30 September 2008), para. 287, read in light of *Brdjanin* (Trial Judgement), para. 739.
[585] Global Rights Compliance, 'Basic Investigative Standards Manual for Documenting International Crimes in Ukraine' (May 2023) <https://globalrightscompliance.org/wp-content/uploads/2025/06/Basic-Investigative-Standards-Manual-for-Documenting-Crimes-in-Ukraine.pdf> accessed 17 January 2026, 263.
[586] UN OHCHR 'Ukraine. Protection of civilians in armed conflict. August 2025 Update' (10 September 2025) <https://ukraine.ohchr.org/sites/default/files/2025-09/Ukraine%20-%20protection%20of%20civilians%20in%20armed%20conflict%20%28August%202025%29_ENG.pdf> accessed 17 January 2026.
[587] *Ibid*.
[588] *Ibid*.

significantly higher (in particular because of the lack of access to the territories currently occupied by Russia).

At the same time, the numbers evidence the fact that most civilian deaths resulted from the use of explosive weapons and mines directed at the civilian population as such, in contrast to individual civilians. This, by the very nature of the means and methods causing death, negates the finding of the intent. Moreover, in most incidents, the finding makes it difficult – if not impossible – to assess whether the killing was intentional, resulted from negligence, including lack of precautions, or the violation of the proportionality requirements under international humanitarian law, or was not accompanied by any form of intent and knowledge at all.

One may thus assume, based on the provided fact only, that killing is unlikely to constitute the most widespread underlying act and, moreover, in most recorded incidents, is simply incapable of manifesting genocidal intent due to the nature of the means and methods causing victims' death. However, multiple individual incidents on the ground, particularly in occupied territories, stand out as being marked by a discriminatory character linked to the victims' identity and profile connected with the national identity.

For example, the UN Independent International Commission of Inquiry on Ukraine ("IICI") established "a widespread pattern of summary executions" in the Russian-controlled territories, especially during the first months of the full-scale invasion.[589] The IICI concluded that in the recorded cases of summary executions, Russian forces targeted victims "mostly for any form of real or perceived support of the Ukrainian armed forces", including veterans of the Anti-Terrorist Operation ("ATO"|) in the east of Ukraine (i.e., fighting Russian forces and their proxies from 2014 onwards) or members of the Ukrainian Territorial Defence, or "for any action directed against the armed forces of the Russian Federation".[590] Other grounds included the Russian forces' suspicion of providing

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[589] UN HRC 'Conference Room Paper of the Independent International Commission of Inquiry on Ukraine' (29 August 2023) UN Doc. A/HRC/52/CRP.4 (hereinafter – "IICI on Ukraine, A/HRC/52/CRP.4"), para. 298.

[590] UN HRC 'Report of the Independent International Commission of Inquiry on Ukraine' (25 September 2023) UN Doc. A/HRC/52/62 (hereinafter – "IICI on Ukraine, A/HRC/52/62"), para. 50. See also UNGA 'Report of the Independent International Commission of Inquiry on Ukraine' (18 March 2024) UN Doc. A/HRC/55/66, para. 56.

information about the troops' movement, "association with current or former military personnel, or for any behaviour that might have been deemed suspicious at the time".[591] While an argument can be made that targeting could be explained by the reprisals against the persons potentially or actually affiliated with the enemy, in certain cases, the treatment could also be viewed as resulting from the victims' perceived affiliation with the Ukrainian national identity pointing to the duality of motives. For instance, in one of the cases recorded by the IICI, a survivor recalled Russian soldier interrogating them using derogatory language for Ukrainians and threatening that a victim would be killed and would be the perpetrators "82nd killed *khokhol*" [derogatory term for the Ukrainians], if the victim did not provide information on the identity of persons passing information about the movement of Russian troops to the Ukrainian Armed Forces.[592] In another instance, the alleged reason for targeting was a tattoo perceived by the Russian forces as linking the victim to the Defence Intelligence of Ukraine or a haircut culturally traditional for Ukrainian Cossacks.[593]

Among those executed were reportedly Ukrainian Territorial Defence Members, ATO veterans and local officials.[594] Similar incidents of executions for the expression of support towards the Ukrainian nationhood have not been isolated throughout the invasion, especially during the initial periods of occupation.[595] At the same time, many other civilians were killed by the Russian forces for other reasons (often unknown) or under different circumstances not necessarily connected with their identity, such as presence in the streets or attempting to evacuate from occupation or the areas of hostilities.[596] As such,

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[591] IICI on Ukraine, A/HRC/52/CRP.4, para. 306.
[592] *Ibid*, para. 314.
[593] *Ibid*, paras 339, 346.
[594] See, e.g., *ibid*, paras 359-365, 370, 417.
[595] OHCHR Report (27 June 2023), para. 92; UN OHCHR 'Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation. 24 February – 15 May 2022' (29 June 2022) (hereinafter – "OHCHR Report (29 June 2022)"), para. 80; 'The occupiers in Luhansk region brutally executed a civilian for his pro-Ukrainian position' (*TSN*, 25 May 2023) <https://tsn.ua/en/ato/the-occupiers-in-luhansk-region-brutally-executed-a-civilian-for-his-pro-ukrainian-position-2336437.html> accessed 17 January 2025.
[596] See, e.g., UN OHCHR 'Report on the Human Rights Situation in Ukraine 1 February to 31 July 2022' (27 September 2022), paras 36-37.

publicly available evidence suggests that the underlying act of killing has not been the most prevalent *modus operandi* documented.

This finding is different for the second underlying act of genocide in the form of causing serious bodily or mental harm.[597] The act in question presupposes "harm that seriously injures the health, causes disfigurement, or causes any serious injury to the external or internal organs or senses".[598] Such harm must entail "a grave and long- term disadvantage to the person's ability to lead a normal and constructive life" (although not permanent or irreversible) and does not encompass mere temporary unhappiness, embarrassment, or humiliation.[599] The same way, serious mental harm differs from "emotional or psychological damage or attacks on the dignity of the human person not causing lasting impairment".[600]

It can undertake – but is not limited to – such forms of conduct as "torture, inhumane or degrading treatment, sexual violence including rape, interrogations combined with beatings, threats of death, and harm that damages health or causes disfigurement or injury".[601] Finally, it is not required that the underlying act in question is of a nature that in itself threatens the group's destruction in whole or in part.[602]

Throughout the full-scale invasion of Ukraine, Russian forces have systematically engaged in various acts that inflicted serious and/or mental harm to the Ukrainians supportive of the Ukrainian nationhood and national idea. They included arbitrary deprivation of liberty accompanied by the acts of torture, inhumane treatment, degrading treatment, sexual violence and rape, particularly, and other acts causing grave and long-term damage to victims. In one of the most typical patterns, as described below, Russian forces would abduct or otherwise unlawfully detain or forcibly disappear persons representative of the Ukrainian nationhood and national identity, hold them in detention

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[597] Genocide Convention, Article II(b).
[598] *Kayishema and Ruzindana* (Trial Judgement), para. 109.
[599] *Akayesu* (Trial Judgement), para. 502; *Krstić* (Trial Judgement), para. 513; *Karadžić* (Trial Judgement), para. 543.
[600] *Krstić* (Trial Judgement), para. 510.
[601] *Stakić* (Trial Judgement), para. 516.
[602] *Karadžić* (Trial Judgement), para. 544.

for prolonged periods in inhumane conditions, subject them to torture and other forms of ill-treatment and/or acts of sexual violence.

Although the actual numbers of civilian detainees remain unknown, in May 2025, the Ukrainian Ombudsman's Office reported the confirmed number of around 1,800 Ukrainian civilians detained for conflict-related reasons,[603] while the real numbers are likely significantly higher,[604] particularly given the lack of access to occupied territories. The Ukrainian Office of the Prosecutor General reported that between February 2022 and August 2025, based on the evidence in the open criminal proceedings, 15,250 civilians previously or currently detained by the Russian authorities were identified.[605]

The victims of unlawful detention primarily involved persons expressing pro-Ukrainian positions, opposing the occupation, or undertaking real or perceived support or assistance to the Ukrainian Armed Forces.[606] While in some cases, such support or assistance was connected with, e.g., the position of weapons, in other instances, the grounds related to various explicit expressions of the Ukrainian national identity, such as possession or demonstration of the "Ukrainian symbols, literature or tattoos characterised as "nationalistic" or "patriotic".[607]

The pattern of Russian conduct primarily targeted representative members of targeted communities, such as "journalists, media workers, civil servants, […] public officials, education-related staff, volunteers helping civilians amid the hostilities, and individuals expressing pro-Ukrainian views".[608] In other instances, the Office of the United Nations High Commissioner for Human Rights ("OHCHR") reported that the victim sampling as well included "local public officials, particularly heads of local communities or their deputies, as well as civil society representatives, humanitarian

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[603] 'Ombudsman Lubinets Dmytro' (*Telegram*, 9 May 2025) <https://t.me/dmytro_lubinetzs/8718> accessed 17 January 2025.
[604] UN OHCHR 'Treatment of Civilians Deprived of Their Liberty in the Context of the Armed Attack by the Russian Federation against Ukraine' (23 September 2025) (hereinafter – "OHCHR Report (23 September 2025)"), para. 22.
[605] *Ibid*.
[606] OHCHR Report (23 September 2025), paras 31-33; UN OHCHR 'Detention of Civilians in the Context of the Armed Attack by the Russian Federation against Ukraine. 24 February 2022 – 23 May 2023' (27 June 2023) (hereinafter – "OHCHR Report (27 June 2023)"), paras 39-40.
[607] OHCHR Report (27 June 2023), paras 40, 52.
[608] OHCHR Report (23 September 2025), para. 32.

volunteers, and informal community leaders such as teachers and priests".[609] Other categories of victims included "persons with real or perceived pro-Ukrainian views or affiliation with Ukrainian political entities, including persons who peacefully protested against Russian occupation in public spaces or via social media".[610] ATO veterans represented another category of victims.[611]

Torture was a common practice directed at the victims of unlawful detention.[612] For example, in March 2023, the IICI established that the use of torture by the Russian forces across Ukraine had a systematic and widespread character and amounted to a crime against humanity.[613] The IICI indicated that the victims of torture seemingly had been selected deliberately, e.g., due to their real or perceived pro-Ukrainian identity manifested, for example, by their suspected or actual affiliation with the Ukrainian armed forces.[614] The acts of torture were accompanied by the labels, such as "Nazis", "fascists" and "terrorists" (commonly used by the Russian forces as derogatory terms to label Ukrainians) or references to "denazification sessions".[615]

Russian forces have a wide range of methods of torture and other forms of ill-treatment, the most recurrent of which have been "severe beatings with a variety of instruments, such as batons and sticks, electric shocks to various body parts, mock executions, kicks, threats of death and violence to a detainee or their loved ones, a variety of stress positions, such as "bent walking" and prolonged kneeling on cement, and different forms of humiliation, including forced singing of the Russian anthem and patriotic songs".[616] In various incidents, torture was also accompanied by the acts of sexual violence, including rape, electrocution of genitals, forced nudity and threats of sexual violence.[617] Torture was used for various purposes, including punishing or intimidating

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[609] OHCHR Report (27 June 2023), para. 52.
[610] *Ibid*, paras 52, 55.
[611] *Ibid*, paras 47-49.
[612] OHCHR Report (23 September 2025), para. 42.
[613] IICI on Ukraine, A/HRC/52/62, para. 77; IICI on Ukraine, A/HRC/52/CRP.4, para. 489.
[614] *Ibid*.
[615] IICI on Ukraine, A/HRC/52/62, para. 73; IICI on Ukraine, A/HRC/52/CRP.4, para. 489.
[616] OHCHR Report (23 September 2025), para. 37.
[617] *Ibid*, para. 38; OHCHR Report (27 June 2023), paras 42, 89.

victims for their pro-Ukrainian views.[618] In some recorded instances, Russian forces "humiliated detainees by forcing them to shout pro-Russian slogans, listen to and sing the Russian national anthem and patriotic songs, and applaud the singers, under threat of beatings".[619]

In addition to other acts of ill-treatment, detainees were held in inhumane conditions, including being held in overcrowded cells with inadequate nutrition, water, medical care, and/or sanitation.[620] In many incidents, detainees were transferred to other occupied territories or Russia, where they were subsequently detained.[621] In other instances, the OHCHR documented a pattern of releasing victims with the subsequent banishment to Government-controlled territory,[622] effectively depriving them of the opportunity to remain in occupied territories. Victims reported various long-term life impacts resulting from the ill-treatment or inhumane conditions of detention.[623]

Additionally, the crime of genocide does not impose a requirement that its victims must be civilians only, and combatants, *hors de combat*, and prisoners of war may also become victims of genocide. The aforementioned pattern of conduct directed against the civilian detainees occurred in relation to targeting the Ukrainian prisoners of war, too. The OHCHR established that Russian authorities had subjected Ukrainian prisoners of war to torture, other forms of ill-treatment and inhumane conditions on a widespread and systematic basis.[624] The methods of torture applied replicated many patterns employed in relation to the Ukrainian civilian detainees.[625] OHCHR additionally documented the confirmed cases of death of ten male POWs and one retained medical personnel in the context of the internment resulting from torture and inhumane internment conditions.[626]

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[618] OHCHR Report (27 June 2023), para. 88.
[619] Human Rights Watch, 'Ukraine: Russian Torture Center in Kherson' (13 April 2023) <https://www.hrw.org/news/2023/04/13/ukraine-russian-torture-center-kherson> accessed 17 January 2026.
[620] OHCHR Report (23 September 2025), paras 43-46; OHCHR Report (27 June 2023), para. 89.
[621] OHCHR Report (27 June 2023), paras 77-80.
[622] OHCHR Report (27 June 2023), para. 95.
[623] OHCHR Report (23 September 2025), paras 56-57.
[624] UN OHCHR 'Treatment of Prisoners of War and Update on the Human Rights Situation in Ukraine. 1 June 2024 – 31 August 2024' (1 October 2024) (hereinafter – "OHCHR Report (1 October 2024)"), para. 28.
[625] *Ibid*, paras 29-30.
[626] *Ibid*, para. 45.

In conclusion, publicly available evidence presented by authoritative international organisations establishes the evidence of widespread and systematic acts of causing serious bodily and mental harm on discriminatory grounds. The pattern of conduct related to the second underlying act appears to be more prevalent in comparison to the underlying act of killing.

The third possible underlying act of genocide involves deliberate infliction of the life conditions calculated to bring about the group's physical destruction.[627] The act in question does not involve the methods resulting in immediate death but those which, ultimately, lead to the physical destruction of the group members.[628] For instance, they take a form of (but are not limited to) "subjecting […] to a subsistence diet, systematic expulsion from homes[, …] reduction of essential medical services below minimum requirement [or their denial]"[629] or "generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion".[630] The element of "calculated to bring about [physical destruction]" requires circumstances which will objectively lead to (slow) physical destruction (i.e., the death), even where it does not eventually occur.[631] Therefore, mere deprivation of food, water, sanitation, medication or other essentials at the refugee sites or within the context of detention as such will not be encompassed by the underlying act in question, unless sufficient proof is provided that they were deliberately calculated to bring about physical destruction (e.g., given the length and scale of such treatment).[632]

In the Ukrainian context, *prima facie*, there does not seem to be a plausible case falling within the ambit of the third underlying act. For example, as argued above, destruction of settlements, villages, towns and cities in frontline areas due to unlawful

[627] Genocide Convention, Article II(c).
[628] *Akayesu* (Trial Judgement), para. 505.
[629] *Akayesu* (Trial Judgement), para. 506. See also *Brdjanin* (Trial Judgement), para. 691.
[630] *Karadžić* (Trial Judgement), para. 547.
[631] *Ibid*, paras 546-547.
[632] *Kayishema and Ruzindana* (Trial Judgement), para. 548.

methods of conducting hostilities (such as indiscriminate attacks) or via extermination, does not demonstrate the intent directed at the destruction of the protected group in whole or in part. The same relates to victims confined in inhumane conditions in detention centres, where, despite the established proof of the infliction of serious bodily or mental harm, the evidence lacks the specific indications of them being "calculated to bring about [physical destruction]".

At the same time, in the context of a siege-related type of destruction described above, with perpetrators' "remote control" over the besieged area giving them "full access" to attempt to destroy a part of a protected group therein, the commission of this underlying act is hypothetically possible. The most prominent example in the Ukrainian context is the siege of Mariupol. Since the very beginning of the full-scale invasion, the civilian population of Mariupol was subjected to the siege constituent of the blatant shelling and bombardment of the city's civilian population combined with the deprivation of the objects essential to the survival, such as supply of food, water, electricity, gas, mobile connections, humanitarian aid and others, during the cold winter months.[633] Not only did the Russian attacks damage all of Mariupol's hospitals, but starting from 2 March 2022, it effectively entirely cut off the Mariupol residents from the water and electricity supplies.[634]

The destruction of this type, leaving the civilian population, inclusive of the protected group's members, exposed to slow death (in addition to attacks directly causing killing or serious bodily or mental harm), is likely to qualify as the third underlying act of genocide. This conclusion may raise several potential counterarguments, which are

[633] '"Our City Was Gone". Russia's Devastation of Mariupol, Ukraine' (Human Rights Watch, Truth Hounds, SITU Research, 2024) <https://www.hrw.org/sites/default/files/media_2024/02/ukraine0224web_0.pdf> accessed 4 January 2026, 23-178; '"The Hope Left Us:" Russia's Siege, Starvation, and Capture of Mariupol City' (*Global Rights Compliance*, 12 June 2024) <https://globalrightscompliance.org/wp-content/uploads/2025/06/20240612-Mariupol-ReportENG.pdf> accessed 4 January 2026, 13-49.

[634] 'High Commissioner updates the Human Rights Council on Mariupol, Ukraine' (*OHCHR*, 16 June 2022) <https://www.ohchr.org/en/statements-and-speeches/2022/06/high-commissioner-updates-human-rights-council-mariupol-ukraine> accessed 4 January 2026.

primarily related to the direction of the intent, and thus they will be addressed in the Section 4.4 below.

The fourth underlying act of genocide may undertake a form of "measures intended to prevent births within the group".[635] The underlying act in question may undertake the forms of "sexual mutilation, the practice of sterili[s]ation, forced birth control, separation of the sexes and prohibition of marriages".[636] Measures intended to cause birth prevention should not exclusively be limited to physical acts of violence only but can likewise cover acts causing mental impact leading to birth prevention within the group. For instance, the act of rape or other forms of sexual violence can fall under this category if they subsequently cause the victim's refusal to procreate, equal in consequence to the threats or trauma precluding the procreation.[637]

Although publicly available evidence does not point to widespread evidence of the commission of the underlying act by the Russian forces, certain documented patterns or clusters of acts may be indicative of it. The first cluster may concern the commission of acts of sexual violence or threats thereof in the occupation.[638] Although officially documented numbers do not necessarily point to the systematic or widespread occasion of such acts in comparison to other underlying conducts (such as torture), the acts of sexual violence (particularly in the nature of the extremely coercive environment of occupation) are often underreported (even beyond the fact that a significant portion of the Ukrainian territory continues to be under occupation as of late 2025 which precludes access to evidence, victims and witnesses).

The second cluster and pattern may concern the use of sexual violence against civilian detainees and prisoners of war. While not every act of sexual violence is necessarily constituent and indicative of the underlying act of prevention of births, when

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[635] Genocide Convention, Article II(d).
[636] *Akayesu* (Trial Judgement), para. 507.
[637] *Ibid*, para. 508.
[638] Ivana Kottasová, Olga Voitovych, 'Survivors say Russia is waging a war of sexual violence in occupied areas of Ukraine. Men are often the victims' (*CNN*, 30 May 2024) <https://edition.cnn.com/2024/05/30/europe/russia-sexual-violence-occupied-ukraine-intl-cmd/index.html> accessed 4 January 2026.

accompanied by the perpetrators' threatening or derogatory commentaries, it can fall under the notion of the fourth underlying act (for example, threatening to deprive a victim of the ability to have children because of their national identity or statements that sexual violence is committed in order to prevent a victim of giving birth to more "Nazis", "khokhols", or simply Ukrainians). While publicly available evidence does point to incidents indicative of such unlawful treatment via the use of various forms of sexual violence,[639] at this stage, further investigation requires Ukrainian justice authorities to inquire into this aspect of mistreatment of civilians and prisoners of war in the form of sexual violence.

The fifth underlying act of genocide entails the forcible transfer of children from one group to another. While the act of transfer of children was initially viewed exclusively through the lenses of "cultural genocide", it was eventually included as an underlying act of the biological method of destruction, i.e., the one by which perpetrators aim at precluding the biological survival of the group.[640] Therefore, it is not enough to demonstrate that children were taken from the group and re-educated in deprivation of their identity, but that the transfer of children impeded the biological future of the group.

The transfer of Ukrainian children to Russia has been one of the most widespread and consistent *modus operandi* of the Russian authorities. Publicly available evidence, including data shared by the Ukrainian authorities and civic society organisations, indicates that around 20,000 children were deported to the Russian Federation as of 2025.[641] At the same time, the exact number of affected individuals is impossible to reliably calculate, particularly due to the conflicting reports from both Russia and

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[639] Such as "rape, attempted rape, threats of rape and castration, beatings or the administration of electric shocks to genitals, repeated forced nudity and sexuali[s]ed humiliation": see OHCHR Report (1 October 2024), paras 29-30.

[640] See debates in UNGA 'Eighty Second Meeting Held at the Palais de Chaillot, Paris, on Thursday, 14 October 1948, at 10.30 am' (23 October 1948) UN Doc. A/C.6/SR.82, 186-191. See also Dimitrios A. Kourtis, 'The Greek Civil War and Genocide by Forcible Transfer of Children' [2024] 26(2) *Journal of Genocide Research* 142, 155-159.

[641] 'Data on 30,000 deported children: Kateryna Rashevska explains what's wrong with the figure currently being actively discussed' (*Ukraine Media Center*, 28 March 2015) <https://mediacenter.org.ua/data-on-30-000-deported-children-kateryna-rashevska-explains-what-s-wrong-with-the-figure-currently-being-actively-discussed/> accessed 4 January 2026; 'Children of War' <https://childrenofwar.gov.ua/en/> accessed 4 January 2026; 'Ukraine has already returned 1223 deported children from Russia' (*Ukrinform*, 24 February 2025) <https://www.ukrinform.ua/rubric-society/3963621-ukraina-povernula-z-rosii-vze-1-223-deportovanih-ditej.html> accessed 4 January 2026.

Ukraine.[642] Upon the transfer, Russian authorities have consistently subjected Ukrainian children to re-education, Russification and militarisation[643] in an extensive network of more than 200 re-education camps.[644] In that process, children's Ukrainian identity was subjected to various forms of attacks with the parallel imposition of the Russian identity narrative (e.g., by making children perform the Russian anthem or write letters to Russian soldiers, as well as punishing them for exposing the signs of the Ukrainian identity).[645] Additionally, the transfer has been accompanied with the change in children's legal status (i.e., through their subsequent placement in Russian foster families or childcare institutions, as well as imposition of the Russian nationality) aimed at "creat[ing] a framework under which some of the children may end up remaining permanently in the Russian Federation".[646]

All in all, the publicly available evidence convincingly shows that Russian forces in Ukraine have committed conduct constituting one or more of the five underlying acts, to varying degrees. The most important question remains whether the commission of such underlying acts was clearly directed at one of the protected groups and accompanied by the prerequisite genocidal intent to destroy such a group.

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[642] UNGA 'Independent International Commission of Inquiry on Ukraine. Note by the Secretary-General' (19 October 2023) UN Doc. A/78/540 (hereinafter – "IICI on Ukraine, A/78/540"), paras 93-94.

[643] 'Forcible Transfer and Deportation of Children from the Temporarily Occupied Territories of Ukraine to the Russian Federation' (*ZMINA*, April 2023) <https://zmina.ua/wp-content/uploads/sites/2/2023/06/children_eng_web.pdf> accessed 4 January 2026 (hereinafter – "ZMINA (2023)") 5, 18-21; Paige Farrenkopf, Caitlin N. Howarth, Nathaniel A. Raymond et al., 'Ukraine's Stolen Children: Inside Russia's Network of Re-Education and Militarization' (*Humanitarian Research Lab at Yale School of Public Health*, 16 September 2025) <https://files-profile.medicine.yale.edu/documents/e6294def-3f80-4d71-9cc7-91f6af70a523> accessed 4 January 2026 (hereinafter – "Farrenkopf, Howarth, Raymond et al. (Yale School of Public Health, 2025)") 1-2, 6-7; Vira Shurmakevych, 'Russia has deported nearly 11,000 Ukrainian children to "re-education" camps in 2025 alone (*Ukrainska Pravda*, 12 September 2025) <https://www.pravda.com.ua/eng/news/2025/09/12/7530611/> accessed 4 January 2026; Organization for Security and Co-operation in Europe (Office for Democratic Institutions and Human Rights) 'Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity, Related to the Forcible Transfer and/or Deportation of Ukrainian Children to the Russian Federation, by Prof. Veronika Bilkova, Dr. Cecilie Hellestveit and Dr. Elīna Šteinerte (4 May 2023) Doc No. ODIHR.GAL/37/23/Rev.1/Corr. <https://odihr.osce.org/sites/default/files/f/documents/7/7/542751_1.pdf> accessed 4 January 2026 (hereinafter – "OSCE ODIHR (2023)") 1, 21, 42, 76.

[644] Farrenkopf, Howarth, Raymond et al. (Yale School of Public Health, 2025) 1, 4.

[645] See, e.g., IICI on Ukraine, A/78/540, paras 101-102; OSCE ODIHR (2023) 21; ZMINA (2023) 18-21.

[646] IICI on Ukraine, A/HRC/52/62, para. 96.

4.3. Defining the protected group in the Ukrainian context

4.3.1. Outlining plausible theories and potential gaps

The diverse and multicultural Ukrainian society makes the exercise of defining the protected group targeted for potential destruction a relatively complex one, especially for those not privy to the society's internal dynamics. Ukrainians share multiple identities that, based on the Russian forces' pattern of conduct, may seemingly be targeted. In a hypothetical example, following, however, victims' collective image, when a Ukrainian-speaking priest of the Orthodox Church of Ukraine is subjected to torture, can their targeting be linked to the protected Ukrainian national, Ukrainian ethnic, or Ukrainian religious group? If a victim is tortured or executed for expressing their support for Ukrainian independence, can it be suggested that their targeting is explained by their political affiliation only and thus brings such targeting out of the realm of the crime of genocide (provided that political groups lack the protection from the crime)? The qualification may seem even more confusing given Russian perpetrators' and leaders' statements, commentaries and declarations. For example, the consistent reference to the derogatory terms "Nazis", "khokhols", "fascists", "nationalists", "ukrops" may make it difficult to pinpoint what exactly is the object of targeting.

Based on the patterns of Russian conduct in Ukraine, several potential theories are *prima facie* plausible, namely that the Russian forces have targeted:

- Ukrainian national group, namely a collectivity of individuals connected by reciprocal rights and duties and united by a deep level of the will to cohesion, mutual self-identification with the Ukrainian nation, manifested through a shared vision of the national project based on shared values and culture.
- Ukrainian ethnic group, namely a community of individuals united by the shared bonds of the Ukrainian language and culture, as well as Ukrainian ethnic origin.
- Ukrainian religious group(s), namely a community (communities) of individuals united by the shared denomination or way of worship.

- Ukrainian political group(s), namely a community (communities) of individuals united by shared political views and convictions (in which case, unlike in the previous three, such conduct is immediately situated outside of the scope of the crime of genocide, given the absence of protection for political groups).
- A group of individuals encompassing persons with various identities refusing to self-identify as "Russians" ("non-Russians").

It is thus clear that the object of Russian atrocities may potentially include three groups protected from the crime of genocide (national, ethnic and religious) while the racial group (traditionally defined by the hereditary physical features regardless of "linguistic, cultural, national or religious factors"[647]) clearly falls outside of the analysis. The preliminary overview of underlying acts and victims' profiles already allows for several important observations that highlight the gaps and inconsistencies across several theories.

Testing a theory proposing to view a Ukrainian ethnic group as an object of targeting may seem plausible in view of the Russian persecutory campaign trying to eliminate the use of the Ukrainian language in occupied territories, as well as target the presence of the Ukrainian cultural elements (e.g., by renaming streets or dismantling the monuments). At the same time, this theory does not explain why not every person speaking Ukrainian or a mix of Ukrainian and Russian was targeted, or why, among the victims targeted, there were Russian speakers in addition to Ukrainian speakers only. Likewise, the theory does not explain the presence among the victims of persons of diverse ethnic origins (for example, ethnic Russians, Crimean Tatars or others).

A theory offering to view Ukrainian religious group(s) may assist in explaining why, among the victims of underlying acts, Russian forces particularly targeted the priests of the Orthodox Church of Ukraine or the Ukrainian Greek-Catholic Church. However, this theory equally does not explain why, e.g., not every (former or actual) parishioner self-

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[647] *Akayesu* (Trial Judgement), para. 514.

identifying as affiliated to the religious community was targeted, or why the victims' profiles list extends far beyond the people representing certain religious movements, even if closely linked to the Ukrainian identity.

A theory viewing Ukrainian political group(s) as a potential object of targeting may seem attractive in order to explain why Russian forces targeted victims for opposing the occupation. It may claim that victims' pro-Ukrainian position and its manifestation represented an expression of political views, which Russia aimed at silencing, suppressing and eradicating. However, treating the victims as merely representing a collection of like-minded individuals with similar political views does not seem to accurately represent the contextual complexity of their identity. After all, the apparent grounds for targeting went far beyond what is typically understood to be "a political belief" in the ordinary meaning (e.g., affiliation with a particular political ideology or party).

Finally, one may allege that Russian forces' actions have been primarily directed at a broad group of individuals with different identities refusing to self-identify as "Russian" and therefore opposing the occupation and annexation under various pretexts (e.g., support of the Ukrainian independence and nationhood, political opposition to the Russian regime without affiliation with the Ukrainian state, etc.). This theory, however, overlooks the Russian authorities' primary focus on targeting the attributes of the Ukrainian identity (in addition to broader opposition to occupation). It also brings the "group" targeted out of the realm of the law of genocide, since protected groups cannot be defined negatively[648] (e.g., as "non-Russians").

It thus seems that the most plausible theory to comprehensively explain the logic uniting various discriminatory and persecutory acts of Russian forces is to allege that the targeted group was the Ukrainian national group. This Section will analyse how the Ukrainian national group should be defined and where its key constituent elements and contours lie; how the Ukrainian national identity is different to other identities uniting Ukrainians (including ethnic, religious and political); and how the Russian vision of the

[648] *Bosnia and Herzegovina v Serbia and Montenegro*, para. 194.

Ukrainian national identity has manifested itself throughout the history of Russian and Soviet colonial violence and in the contemporary narrative of Russian perpetrators and leadership.

4.3.2. Defining the Ukrainian national group and situating it within the spectrum of other Ukrainian identities

Conclusions from Chapter I indicate that "a national group" is defined through the lenses of the concept of "a nation", which, in turn, is viewed through the lenses of two combined approaches: civic-political or consensual (requiring a degree of mutual self-identification with a national project, cohesion and will to leave in a shared community) or ethno-cultural (centring the nation around certain shared inherited cultural elements). As was concluded in Chapter I, in reality, no approach works as a standalone concept, and all nations, to a certain degree, combine both.

An individual's affiliation with the nation / national group thus appears to rest on two premises – objective and subjective. While the former can be evident from common language, culture, folklore and traditions, as explained in Chapter I above, what distinguishes the national group from other protected groups is the fact of (i) political organisation and social attachment (ii) manifested in the will to live together as a single entity driven by joint aspirations, ideals and sentiments and even common experiences, myths and stories.[649] Hence, in the world of fluid identities nationality cannot be a purely "objective fact", but as well "a subjective belief" or, often, "an issue of presumed identity".[650] "Collective" identities of such kind can by their very nature be "social

[649] In the context of the application to the Ukrainian national group's context, see Timothy Snyder, 'Ukraine Holds the Future. The War Between Democracy and Nihilism' (*Foreign Affairs*, 6 September 2022) <https://www.foreignaffairs.com/ukraine/ukraine-war-democracy-nihilism-timothy-snyder> accessed 4 January 2026; Yuval Noah Harari, 'Why Vladimir Putin has already lost this war' (*The Guardian*, 28 February 2022) <https://www.theguardian.com/commentisfree/2022/feb/28/vladimir-putin-war-russia-ukraine?utm_source=dlvr.it&utm_medium=%5Btwitter%5D&utm_campaign=%5Brogue_corq%5D> accessed 4 January 2026; 'Historian Timothy Snyder: 'History Is Always Plural'' (*RFERL*, 20 June 2015) <https://www.rferl.org/a/russia-ukraine-interview-bloodlands-timothy-snyder-history/27082683.html> accessed 4 January 2026); Timothy Snyder, 'The War in Ukraine Has Unleashed a New Word' (*The New York Times Magazine*, 22 April 2022) <http://nytimes.com/2022/04/22/magazine/ruscism-ukraine-russia-war.html> accessed 4 January 2026.

[650] Lingaas (2020) 5 citing Max Weber, *Grundriss der Sozialökonomik, III. Abteilung: Wirtschaft und Gesellschaft* (Mohr Verlag 1922) 211.

constructs, "imagined" identities entirely dependent on variable and contingent perceptions, and not social facts, which are verifiable in the same manner as natural phenomena or physical facts."[651]

Hence, the Ukrainian national group consists of individuals united by a sense of reciprocal rights and duties, based on their mutual self-identification as part of the Ukrainian national project (i.e., the Ukrainian nation).

While the contours of this national project may be fluid and subjectively determined by each individual victim, they do share a certain degree of consistency in how the nation's past, presence, and future look, and in the values that determine the national idea. Among them is the emphasis on Ukraine's sovereignty and independence, as well as opposition to the Russian (and formerly Soviet colonialism). For example, according to Timothy Snyder, after Ukraine gained independence in 1991, it established its national identity based on three fundamental ideas. The first idea is plurality since the Ukrainian nation is not homogeneous and includes individuals of different origins, languages, religions, and other identities.[652] The second idea is the future, including "a kind of European destiny" for future generations, in contrast to the Russian obsession with "mythical ideas of the past".[653] The third idea underpinning the Ukrainian national identity is the orientation towards Europe.[654]

Ukrainian national group's identity is also premised on the shared understanding of the importance of certain historical figures and moments. Common political achievements, political destiny and collective memories, including those of protests,

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[651] ICI on Darfur Report (2004), paras 494, 499, particularly referring to Guglielmo Verdirame, 'The Genocide Definition in the jurisprudence of the ad hoc tribunals' [2000] 49 *International and Comparative Law Quarterly* 578, 592.
[652] Robin Pomeroy, Kateryna Gordiychuk, 'What we need to know about Ukraine's history: Professor Timothy Snyder on the Radio Davos podcast' (*World Economic Forum*, 29 July 2022) <https://www.weforum.org/agenda/2022/07/timothy-snyder-ukraine-history/> accessed 4 January 2026; Stefano Kotsonis, Meghna Chakrabarti, 'The Russia-Ukraine crisis and how Ukrainians are finding a new sense of national identity' (*wbur*, 8 February 2022) <https://www.wbur.org/onpoint/2022/02/08/russia-state-nato-ukrainian-national-identity> accessed 4 January 2026.
[653] Robin Pomeroy, Kateryna Gordiychuk, 'What we need to know about Ukraine's history: Professor Timothy Snyder on the Radio Davos podcast' (*World Economic Forum*, 29 July 2022) <https://www.weforum.org/agenda/2022/07/timothy-snyder-ukraine-history/> accessed 4 January 2026.
[654] *Ibid*.

uprisings, past wars and victorious achievements, are particularly important to shape the national will to cohesion and consolidate people as a nation.[655]

As Timothy Snyder argues, the main factors in Ukrainian identity are the experiences of the Maidan and the Russian invasion, which both consolidated a sense of belonging to the Ukrainian nation as a political nation.[656] Beyond the Orange Revolution, the Revolution of Dignity and the Russian invasion, the national identity has equally been shaped by the historical Russian colonial impression in both imperial and Soviet times. This particularly concerns national tragedies, such as the Holodomor, that play a crucial role in the national remembrance. Other important pinpoints for the construction of the national identity involve the Kyivan Rus and the perception of the Ukrainians as its descendants (in contrast to the Muscovites and further Russians), the Cossack times as a manifestation of national liberation struggle, the vision of Ukrainian independence as continuing from the national liberation struggle in 1917-1921 and the establishment of the Ukrainian People's Republic, as well as perceptions of certain historical figures as forming a nation's pantheon.[657]

At the same time, the Ukrainian national group incorporates not just the civic-political (consensual) elements, but, to a large extent, cultural-ethnic ones too. Albeit not always necessarily so for the subjective definition of every individual member of the national group, the Ukrainian language, traditional culture, and even religion (e.g., affiliation with the Orthodox Church of Ukraine or Ukrainian Greek-Catholic Church) may be at the core of how the national group is defined by its individual members.

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[655] Weber (1978) 396, 923 in Weber (2024) 304.

[656] 'Historian Timothy Snyder: 'History Is Always Plural'' (*RFERL*, 20 June 2015) <https://www.rferl.org/a/russia-ukraine-interview-bloodlands-timothy-snyder-history/27082683.html> accessed 4 January 2026. See also Yuval Noah Harari, 'Why Vladimir Putin has already lost this war' (*The Guardian*, 28 February 2022) <https://www.theguardian.com/commentisfree/2022/feb/28/vladimir-putin-war-russia-ukraine?utm_source=dlvr.it&utm_medium=%5Btwitter%5D&utm_campaign=%5Brogue_corq%5D> accessed 4 January 206; James Marson, 'Ukraine's Growing Sense of National Identity Puts It in Putin's Crosshairs' (*The Wall Street Journal*, 28 January 2022) <https://www.wsj.com/articles/russia-putin-targets-ukraines-growing-sense-of-national-identity-11643382476> accessed 4 January 2026.

[657] Hanna Matviyishyna, 'Rating of the most outstanding Ukrainians of all time: a sociologist told how the survey was conducted' (*Suspilne Novyny*, 16 October 2022) <https://suspilne.media/296244-rejting-najvidatnisih-ukrainciv-usih-casiv-sociolog-rozpoviv-ak-provodili-opituvanna/> accessed 17 January 2025.

However, it is also possible for a person to self-identify with the Ukrainian nation, even if they have a non-Ukrainian ethnic background or do not speak Ukrainian as their primary language. The degree to which civic-political and ethno-cultural elements of national identity prevail over one another or how exactly they interact will necessarily depend on the profile of every individual group member.

Viewing the Ukrainian national group as an object of targeting by the Russian forces appears to be the best possible explanation behind various Russian acts and policies seemingly directed against victims of rather diverse backgrounds, yet united by a shared national identity dedicated to the support of the Ukrainian national project. Other theories viewing different alternative protected groups as a potential object of targeting raise various important points for criticism. For example, considering a Ukrainian ethnic group (i.e., individuals united merely by the elements of the Ukrainian language and culture) as a potential target does not explain why the profiles of various victims of Russian atrocities include individuals who were either Russian speakers or were ethnically of the Russian or other ethnic backgrounds but not Ukrainian. At the same time, they were often targeted alongside Ukrainian-speakers or individuals sharing Ukrainian ethnic origin for the reasons of real or perceived manifestation of "pro-Ukrainian" identity. In contrast, many other people of Ukrainian ethnic origin have not been targeted by the Russian forces, especially when they express their support for the Russian occupation. It is therefore possible to consider oneself to be a "Ukrainian" by descent and even speak Ukrainian at home, but not belong to a national group, in view of the support of the Russian rule in the occupied Ukrainian territories.

Equally, considering religious groups, based on the cases of targeting of priests of the Orthodox Church of Ukraine or Ukrainian Greek-Catholic Church, does not fully encompass the context of their targeting: it was primarily premised on the fact that, in the Russian authorities' understanding, affiliation with the aforementioned religious communities is inherently linked to the Ukrainian national identity. Given the role that both religious communities played in the emergence and evolution of the modern

Ukrainian national identity, membership in them is not a standalone basis for targeting but is linked to the broader connection to the Ukrainian national group. Otherwise, treating them as a standalone object for targeting would present an incomplete picture, missing the features that unite them with other victims through shared national identity.

Membership in the Ukrainian national group is thus not premised on ethnic, linguistic or other prerequisites. It does accommodate individuals of different ethnic origins (e.g., ethnic Ukrainians, Crimean Tatars, Hutsuls, Boykos, Lemkos, Hungarians, Russians, Belarusians, Poles, and others) united by the very umbrella of belonging to the same nation. Similarly, the Ukrainian national group can and does unite individuals with various linguistic or cultural profiles, including Russian-speaking individuals. The national identity – unlike ethnic identity – does not require an exclusive link to culture or language at the individual level; at the group level, however, linguistic or cultural features may form an important pillar of the overall group's national identity.

Acknowledging the dichotomy between the Ukrainian national and ethnic identities and differentiating them also explains how Russia has managed to exploit the elements of the Ukrainian culture in its propaganda throughout the years of occupation. For example, in the territories occupied after 24 February 2022, occupation authorities used the image of "vyshyvanka" – Ukrainian traditional clothes – in a propaganda campaign to claim that "Russia is here [i.e., in occupied territories] forever".[658] Despite Russia's *de facto* elimination of the education in Ukrainian in occupied territories, technically, until summer 2025, Ukrainian education was available for pursuance.[659] Equally, despite the Ukrainian language being a representative ground for targeting, not every person speaking Ukrainian (or mixed Ukrainian and Russian) has faced targeting (e.g., residents of rural communities in occupied territories). The most plausible explanation is that Ukrainian ethnic identity

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[658] Anastasia Platonova, Svyatoslav Khomenko, '"These are our children, we are fighting for them." How children in Kherson are campaigning for Russia with embroidered shirts from the Kyiv region' (*BBC News Ukraine*, 26 August 2022) <https://www.bbc.com/ukrainian/news-62694297> accessed 17 January 2025.

[659] Donbas.Realii, Nataliia Nedielko, 'Breaking the Connection: Russia Takes the Fight Against the Ukrainian Language in Occupation to a New Level' (*Radio Svoboda*, 27 June 2025) <https://www.radiosvoboda.org/a/navischo-rosia-skasovue-vyvchennia-ukrainskoi-movy/33455873.html> accessed 17 January 2025.

as such is not perceived as a standalone target by the Russian authorities: it may be an object of targeting when linked to the Ukrainian *national* identity, but otherwise, ethno-cultural elements may be equally effectively exploited for propaganda purposes.

The dichotomy between the Ukrainian ethnic and national identity is equally critical to understand the history of Russian and Soviet colonial violence directed against the Ukrainians in retrospect.[660] Raphael Lemkin, the founding father of the term "genocide", caught the distinction rather contextually accurately in his 1953 address "Soviet genocide in Ukraine", dedicated to the commemoration of the Holodomor, Soviet-made 1932-1933 famine in Ukraine. In his address, Lemkin named the Soviet atrocities against the Ukrainian "nation" as a "classic example" of genocide in the pursuit of the Soviet attempts to erase national identities and replace them with the overarching "Soviet" pseudo-national identity.[661] To this end, acts directed against the Ukrainian nation constituted "[the] longest and broadest experiment in Russification".[662]

Lemkin argued that the Ukrainians were distinct from the Russians ethnically due to a separate culture, temperament, language, or religion.[663] The Ukrainians were also distinguished by the national aspirations, particularly by maintaining national unity, self-identifying specifically as Ukrainians and seeking independence,[664] all of which, in the eyes of the Soviet authorities, posed a significant threat to the very idea of Sovietism.[665]

In order to eliminate the threat, the Soviet authorities decided to adopt a sophisticated but calculated method of destruction. In Lemkin's opinion, because the Ukrainian national group was "too populous" for the mass and blatant elimination (as the Nazis adopted during the Holocaust), the destruction was targeted at the three foundations

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[660] For a detailed discussion see Vishchyk, 'Construing national and ethnic groups under the Genocide Convention through Soviet and Russian narratives on the Ukrainian identities' (2024) 19-23. See also Volodymyr Vasylenko, *The Holodomor of 1932–1933 in ukraine as a crime of genocide. Legal evaluation* (Olena Teliga Publishing House 2009); Volodymyr Vasylenko, Myroslava Antonovych (eds), *The Holodomor of 1932–1933 in Ukraine as a crime of genocide under international law* (Publishing House "Kyiv-Mohyla Academy" 2013).
[661] *Lemkin. Soviet Genocide in Ukraine* 47.
[662] *Ibid.*
[663] *Ibid* 48.
[664] *Ibid* 47.
[665] *Ibid* 50.

of the nation: intelligentsia (the brain), clergy (the soul) and peasantry (the body).[666] The goal, therefore, was to target the religious, intellectual, and political leadership, the "select and determining parts" of the national group whose elimination would lead to the group's destruction.[667] Through the systematic and repeated pattern, the Soviet authorities aimed at liquidating any "fresh outbursts of national spirit".[668] The targeting of intelligentsia, namely teachers, writers, artists, thinkers, and political leaders (the brain of the nation) that suffered the first blow paralysed the rest of the group's body.[669] The attack on the intelligentsia was followed or accompanied by the systematic and coordinated attacks on the religious and spiritual leaders, namely the Church, priests and clergy (the soul of the nation).[670] The attack on the nation's soul impacted the group's entire social structure since clergy families have traditionally been a cradle for future intellectuals, with the priests often serving as community leaders or running charity foundations and/or education institutions.[671] Finally, through famine (the Holodomor), the Soviets targeted independent peasantry – "the repository of the tradition, folklore and music, the national language and literature, the national spirit, of Ukraine" (the body of the nation).[672]

Targeting of the three pillars, combined with the tactic to fragment the nation through mixing it with other groups, would have aimed at the Ukrainian nation's absorption into a "Soviet nation" with the predominant underlying Russian "master" identity.[673] The disappearance of the three pillars holding the group together through the maintenance of its culture, beliefs and common ideas would lead to the destruction of the Ukrainian nation, the same way as if every single Ukrainian were killed, turning a national group into nothing more "than a mass of people".[674]

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[666] *Ibid* 48-50.
[667] *Ibid* 48.
[668] *Ibid*.
[669] *Ibid*.
[670] *Ibid*.
[671] *Ibid* 49.
[672] *Ibid.*In 2006, the Ukrainian parliament also recognised the Holodomor as the genocide of the Ukrainian peole. See Law of Ukraine "On the Holodomor of 1932-1933 in Ukraine" of 28 November 2006 No. 376-V.
[673] *Lemkin. Soviet Genocide in Ukraine* 50-51.
[674] *Ibid* 51.

Lemkin's argument explains why, even at the height of the terror and purge, the Soviet regime did not fully aim at the complete elimination of the Ukrainian language, traditions, folklore and other cultural elements. For example, even during the Stalin era and following the 1930s Great Purge of the intelligentsia, there were writers and artists working in Ukrainian. Likewise, Ukrainian remained the language of education in schools and universities. However, these cultural and linguistic elements were only tolerated and permitted when they stayed within the realm of the "Soviet Ukrainanism" and did not display any perceived or implied manifestations of the national aspirations. This is showcased by the Soviet authorities' consistent and paranoid reference to "nationalism" as a quintessential threat.[675] For example, a writer could continue their works in Ukrainian if it was for the sake of solidifying the Soviet domination and communist ideals, but would be eliminated if anything indicated their real or perceived support for the Ukrainian nationhood.

In fact, the Soviet Union, similar to modern Russia, attempted to create a pseudo-national overarching identity, displacing the national identities of the peoples that formed a part of the USSR. Various ethnic identities could be tolerated and even supported by the USSR (e.g., during the Korenizatsiia ("indigenisation") policies in the 1920s) as long as these distinct linguistic and cultural features did not threaten the imposed supremacy of the Soviet pseudo-national identity with the Russian language and culture at its core. The pseudo-national character of the Soviet "national" identity stems from the absence of two constituent features of national communities. The Soviet "identity" lacked both the ethno-cultural element (e.g., a distinct language and culture different from the Russian one and being based on the political ideology of communism in the first place) and civic-political or consensual (since its imposition on national groups by the Soviet leadership was forceful and violent). For example, unlike the Austro-Hungarian Empire, the USSR never aimed at constructing a supranational collective identity, leaving space for various

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[675] *Ibid* 49-50.

national groups' self-determination. Cultural attributes could only survive when exploited to support the political ideology.

This distinction between ethnic, national and pseudo-national identities in Ukrainian history allows for a better understanding and application of the same framework to the modern Ukrainian identities, identifying what the Ukrainian national group is or is not and which group represents the object of Russian targeting.

Equally, membership in the Ukrainian national group is not premised on Ukrainian citizenship. While citizenship can be an important indicator of connection to the Ukrainian state and/or recognition of mutual rights and duties among group members, it must not be taken as indicative of membership in the national group. For example, persons with Ukrainian citizenship can collaborate with the Russian occupying forces on a voluntary basis or, even outside the context of occupied territories, profess allegiance to Russia or be entirely indifferent on the identity level to the membership in any group at all. In other words, it is possible (and real) that despite the possession of a Ukrainian passport, an individual does not associate themselves with the Ukrainian national group or any other (protected) group at all and considers themselves to be "Russian".

Premising the membership in a protected Ukrainian national group on citizenship only would deprive stateless persons residing on the territory of Ukraine (including permanently) and professing allegiance to the Ukrainian nation of the scope of protection. In other words, the possession of a Ukrainian passport or absence thereof would mean turning a blind eye to an individual's genuine link with the nation – something that other protected groups do not entail.

This is the reason why considering "the Ukrainian people" (i.e., "narod"/"народ" in Ukrainian) as a potential object of alleged Russian genocide is an erroneous premise. The Constitution of Ukraine defines the concept of "people" ("narod"/"народ") as "citizens of Ukraine of all nationalities".[676] The concept is primarily based on the uniting link of citizenship, regardless of ethnic origin or national self-identification, and thus is overly

[676] Constitution of Ukraine, Law No. 254к/96-ВР of 28 June 1996, Preamble.

broad and blurred to fall under the definition of any of the four protected groups under the law of genocide. The concept of “people” can be broad enough to encompass various protected groups, yet cannot constitute a standalone potential object of the intended destruction. Therefore, the aforementioned Declaration of the Verkhovna Rada of 14 April 2022 referencing the Russian intent to destroy the “Ukrainian people” as “a separate national community”[677] contains a flawed equation: a people is not tantamount to a nation or a national group.[678]

The finding that citizenship need not be a prerequisite for membership in the Ukrainian national group raises a further question: whether it is possible for an individual to combine several national identities. This concerns, e.g., cases of multiple nationalities or cases of foreigners demonstrating genuine commitment to the Ukrainian national project, such as representatives of the Ukrainian diaspora abroad who continue to maintain strong ties with Ukraine despite their parallel other national identities. Since human identities are necessarily fluid, it should not be excluded that an individual can potentially possess several national identities combined with the Ukrainian one. It may seem to be more difficult to reach the same conclusion in relation to other protected groups, although such a determination is not impossible. For example, in the context of religious groups, within one denomination, an individual may (rarely but hypothetically) identify themselves more broadly as a Christian professing in different settings the Orthodox, Catholic or Protestant model of worship. In the context of ethnic groups, an individual may share several ethnic identities based on their ethnic origins (e.g., a person raised in an ethnically mixed Ukrainian, Polish, Jewish and Greek family) and affiliating themselves with every one of the ethnic groups.

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[677] Verkhovna Rada of Ukraine, Statement ‘On the Declaration of the Verkhovna Rada of Ukraine “On the Genocide Committed by the Russian Federation in Ukraine”’ (14 April 2022) No. 2188-IX <https://zakon.rada.gov.ua/laws/show/2188-20#Text> accessed 17 January 2026.

[678] For a related discussion, see Myroslava Antonovych, ‘The relationship between the concepts of “people” and “nation” in national and international law: in the context of Ukrainian nation-building’ in Volodymyr Morenets, Volodymyr Panchenko, Tetiana Yaroshenko (eds), *The one who revived Mohylianka: collection to the 60th anniversary of Vyacheslav Bryukhovetsky* (Kyiv-Mohyla Academy, 2007) <https://ekmair.ukma.edu.ua/server/api/core/bitstreams/4cacb532-5cc2-46ff-822a-42da3bc2c8a3/content> accessed 19 March 2026, 494-502.

Similarly, with the national groups, an individual may possess affiliation to several identities, with equal determination or with some of them taking precedence over the others. This raises an important consideration, e.g., in cases of multiple nationalities, especially in the modern world, where an individual is never in a stable tie with a particular national community and possesses ties with several states without necessarily having a predominant link with any of them. In a hypothetical scenario, a Ukrainian national may also possess a nationality of state A (where they own the most substantial amount of business and private property), state B (where their partner and children reside), state C (where their parents reside and where they spend considerable amount of time), and state D (where they go on holidays regularly and where, in their testament, they bequeathed to bury themselves). Considering that membership in the national group is premised on citizenship would entail that an individual in question automatically belongs to several different protected groups. What matters in reality is the effective and real link, similar to *Nottebohm*'s test, yet in a different variation, with every protected group in question. If an individual in question does not possess a predominant connection to any national group out of the several, they must be excluded from the scope of protection; if they demonstrate effective and real links to several, they can be considered as belonging to different national groups simultaneously. The issues surrounding the resolution of the "competition" between multiple national identities are only context-based questions *at the periphery* of the fact that we can have multiple national identities.

Equally, potential claims suggesting that Russian forces targeted victims purely based on their political opinions (i.e., support for Ukrainian independence, isolation from Russia, or resistance to occupation) are implausible. If this argument were to be adopted, it would turn the Ukrainian national group into an inherently political group – the argument that the Russian forces and ignorant outsiders may use for plausible deniability to claim that even if perpetrators did target victims through the underlying acts, it was only for the purpose of the elimination of political opposition to the regime. However, the Ukrainian national identity – as any national identity – despite its inevitable "civic-political" dimension to one degree or another, cannot be equated to political ideology. Although it necessarily involves political elements detached from what is commonly perceived as purely cultural, linguistic or religious identity (i.e., the vision of the past and future and deeper mutual intangible ties binding the group members together), national identity goes far beyond political ideology. More than that, national identity is, in fact, detached from any political ideology. Membership in the Ukrainian group does not account for an individual's affiliation with a political party or views on the political spectrum that are easily amenable to fluctuation, particularly through abandonment. Unlike ideology based on political opinion, the national identity represents a much more deeply rooted sense of self-identification, regardless of political affiliations, but closely tied to the nationhood. Therefore, even if the civic-political or consensual approach to defining the Ukrainian nation was adopted in isolation from the ethnic-cultural approach (where the membership would be based exclusively on the members' will to live together and form a shared political community – which, as the Ukrainian context shows, is not a fully accurate description), Ukrainian nation will not constitute a political group in the sense viewed by the drafters of the Convention. "Political nations", despite being political communities, must be differentiated from "political groups" in the sense historically attributed to them in the law of genocide.

Finally, Ukrainian national identity is closely linked to the Ukrainian state and its independence. The idea of an independent Ukrainian state has historically borne an important and powerful symbolic meaning to the Ukrainian nation and its members. Therefore, as already explained above in the context of citizenship, membership in the Ukrainian nation cannot be reserved for individuals who, despite residing in Ukraine and possessing Ukrainian citizenship, oppose the idea of Ukrainian autonomy, sovereignty, and independence, or support the idea of Ukraine's subjugation by Russia, or are indifferent to the fate of the Ukrainian state. This link between national identity and the Ukrainian state has further important implications for the analysis of the intent of the

Russian leadership and perpetrators, as reflected in their declarations and statements regarding the dismantlement of Ukrainian independence.

4.3.3. The Ukrainian national group through the lenses of the Russian leadership and perpetrators

As the jurisprudence of international tribunals indicates, when defining the targeted groups and membership therein, reference should be made to both objective factors, as well as the mindset of victims and perpetrators (i.e., stigmatisation of a group as a distinct unit in the eyes of the perpetrators).[679] Subjective indicators are particularly important as the "victim is perceived by the perpetrator […] as belonging to a group slated for destruction"[680] and the perpetrators may view the group in a different manner than how it is perceived by others or exists in reality.[681] Therefore, in order to reach a conclusive determination on the construction of the targeted group in Ukraine, the analysis has to look at both public speeches of the Russian authorities and statements of individual perpetrators of atrocities on the ground.

The analysis of the Russian public declarations is tainted by various competing and confusing claims about the Ukrainians and their identity. For example, in the three notorious statements between July 2021 and 24 February 2022, Russian President Vladimir Putin made several claims that may delude the understanding of what exactly Russia is seeking to target in Ukraine on the identity level. On 12 July 2021, the Russian President's website published a notorious article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians".[682] The very title of the article, as well as its narrative, seems to differentiate Russians and Ukrainians into distinct categories. The article begins by Putin repeating his previous claims that "Russians and Ukrainians were one people – a single whole", "a single people" and "the parts of what is essentially the same historical

[679] Tams, Berster, Schiffbauer (2014) 103-104.
[680] *Rutaganda* (Trial Judgement), para. 56.
[681] *Bagilishema* (Trial Judgement), para. 65.
[682] 'Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians"' (*President of Russia*, 12 July 2021) <https://web.archive.org/web/20210713093824/http://en.kremlin.ru/events/president/news/66181> accessed 17 January 2026.

and spiritual space".[683] Putin called "the emergence of the wall" between Ukrainians and Russians a "great common misfortune and tragedy" resulting from "the attempts to play on the "national question"".[684] In the article, Putin attempts to make a claim of the shared past between Ukrainians and Russians, depicting "Ukraine" as a mere periphery of Russia and referring to Ukraine as a simple "Malorossia" [i.e., derogatory reference to "Little Russia"].[685] Putin emphasised the significant role of the "natives of Ukraine" in the Russian Empire and the Soviet Union.[686] Putin made reference to the historical "common faith, shared cultural traditions, and […] language similarity" between Ukrainians and Russians.[687] Putin stressed that "the Russian Empire was witnessing an active process of development of the Malorussian cultural identity within the greater Russian nation, which united the Velikorussians, the Malorussians and the Belorussians".[688] In Putin's words, "the idea of Ukrainian people as a nation separate from the Russians" had "no historical basis".[689] Although Putin acknowledged that "the Soviet localisation policy undoubtedly played a major role in the development and consolidation of the Ukrainian culture, language and identity", Ukrainisation "was often imposed on those who did not see themselves as Ukrainians" and the Soviet decisions fed the narrative of the existence of "three separate Slavic peoples […] instead of the large Russian nation".[690] Putin concluded that "modern Ukraine is entirely the product of the Soviet era […] shaped – for a significant part – on the lands of historical Russia".[691] Putin spent a substantial amount of space to depict Ukraine post-2014 as governed by neo-Nazis and radicals.[692] He also pointed that Russia respects "the Ukrainian language and traditions and […] Ukrainians' desire to see their country free, safe and prosperous".[693]

[683] *Ibid.*
[684] *Ibid*.
[685] *Ibid*.
[686] *Ibid*.
[687] *Ibid*.
[688] *Ibid*.
[689] *Ibid*.
[690] *Ibid*.
[691] *Ibid*.
[692] *Ibid*.
[693] *Ibid*.

On 21 February 2022, in the address on the recognition of the independence of the so-called "Donetsk and Luhansk People's Republics", Putin reiterated the same narratives. He once again stressed the "inseparability" of Ukraine and Russia, with Ukraine being "an inalienable part of [Russia's] history, culture and spiritual space".[694] He also reiterated that Ukraine was created by Russia and the Soviets as a result of Lenin's concessions to "the nationalists".[695] The same narratives were later voiced during Putin's speech declaring the full-scale invasion of Ukraine on 24 February 2022.[696]

In this narrative, the use of derogatory terms is particularly crucial to analyse. Russia's reference to "nationalism", "Nazism" and "neo-Nazism" is particularly illustrative. In Russia's vision, "Nazism" could be linked to various events or behaviours, e.g., being associated with the 2014 Revolution of Dignity,[697] policies promoting the support for the Ukrainian nationhood and separation from the Russian influence derogatorily labelled by Russia as "Ukrainisation", "De-Russification" and "Russophobia".[698] They included, e.g., the government's linguistic, cultural and religious policies solidifying the Ukrainian national identity instead of the Russian ones, prosecution of individuals promoting pro-Russian views, limiting the influence of pro-Russian media,[699] Ukrainian national commemoration policies, including those related to

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[694] 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026

[695] *Ibid*.

[696] 'Address by the President of the Russian Federation' (*President of Russia*, 24 February 2022) <https://web.archive.org/web/20220309150811/http://en.kremlin.ru/events/president/transcripts/statements/67843> accessed 17 January 2026.

[697] 'Statement by the Minister of Foreign Affairs of the Russian Federation Sergey Lavrov during the high-level segment of the 49th session of the UN Human Rights Council via videoconference, March 1, 2022' (*Ministry of Foreign Affairs of the Russian Federation*, 1 March 2022) <https://www.mid.ru/ru/press_service/minister_speeches/1802169/> accessed 17 January 2026.

[698] UNSC '9027th meeting Thursday, 5 May 2022, 3 p.m. New York' (5 May 2022) UN Doc. S/PV.9027, 17-19; UNSC '9280th meeting Tuesday, 14 March 2023, 10 a.m. New York' (14 March 2023) UN Doc. S/PV.9280, 2-4.

[699] 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026; UNSC '9280th meeting Tuesday, 14 March 2023, 10 a.m. New York' (14 March 2023) UN Doc. S/PV.9280, 2-4.

Holodomor.[700] Even Ukrainian patriotic slogans (such as "Glory to Ukraine" and "Glory to Heroes") were deemed to be "a symbol of Nazism".[701]

Hence, "(neo-)Nazis" and "nationalists" in the eyes of the Russian authorities were selected as a central target during the invasion of Ukraine. In Putin's vision, in 2014, "nationalists, neo-Nazis, Russophobes" seized power during the unconstitutional *coup d'état*[702] establishing "aggressive and nationalistic regime",[703] whereby radicals and nationalists forced their will on "the weak authorities […] infected with the virus of nationalism".[704] According to Putin, "aggressive nationalism and neo-Nazism" was thus "elevated to the rank of national policy."[705]

At the same time, Russian authorities' rhetoric appeals to the distinction between the Ukrainian authorities and "the people". Back in 2014, Putin stressed that "fraternal Ukrainian people have always been and will remain of foremost importance for [Russia]".[706] In 2021, Putin once again repeated that for "millions people" in Ukraine, "the anti-Russia project is simply unacceptable."[707] In Russia's narrative, the Ukrainian society

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[700] 'Statement of the Russian Foreign Ministry in connection with the resolution of the German Parliament on the topic of mass famine in the USSR in 1932-1933' (*Ministry of Foreign Affairs of the Russian Federation*, 1 December 2022) <https://mid.ru/ru/foreign_policy/news/1841172/?lang=en> accessed 17 January 2026.

[701] 'Mariia Zakharova' (*Telegram*, 3 January 2023) <https://t.me/MariaVladimirovnaZakharova/4522> accessed 17 January 2026.

[702] 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026; 'Address by President of the Russian Federation' (*President of Russia*, 18 March 2014) <https://web.archive.org/web/20150414011451/http://en.kremlin.ru/events/president/news/20603> accessed 17 January 2026.

[703] 'Russian press: Is Moscow ready to invade Ukraine?' (*Russian BBC Service*, 25 April 2014) <https://www.bbc.com/russian/russia/2014/04/140425_rus_press> accessed 17 January 2026; 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026.

[704] 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026.

[705] *Ibid*.

[706] 'Address by President of the Russian Federation' (*President of Russia*, 18 March 2014) <https://web.archive.org/web/20150414011451/http://en.kremlin.ru/events/president/news/20603> accessed 17 January 2026.

[707] 'Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians"' (*President of Russia*, 12 July 2021) <https://web.archive.org/web/20210713093824/http://en.kremlin.ru/events/president/news/66181> accessed 17 January 2026.

was "faced with the rise of far-right nationalism, which rapidly developed into aggressive Russophobia and neo-Nazism".[708]

Pursuing this narrative, Russia declared the "denazification" of Ukraine as one of the key objectives behind the full-scale invasion aimed at "protecting" Russia from threats and peril emanating from "the ruling Ukrainian regime"[709] and "cleaning Ukraine from the Nazis, from pro-Nazi people and ideology".[710] The "Ukrainian people" were simply believed to be "held hostage" by the "nationalist" regime.[711]

In other words, Russian leadership initially appeared to believe that the "nationalist" or "Nazi" section of the population that was to be targeted and neutralised was limited to a relatively little proportion of the Ukrainian population, such as high-level authorities and "nationalist battalions" (e.g., "Azov" or "Right Sector" frequently labelled as "nationalist" or "Nazi" by the Russian propaganda[712]). The remaining population was seemingly perceived as pro-Russian, neutral or passive and therefore susceptible to accepting the Russian rule. This is why, when declaring the full-scale invasion of Ukraine in 2022, Putin called upon the Ukrainian population "to work together ... without allowing anyone to interfere in our affairs and our relations" and upon the Ukrainian military "to refuse to carry out [the junta's] criminal orders, […] lay down arms and go home."[713] A day later, Putin claimed that "the main clashes of the Russian army, as expected, are not taking place with regular units of the armed forces of Ukraine", but with "nationalist

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[708] 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026.

[709] 'Address by the President of the Russian Federation' (*President of Russia*, 24 February 2022) <https://web.archive.org/web/20220309150811/http://en.kremlin.ru/events/president/transcripts/statements/67843> accessed 17 January 2026.

[710] 'Peskov said that Ukraine ideally needs to be "cleansed of the Nazis"' (*TASS*, 24 February 2022) <https://web.archive.org/web/20220224174054/https://tass.ru/politika/13836767> accessed 17 January 2026.

[711] See, e.g., 'Address by the President of the Russian Federation' (*President of Russia*, 24 February 2022) <https://web.archive.org/web/20220309150811/http://en.kremlin.ru/events/president/transcripts/statements/67843> accessed 17 January 2026; UNSC '8974th meeting Wednesday, 23 February 2022, 9.30 p.m. New York' (23 February 2022) UN Doc. S/PV.8974, 12.

[712] See, e.g., UNSC '8998th meeting Thursday, 17 March 2022, 3 p.m. New York' (17 March 2022) UN Doc. S/PV.8998, 14.

[713] 'Address by the President of the Russian Federation' (*President of Russia*, 24 February 2022) <https://web.archive.org/web/20220309150811/http://en.kremlin.ru/events/president/transcripts/statements/67843> accessed 17 January 2026.

formations" and "nationalists" embedded in regular Ukrainian units and inciting them to armed resistance.[714] Putin urged the service personnel of the Ukrainian armed forces not to let "neo-Nazis and Bandera use your children, your wives and old people as human shields" and to "take power into [their] own hands" since "it will be easier for [Russia] to come to an agreement than with this gang of drug addicts and neo-Nazis, who settled in Kyiv and took the entire Ukrainian people hostage".[715]

However, as the Ukrainian resistance persisted, Russia's initial purported view that there was only an insignificant part of the population being "nationalists" or "Nazis" started to expand to a broader range of persons emblematic of resistance. In early March 2022, Putin claimed that he would "never give up conviction that Russians and Ukrainians are one people" although "some of the inhabitants of Ukraine were intimidated, many were duped by Nazi nationalist propaganda, and someone deliberately, of course, followed the path of Bandera, other Nazi henchmen".[716] Later, Putin claimed that "the brainwashing of the citizens of Ukraine, the use of neo-Nazi, extremely nationalistic ideology for decades, one way or another, did their job"[717] and many of those opposing Russia "do not even understand what they are doing, do not understand that they are being used simply as pawns in someone else's game."[718] According to Putin, "[in] Ukraine they managed to instil such pseudo-values into the minds of *millions* of people, which led to the fact that anti-Russia was created on this territory, sowing hatred, raping the minds of people, depriving them of their true history. Everything has been done in order to reshape the consciousness of millions, and the wick was very skillfully raised to the disintegration of our country."[719]

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[714] 'Meeting with permanent members of the Security Council' (*President of Russia*, 25 February 2022) <https://web.archive.org/web/20220225170205/http://kremlin.ru/events/president/news/67851> accessed 17 January 2026.
[715] *Ibid*.
[716] 'Meeting with permanent members of the Security Council' (*President of Russia*, 3 March 2022) <https://web.archive.org/web/20220307025307/http://kremlin.ru/events/president/news/67903> accessed 17 January 2026.
[717] 'Meeting with historians and representatives of traditional religions of Russia' (*President of Russia*, 4 November 2022) <https://web.archive.org/web/20221104144116/http://kremlin.ru/events/president/news/69781> accessed 17 January 2026.
[718] 'Meeting with the mothers of servicemen – participants of the SMO' (*President of Russia*, 25 November 2022) <https://web.archive.org/web/20221125124850/http://kremlin.ru/events/president/news/69935> accessed 17 January 2026.
[719] 'Meeting with historians and representatives of traditional religions of Russia' (*President of Russia*, 4 November 2022) <https://web.archive.org/web/20221104144116/http://kremlin.ru/events/president/news/69781> accessed 17 January 2026.

In April 2022, the Russian envoy in the UN Security Council argued that "[Nazis] are there [i.e., in Ukraine] and that, unfortunately, they are running the show. […] [T]here are many of them and they include numerous young people. […] We need to cut out the malignant Nazi tumour that is consuming Ukraine and would have eventually begun to consume Russia".[720] He called neo-Nazism and ultra-nationalism not "a marginal phenomenon" but "a mainstream policy of the Ukrainian authorities",[721] and claimed that "Ukrainian society has consistently been under the influence of nationalists for at least the past eight years", which "only further convinces [Russia] of the imperative of, and lack of alternative to, conducting Russia's special military operation."[722] In his words, during the years of Ukrainian independence, "a whole generation of people has been taught to hate Russia" "with a poisoned mentality",[723] and "children's words reflect the values and mindset of an entire society".[724]

Russian Ministry of Foreign Affairs reiterated the same claim about the "generation of Ukrainians obsessed with the idea of hatred and national superiority".[725] Russian Minister of Defence also stated that "radical nationalism planted by the Azov Battalion, became the ideology of the entire Bandera Ukraine" and called upon the fight against "any manifestation of Nazism" to be "uncompromising and comprehensive".[726]

On the localised level, Russian collaborators in occupied Ukrainian territories adopted a similar rhetoric. For example, deputy head of the occupation military-civilian administration of the Kherson region, Kirill Stremousov, broadly referred to participants of mass pro-Ukrainian rallies against the occupation as "Nazis" and holders of "not just

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[720] UNSC '9011th meeting Tuesday, 5 April 2022, 10 a.m. New York' (5 April 2022) UN Doc. S/PV.9011, 16.
[721] UNSC '9069th meeting Tuesday, 21 June 2022, 10 a.m. New York' (21 June 2022) UN Doc. S/PV.9069, 18.
[722] UNSC '9013th meeting Monday, 11 April 2022, 10 a.m. New York' (11 April 2022) UN Doc. S/PV.9013, 19.
[723] UNSC '9208th meeting Tuesday, 6 December 2022, 10 a.m. New York' (6 December 2022) UN Doc. S/PV.9208, 10.
[724] *Ibid* 11. See also UNSC '9027th meeting Thursday, 5 May 2022, 3 p.m. New York' (5 May 2022) UN Doc. S/PV.9027, 17-19.
[725] 'Statement of the Russian Foreign Ministry in connection with the execution of Russian prisoners of war by Ukrainian Nazis' (*Ministry of Foreign Affairs of the Russian Federation*, 9 February 2023) <https://mid.ru/ru/foreign_policy/news/1853228/?lang=en> accessed 17 January 2026.
[726] 'The Fight against any Manifestation of Nazism Must Be Uncompromising and Comprehensive' (*"Krasnaya Zvezda" – Journal of the Russian Ministry of Defence*, 22 August 2022) <https://web.archive.org/web/20220827053741/https://ric.mil.ru/Novosti/item/423016/> accessed 17 January 2026.

some kind of schizophrenia [but] a syndrome of some kind of mental retardation of certain segments of the population who are not just zombified".[727] In his words, "all those lovers of the Ukrainian world, which smells of Nazism and the absence of any kind of national patriotic ideology, [were] being detained."[728] The head of the occupation administration of the Kherson region, Vladimir Saldo, said that "neo-Nazi evil spirits [which] raised their heads must be eradicated" and "this time, the job [must be finished], without mercy."[729]

Similar narratives became prevalent in the propaganda spread by the Russian media. In early April 2022, Russian state-controlled media agency "RIA Novosti" issued a notorious article titled "What Russia Should Do with Ukraine?" by Timofei Sergeitsev, Russian political campaign manager, who concluded that the majority of Ukrainians – beyond merely political authorities – should be considered "Nazis" targeted for elimination.[730] Sergeitsev claimed:

"Denazification is necessary when a significant part of the people – most likely the majority – has been mastered and drawn into the Nazi regime in its politics. That is, when the hypothesis "the people are good – the government is bad" does not work. Recognition of this fact is the basis of the policy of denazification, of all its measures, and the fact itself is its subject matter. Ukraine is in just such a situation. […] Denazification is a set of measures in relation to the nazified mass of the population, which technically cannot be subjected to direct punishment as war criminals."

Sergeitsev's concept of "denazification" entails the completion of several stages. Firstly, destruction of the Ukrainian Armed Forces and "nationalist battalions" since "all of them have been equally involved in the extreme cruelty against the civilian population" and "genocide of the Russian people".[731] Secondly, the remaining population were

[727] 'Kirill Stremousov on why Ukrainian Nazis are out for blood' (*Ukraina.ru*, 23 August 2022) <https://web.archive.org/web/20220823231228/https://ukraina.ru/20220823/1037999121.html> accessed 17 January 2026.
[728] *Ibid*.
[729] 'Vladimir Saldo' (*Telegram*, 22 March 2023) <https://t.me/SALDO_VGA/576> accessed 17 January 2026.
[730] Timofey Sergeitsev, 'What Russia should do with Ukraine?' (*RIA Novosti*, 3 April 2022) <https://web.archive.org/web/20220403170507/https://ria.ru/20220403/ukraina-1781469605.html> accessed 17 January 2026.
[731] *Ibid*.

considered for punishment as "war criminals and active Nazis" through "total lustration", including the eradication of "any organisations associated" with the "practice of Nazism" inevitably targeting "a significant part of the masses", i.e., "passive Nazis" and "accomplices of Nazism" who tolerated and supported "the Nazi power".[732] In Sergeitsev's vision, "the just punishment of this part of the population is possible only as bearing the inevitable hardships of a just war against the Nazi system, conducted as carefully and prudently as possible in relation to civilians".[733]

Third, the later stages of "denazification" would entail "re-education" in the form of "ideological repression (suppression) of Nazi attitudes and strict censorship" in the political, cultural and educational fields.[734] In Sergeitsev's words, since the whole generation raised after Ukraine gained independence was "Nazified", "denazification" will inevitably require "de-Ukrainisation", i.e., "a rejection of the large-scale artificial inflating of the ethnic component of self-identification of the population of [Russian historical] territories", and "de-Europeanisation".[735] Essentially, any pro-Ukrainian or pro-European attribute was considered for elimination "as Nazi".[736]

The cited statements represent only a fraction of the years-long Russian narrative about the Ukrainian identity. The cited fraction is, however, representative enough. It provides for several important outlooks on the Ukrainian identity by the Russian authorities. First, Russian authorities deny the right of Ukraine to exist as an independent state, determining its own internal and external policies autonomously. Any arguments to the contrary are perceived as "nationalist". Ukraine, in such an outlook, is nothing more than "historical Russian lands" that "mistakenly" gained independence as a result of the Soviet policies. Second, Russian authorities deny the right of Ukrainians to claim their existence as a separate nation: in the vision of the Russian ideology, Ukrainians, Belarusians and Russians form a part of the "triunite" "Russian nation". Respectively,

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[732] *Ibid*.
[733] *Ibid*.
[734] *Ibid*.
[735] *Ibid*.
[736] *Ibid*.

while the Russian ideology accepts the existence of Ukrainian culture and/or language in some form, as well as Ukrainians' distinctiveness from the Russians in a certain format, as well. However, the defining postulate, in the Russian ideology, is that Ukrainians belong to a broader "Russian nation" as a sub-category of the bigger whole. Therefore, Ukrainian ethnic identity may, in the eyes of the Russian regime, exist only when forming a part of the Russian national identity. In other words, one may speak Ukrainian or practice Ukrainian culture, but only to the extent to which it does not nurture national aspirations. In contrast, the narratives promoting Ukraine's independence, independent nationhood and national distinctiveness are labelled as "nationalist", "Nazi", "neo-Nazi", "fascist", "Banderovite" and others.[737]

Russian official statements, as well as broader propaganda claims, highlight that Russian authorities primarily view the Ukrainian nation and national identity as an object for targeting, while ethnic or other identities are seemingly viewed as having the potential to exist within the realm of acceptance of the Russian national identity.

4.4. The analysis of the intent to destroy the Ukrainian national group "in whole" or "in part"

Having established that the most plausible theory identifies the Ukrainian national group as a potential object of Russian targeting, the analysis should then proceed to the considerations pertaining to the assessment of the alleged genocidal intent. The present Section will focus on several important considerations mirroring the structure of Chapters II and III above. It will first focus on the potential scope of destruction (4.4.1), namely, whether the alleged intent targets the Ukrainian national group "in whole" or "in part". The analysis will then proceed to the nature of the alleged destruction applied (4.4.2) and

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[737] See, e.g., 'Putin: Western Ukrainians were second-rate, hence the origins of nationalism' (*Ukrainska Pravda*, 17 April 2014) <https://www.pravda.com.ua/rus/news/2014/04/17/7022790/> accessed 17 January 2026; 'Article by Vladimir Putin "On the Historical Unity of Russians and Ukrainians"' (*President of Russia*, 12 July 2021) <https://web.archive.org/web/20210713093824/http://en.kremlin.ru/events/president/news/66181> accessed 17 January 2026; 'Address by the President of the Russian Federation' (*President of Russia*, 21 February 2022) <https://web.archive.org/web/20220222015010/http://en.kremlin.ru/events/president/news/67828> accessed 17 January 2026.

conclude with the evaluation of a broader range of considerations pertaining to the alleged genocidal intent (4.4.3).

4.4.1. The intent to destroy the Ukrainian national group "in whole"

As analysed in Chapter II, defining the Ukrainian national group "in whole" can theoretically be done following two alternative approaches. The "universalist" approach would suggest that the Ukrainian national group in whole represents the members of the Ukrainian nation around the globe, including both in Ukraine and in the diaspora. The "territorialist" approach would suggest that the Ukrainian national group "in whole" includes only members of the Ukrainian nation in Ukraine.

While the "universalist "approach may work better in cases of other protected groups, for the purposes of the national groups, the "territorialist" approach is a preferable model. First, it aligns the international jurisprudence of the ICTY that, in cases of Bosnian Muslims defined, *inter alia*, as a national group focused on the Bosnian Muslims in Bosnia and Herzegovina only. Second, it corresponds to the nature of the national groups as predominantly present within the territory of one state, particularly the state to which their national identity is closely linked. In the case of Ukraine, the Ukrainian national group's identity is inherently linked to the independent state of Ukraine, and, while upon exiting the country, members of the Ukrainian national group do not lose their national identity, it is preferable to limit the definition of the national group "in whole" to the territory of Ukraine where the majority of the group's members are aggregated. Finally, adopting the territorialist approach in the case of the Ukrainian national group helps to avoid potential conflicts or borderline situations, where, for example, members of the Ukrainian diaspora may share the Ukrainian ethnic identity and ethnic origin but pledge allegiance to another nation (e.g., Ukrainians in the US or Canada, especially those generations that were born and raised there).

Therefore, the Ukrainian national group "in whole" has to be defined as incorporating members of the Ukrainian nation on the territory of the state of Ukraine rather than globally.

At the current stage, it appears implausible that Russian authorities and forces may nurture the intent to destroy the Ukrainian national group "in whole". By analogy with the arguments made by the Appeals Chamber in *Krstić* in relation to the Nazis' intent during the Holocaust and the Bosnian Serb forces' intent during the Srebrenica massacre, the control of the Russian forces in Ukraine extends merely to the territories currently occupied. While Russia does have the capacity to affect the Ukrainian civilian population in Ukraine overall through long-range strikes, as was discussed above, such acts, due to their inherently indiscriminate character, are unlikely to be supportive of the proof of the intent. The Russian forces simply have not possessed the capacity to attempt to operationalise the intent to achieve the Ukrainian national group's full destruction.

While it remains possible that, as an ideal and/or long-term scenario, Russia may intend or desire the occupation of the overall territory of Ukraine, such a scenario remains overly speculative, even for the preliminary allegations to destroy the Ukrainian national group "in whole". As a matter of a hypothetical exercise, it remains nevertheless possible – based on the 2014-2022 scenario of occupied Crimea and parts of the Donetsk and Luhansk regions and the post-2022 full-scale invasion – that, if Russia were to gain control over Ukraine overall, it would be able to realise the potential to seek the destruction of the national group "in whole".

Currently, however, given the limited territorial control of the Russian forces over Ukraine, the only plausible theory relates to the intent to destroy the Ukrainian national group "in part".

4.4.2. <u>The intent to destroy the Ukrainian national group "in part"</u>

As outlined in Chapter II, although the destruction of the national group "in part" sought can be one of the two alternative manifestations of genocidal intent, the targeted part must be substantial. In order to examine the substantiality, it is of primary importance to determine which exact segment of the Ukrainian national group can be considered to be "a part".

4.4.2.1. Defining the targeted part of the Ukrainian national group

Based on the analysis of the international jurisprudence, one can assume that "a part" of the Ukrainian national group can be defined in at least two alternative ways. The first approach may focus on whether the persons targeted by the underlying acts (particularly the leadership of the national group in Russian-controlled territories) are substantial to the group "in whole". As explained in Chapter II, this approach, however, represents a misreading of the jurisprudence and does not find solid support. It would only be possible in rare cases when perpetrators possess control of the whole targeted group and thus are capable of focusing on eliminating the emblematic and prominent segments within the entire group (e.g., as in the case of Lemkin's interpretation of the Soviet intent to eliminate the Ukrainian nation via targeting intelligentsia, clergy and peasants). When the perpetration of genocide is limited by the perpetrator forces' control over a geographically limited area, defining a targeted part as inclusive of a particular strata or categories of the group's members appears erroneous and implausible.

The second alternative approach prevalent in international jurisprudence dictates that "a part" represents a geographically limited segment of the Ukrainian national group. In the Ukrainian national context, given the area of Russian forces' control and reach, the most logical conclusion would be to define *the Ukrainian national group in occupied territories* as a part of the group in question.

This approach is justified for several reasons. Firstly, it avoids compartmentalising the part into multiple parallel co-existing subparts (e.g., Ukrainian national group in every occupied region, city or town). Secondly, it allows for a better explanation of the narrative of Russian atrocities and the logic underpinning the commission of similar or identical acts and imposition of identical policies targeting the Ukrainian national identity throughout all occupied localities, instead of viewing them in isolation. Such an approach also aligns with the ICTY's approach, focusing on the Bosnian Muslims of the region of Eastern Bosnia as a part of the protected group (see Chapter II).

4.4.2.2. Substantiality of the targeted part of the Ukrainian national group in occupied Ukrainian territories

Having defined the part of the Ukrainian national group, the analysis must proceed to examining whether such part is substantial either quantitatively or qualitatively. As analysed in Chapter II above, quantitative assessment is always a starting point of the analysis and can be made both on the basis of absolute numbers and in relation to the size of the overall targeted group.

In the Ukrainian context, the quantitative assessment of the substantiality of the Ukrainian national group faces two major complications, rendering such an evaluation inherently unreliable and questionable. The first challenge relates to the numbers' accuracy. As was explained in Chapter I and in the present Chapter's Section 4.3, national identity – more than other identity protected by the criminalisation of genocide – is inherently fluid. Both in absolute terms and on the local level (e.g., in a particular region, city or town), it is impossible to estimate precisely how many persons self-identify with the Ukrainian national identity (in the absence of reliable sociological polling). Previously undertaken Ukrainian censuses are unhelpful since they have traditionally estimated the number of Ukrainian residents and, approximately, their ethnic, religious and other affiliations, but are incapable of estimating the percentage of residents sharing a sense of national identity or their presence (or percentage of presence) in a particular region (including in the territories currently occupied). Therefore, estimating (at least approximately) the number of members of the Ukrainian national group both in its entirety and within any geographically limited area is impossible given the very nature of the national group and fluidity of national identity (without a full-fledged, comprehensive and reliable sociological survey, which will, in any event, lack full reliability given the identity's fluidity).

Even if such estimates were possible, the second challenge relates to the absence of up-to-date, consistent and attested official (or unofficial) statistics related to both the number of Ukrainian residents, as well as their identities. In the Ukrainian context, the last official census was conducted in 2001,[738] with the demographic situation changing drastically throughout the following two decades. The latest digital census was carried out by the government in 2020 and did not include the data on the population composition in Crimea and the occupied territories of the Donetsk and Luhansk oblasts, while showing a rather drastic fall of the population rate from around 48,4 million (as of 5 December 2001) to around 37,3 million (as of 1 December 2019).[739] Alternatively, according to estimates by the Ukrainian Academy of Sciences, as of January 2022, around 42 million persons resided in the territory of Ukraine.[740] The 2022 full-scale invasion contributed drastically to the change in the population composition, making the accurate estimates improbable and unreliable. According to estimates by the Ukrainian Academy of Sciences, as of July 2024, the number dropped to 35,8 million, including 31,1 million in the Ukrainian government-controlled territories.[741] The same number of 35,8 million was shared in October 2024 by the Ukrainian government.[742] Especially, in the context of territories currently occupied, precise evaluation of the identity of the population that both stayed and left, including individuals' affiliation with the national group, is an impossible exercise.

Speculatively speaking, as a mere illustration, even taking the approximate estimates of around 4,7 million residents of occupied territories in comparison to the overall claimed population of 35,8 million as of July 2024, the part of the overall Ukrainian population amounts to around 13% under the Russian control. Taking it at its face value, the intended destruction of 4,7 million persons may arguably satisfy the

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[738] 'All-Ukrainian Population Census' (*State Statistics Service of Ukraine*) <https://www.ukrcensus.gov.ua/> accessed 17 January 2026.

[739] 'Comparing the data of the Ukrainian census of 2020 and 2001' (*Slovo i Dilo,* 23 January 2020) <https://www.slovoidilo.ua/2020/01/23/infografika/suspilstvo/porivnyuyemo-dani-perepysu-naselennya-ukrayiny-2020-2001-rokiv> accessed 17 January 2026.

[740] Oleksandr Bilous, 'How many people live in Ukraine: current estimate and forecast until 2051' (*RBK-Ukraina*, 2 October 2024) <https://www.rbc.ua/rus/news/skilki-naselennya-ukrayini-otsinka-sogodni-1727847652.html> accessed 17 January 2026.

[741] *Ibid*.

[742] Maria Naumenko, 'In July of this year, the population of Ukraine was 35.8 million people, – government' (*Espreso*, 7 October 2024) <https://espreso.tv/suspilstvo-v-lipni-tsogo-roku-chiselnist-naselennya-ukraini-sklala-358-mln-lyudey-uryad> accessed 17 January 2026.

threshold of substantiality in absolute terms, while 13% raises doubts as to the relative numeric substantiality (given that it is situated between 3% recognised previously as insufficient and around 50% recognised as sufficient in the jurisprudence, as described in Chapter II). However, the methodology in the provided hypothetical scenario is fundamentally flawed. It is based on the estimates of the *overall population* of occupied territories regardless of their identities (potentially inclusive of Russian settlers, pro-Russian individuals and people who do not self-identify with the Ukrainian nation). The number of members of the Ukrainian national group is necessarily lower than the overall number of the population, and percentage-wise will inevitably differ from region to region. It also depends on the duration of the occupation, whereby many potential members of the national groups left the territories under the Russian control throughout the course of the occupation.

Hence, undertaking the *quantitative* assessment of substantiality – as the first step of the analysis – in the context of the Ukrainian national group in the territories occupied by Russia proves to be impractical and unreliable. This, however, does not preclude that members of the Ukrainian national group in occupied territories constitute a substantial part of the whole national group based on *qualitative* considerations.

As analysed in Chapter II, the qualitative assessment is premised on the considerations of prominence, particularly whether the targeted part was emblematic of the entire group or essential to its survival to the extent that would affect the entirety of the group. Prominence can be evaluated in relation to individuals targeted where they qualify as a "part" themselves (personal prominence): this, however, does not prove to be case under the analysis since it would assume that victims of underlying acts (e.g., such as leaders) qualify as a part *vis-à-vis* the whole Ukrainian national group – a scenario out of the analysis' spectrum as explained in the Section 2.1.2.3.

Prominence can also be evaluated in relation to the geographically limited part of the group under targeting (territorial prominence). In *Krstić (Appeal)*, the key considerations related to the territorial prominence included:

- Whether the targeted geographically limited part was “of immense strategic importance” to both the victim group and the perpetrators, including whether its survival or destruction could disrupt the strategic goals of the perpetrators or the victim group to establish “a viable” political entity;
- Whether the elimination of the targeted geographically limited part “would have accomplished the goal of purifying the entire region” of the targeted group members;
- Whether the targeted geographically limited part was prominent in the eyes of both the overall victim group and the international community, e.g., in light of the attention attracted by the UN bodies;
- Whether the fate of the targeted geographically limited part “would be emblematic of that of [the entire group]” should it fall under the perpetrator’s control, i.e., whether elimination of the targeted part “would serve as a potent example to [the entire victim group] of their vulnerability and defenselessness in the face of [the perpetrator] […] forces”;
- Whether the authority and control of perpetrator forces extended beyond the targeted geographically limited part.[743]

Based on the criteria in question, members of the Ukrainian national group in the Russian-occupied territories may qualify as a qualitatively substantial part of the Ukrainian national group in whole irrespective of its numeric size in relation to the whole group. First, the regions – around 20% of the Ukrainian territory (as of January 2026)[744] – occupied by Russia, bear a strategic and emblematic meaning to both Ukraine and Russia. To Ukraine, Russia’s continued occupation of the areas in question and attempts to purify the territory of the remnants of the Ukrainian presence there constitute an existential threat to ensure the viability of statehood, independence and preservation of

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[743] *Krstić* (Appeal Judgement), paras 15-17.
[744] Tetyana Oliynyk, ‘Russia occupied more than 4,000 sq km of Ukrainian territory in 2025 – military analysts’ (*Ukrainska Pravda*, 1 January 2026) <https://www.pravda.com.ua/eng/news/2026/01/01/8014292/> accessed 17 January 2026.

the Ukrainian national identity independent from the Russian influence. Preservation of the presence of the Ukrainian national group in occupied territories bears a strategic meaning for the overall Ukrainian national group and the state of Ukraine in order to ensure the viability of the Ukrainian State in the future, including upon the potential territories' liberation.

In the vision of the modern Russian regime, preservation of the occupied territories under Russian control and taking more territory is an inevitable step on the way to achieving the ultimate goal of dismantling Ukrainian statehood, nationhood and national identity. The annexation of occupied territories is emblematic of this goal: losing the territories in question to Ukraine's liberation efforts would seriously undermine the key strategic goal underpinning Russia's objectives in relation to Ukraine and its nation. To achieve this objective, it is quintessential for Russia to purify the region from any elements supportive of the Ukrainian national identity and, through the policy of Russification, to ensure that the population of occupied territories is homogeneously Russian or pro-Russian.

Secondly, the prominence of the Ukrainian national group in occupied territories is highlighted by the attention paid to atrocities perpetrated therein by reputable international organisations, including under the auspices of the UN. For more than a decade of the Russian occupation of the Ukrainian territories, the OHCHR, the IICI and the Organisation for Security and Co-operation in Europe[745] have consistently highlighted Russia's violations of international law and fundamental human rights directed against the Ukrainian civilian population in occupied territories, particularly directed at persons supportive of the Ukrainian nationhood (e.g., with real and perceived "pro-Ukrainian" identity). Reputable non-governmental human rights organisations, as well as international and Ukrainian media, have consistently reported on the persecutory practices

[745] See, e.g., Organization for Security and Co-operation in Europe (Office for Democratic Institutions and Human Rights) 'Report on Violations and Abuses of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity, Related to the Arbitrary Deprivation of Liberty of Ukrainian Civilians by the Russian Federation by Prof. Veronika Bílková, Dr. Cecilie Hellestveit and Dr. Elīna Šteinerte' (25 April 2024) ODIHR.GAL/19/24/Corr.2 <https://www.osce.org/sites/default/files/f/documents/f/4/567367_0.pdf> accessed 17 January 2026.

of the Russian Federation in occupied territories.[746] In July 2025, ECtHR issued a decision in *Ukraine and the Netherlands v. Russia* establishing administrative practices and patterns of violations directed at the civilians in the Russian-controlled territories, including those of torture and inhuman and degrading treatment and directed against the civilians with real or perceived "pro-Ukrainian" views.[747] The ICC has issued two arrest warrants for the acts of unlawful transfer of children (albeit not under the genocide qualification) from occupied territories to Russia.[748] Russian-occupied territories and the Ukrainian population therein have thus been an object of increased international and media attention and scrutiny.

Third, the fate of the Ukrainian national group in occupied territories was emblematic of the one potentially expecting the Ukrainian national group entirely or in other localities, should they fall under the Russian control and rule. 11 years of the Russian occupation of Crimea and the areas of the Donetsk and Luhansk oblasts, as well as the occupation of the Kherson and Zaporizhzhia oblasts after the 2022 full-scale invasion, followed a clear pattern of policy. Once a territory falls under Russian control, the

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[746] See, e.g., Human Rights Watch, 'Education under Occupation. Forced Russification of the School System in Occupied Ukrainian Territories' (20 June 2024) <https://www.hrw.org/report/2024/06/20/education-under-occupation/forced-russification-school-system-occupied-ukrainian> accessed 17 January 2026; Human Rights Watch, 'Ukraine: Russian Torture Center in Kherson' (13 April 2023) <https://www.hrw.org/news/2023/04/13/ukraine-russian-torture-center-kherson> accessed 17 January 2026; Human Rights Watch, '"We Had No Choice". "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia' (1 September 2022) <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians> accessed 17 January 2026; Amnesty International, 'Ukraine: School teacher: A high-risk job under Russian occupation' (4 October 2024) <https://www.amnesty.org/en/documents/eur50/8578/2024/en/> accessed 17 January 2026; Amnesty International, 'Russia/Ukraine: 10 years of occupation of Crimea Russia is seeking to effect demographic change while suppressing Ukrainian and Crimean Tatar identities' (18 March 2024) <https://www.amnesty.org/en/documents/eur50/7805/2024/en/> accessed 17 January 2026; Amnesty International, 'Ukraine: "Like A Prison Convoy": Russia's Unlawful Transfer And Abuse of Civilians In Ukraine During 'Filtration'' (10 November 2022) <https://www.amnesty.org/en/documents/eur50/6136/2022/en/> accessed 17 January 2026; Joe Parkinson, Drew Hinshaw, ''The Hole': Gruesome Accounts of Russian Occupation Emerge From Ukrainian Nuclear Plant' (*The Wall Street Journal*, 18 November 2022) <https://www.wsj.com/articles/russian-occupation-of-nuclear-plant-turns-brutal-with-accusations-of-torture-and-beatings-11668786893> accessed 17 January 2026; Ian Lovett, Isabel Coles, 'Kherson Residents Tell of Torture, Abuse During Russian Occupation' (*The Wall Street Journal*, 16 November 2022) <https://www.wsj.com/articles/kherson-residents-tell-of-torture-abuse-during-russian-occupation-11668600584> accessed 17 January 2026; Andrew E. Kramer, 'Electrical Cords, Metal Pipes: In Kherson, Signs of Torture Emerge' (*The New York Times*, 16 November 2022) <https://www.nytimes.com/2022/11/16/world/europe/kherson-ukraine-detain-torture.html> accessed 17 January 2026.

[747] See, e.g., *Case of Ukraine and the Netherlands v Russia*, App. Nos. 8019/16, 43800/14, 28525/20 and 11055/22 (9 July 2025), paras 1117-1124, 1145-1150, 1178-1182, 1078-1083.

[748] 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova' (*Interntional Criminal Court*, 17 March 2023) <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> accessed 17 January 2026.

occupation authorities commence a campaign of targeting and eliminating any supporters and reminders of the Ukrainian national identity. Essentially, everyone manifesting or exposing the (real or perceived) signs of Ukrainian national identity or support of the Ukrainian nationhood becomes a potential target for violent targeting. The fate of the national group members in occupied territories thus serves as a "potent example [of] […] vulnerability and defenselessness"[749] to the rest of the group in the face of the threat of the Russian occupation.

Finally, the Russian area of control and reach is limited to the occupied territories only. While Russian forces do possess a capacity to affect the civilian population in non-occupied areas as well (e.g., through long-range missile or artillery attacks), Russia's effective control and capacity to discriminately target persons with the Ukrainian national identity is confined to the territories under occupation. Such territories are thus the only area in which Russia can fully realise its potential to target the Ukrainian national group, additionally highlighting the prominence of the group members as a substantial part of the group in such territories.

Therefore, there is convincing evidence to believe that members of the Ukrainian national group in Russian-occupied territories may qualify as a qualitatively substantial part of the Ukrainian national group.

4.4.2.3. Evaluating the evidence of the intent to destroy a substantial part of the Ukrainian national group

Having identified what segment of the Ukrainian national group may constitute a targeted part, the last – and the most fundamental – Section of the analysis must focus on evaluating, at least preliminarily, the indicators of the intent to destroy a part of the protected group. This involves the assessment of factors that both support and undermine the allegations of the existence of special intent.

The inference of the existence of genocidal intent behind the Russian forces' acts directed against the Ukrainian national group may be primarily supported by (i) the their

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[749] *Krstić* (Appeal Judgement), para. 16.

increased destructive potential (in light of both their methodology and the identity of victims targeted); (ii) the widespread commission of acts of socio-cultural destruction accompanying physical and biological destruction; (iii) the implied existence of the plan and policy to eliminate the Ukrainian national group, (iv) in combination with the hateful rhetoric and propaganda inducing such elimination both on state level and on the ground.

First, Russian acts against the Ukrainian national group in occupied territories seemingly demonstrate a high degree of destructive potential, both based on the methodology employed and the victims selected for targeting through underlying acts. Russian application of underlying acts, particularly the infliction of serious bodily and mental harm in combination with a more limited number of killings, has been widespread and systematic. It has expanded across the wide geographical scope of at least five regions currently occupied (and, in different time frames, other occupied areas). The commission of underlying acts has not been isolated, sporadic or scattered. It has followed an organised, concerted, and consistent pattern on a continuous basis. The attacks on victims have been repeated and multiple, involving grave consequences to their lives and the lives of their next-of-kin. The commission of the acts in question has also usually adopted the same *modus operandi.* Each of these factors significantly increased the destructive potential that the Russian targeting has been capable of inflicting on the existence of the Ukrainian national group in occupied territories.

Moreover, the destructive potential was heightened in view of the profile of victims targeted by the underlying acts. Those have primarily included persons who can qualify as leaders of the national group in occupied territories and possessed an emblematic position to the rest of the population, including other national group's members. Such persons included, among others, current or former community leaders and politicians, journalists, activists, civic society activists, participants of the anti-occupation and pro-Ukrainian protests, teachers, artists, current or former law enforcement and ATO veterans as potential group's defenders, etc. More broadly, with the flow of occupation, a category of "leaders" – in the eyes of the Russian perpetrators – seemingly expanded to anyone manifesting or exposing any real or perceived support of the Ukrainian national identity, including by simply possessing Ukrainian symbols (i.e., anyone going beyond a passive tolerance of the imposed Russian identity). The fact that victims were not targeted randomly but were systematically and purposefully selected for the reasons of their role in the communities and their identity, particularly national identity, significantly increases the destructive potential of eliminating the Ukrainian national group.

The campaign of targeting selected emblematic categories of victims via underlying acts was further supplemented by subjecting the broader Ukrainian national group to a variety of methods of socio-cultural targeting of the Ukrainian national identity. Those included violations of the right to freedom of assembly (e.g., by dispersal of peaceful pro-Ukrainian demonstrations[750]), freedom of expression (e.g., by shutting down the Ukrainian media[751] and harassing pro-Ukrainian journalists[752]), rights to enjoy one's own culture (e.g., by dismantling symbolic Ukrainian monuments,[753] renaming streets linked

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[750] OHCHR Report (29 June 2022), para. 122; 'Ukraine: Torture, Disappearances in Occupied South' (Human Rights Watch, 22 July 2022) <https://www.hrw.org/news/2022/07/22/ukraine-torture-disappearances-occupied-south> accessed 17 January 2026; Daniel Capurro, 'Russian troops open fire on unarmed Ukrainian protesters in occupied city of Kherson' (*The Telegraph*, 21 March 2022) <https://www.telegraph.co.uk/world-news/2022/03/21/russian-troops-open-fire-unarmed-ukrainian-protesters-occupied/> accessed 17 January 2026; Iryna Balachuk, 'Thousands in Kherson come out to rally against occupier, the aggressors open fire' (*Ukrainska Pravda*, 13 March 2022) <https://www.pravda.com.ua/eng/news/2022/03/13/7330971/> accessed 17 January 2026; 'Russian military disperse rally in Berdyansk: people beaten, shots fired' (*Ukrinform*, 20 March 2022) <https://www.ukrinform.net/rubric-ato/3435132-russian-military-disperse-rally-in-berdyansk-people-beaten-shots-fired.html> accessed 17 January 2026; 'Pro-Ukraine Rally Dispersed By Russians In Kherson After City Administration Forced Out' (*RFERL*, 27 April 2022) <https://www.rferl.org/a/kherson-ukrainian-rally-dispersed/31824009.html> accessed 17 January 2026; Jennifer Rankin, ''It was scary': acts of resistance in Russian-occupied Kherson' <http://theguardian.com/world/2023/apr/19/it-was-scary-acts-of-resistance-in-russian-occupied-kherson-ukraine> accessed 17 January 2026.

[751] UN OHCHR 'Human rights situation during the Russian occupation of territory of Ukraine and its aftermath. 24 February 2022 – 31 December 2023' (20 March 2024) (hereinafter – "OHCHR Report (20 March 2024)"), para. 52; Maria Korenyuk, Jack Goodman, 'Ukraine war: How Russia replaces Ukrainian media with its own' (*BBC News*, 23 April 2022) <https://www.bbc.co.uk/news/world-europe-61154066> accessed 17 January 2026.

[752] OHCHR Report (20 March 2024), para. 53; 'Russian forces in Ukraine detain and harass journalists; authorities clamp down on Russian media' (*Committee to Protect Journalists*, 10 March 2022) <https://cpj.org/2022/03/russian-forces-in-ukraine-detain-and-harass-journalists-while-authorities-clamp-down-on-russian-media/> accessed 17 January 2026; 'A Year of the Big War: 497 Crimes against Journalists and Media Committed by Russia in Ukraine' (*Institute of Mass Information*, 24 February 2023) <https://imi.org.ua/en/news/a-year-of-the-big-war-497-crimes-against-journalists-and-media-committed-by-russia-in-ukraine-i51010> accessed 17 January 2026.

[753] Leon Aron, 'See occupied Mariupol, where dread and suspicion reign' (*The Washington Post*, 3 May 2023) <https://www.washingtonpost.com/opinions/2023/05/03/mariupol-occupied-photos-dread-suspicion/> accessed 17 January 2026; 'Occupiers in Mariupol destroy memorial to defenders: they want to put Nevsky on a horse' (*Ukrainska Pravda*, 3 August 2022) <https://www.pravda.com.ua/news/2022/08/03/7361660/> accessed 17 January 2026; Iryna Balachuk, 'Occupiers dismantle monument to victims of Holodomor in Mariupol' (*Ukrainska Pravda*, 19 October 2022) <https://www.pravda.com.ua/eng/news/2022/10/19/7372573/> accessed 17 January 2026; ''Glory to Ukraine' Memorial' (*Ukrainian Institute*) <https://ui.org.ua/en/postcard/glory-to-ukraine-memorial/; https://khpg.org/en/1608814139> accessed

to the Ukrainian history or identity,[754] targeting libraries and archives and removing and eliminating Ukrainian books,[755] "Russifying" education[756] and replacing Ukrainian curriculum with Russian ones,[757] "re-education" of children in camps,[758] etc.).

The systematicity, multiplicity and repetition of acts following the same pattern of conduct raise a plausible allegation of the existence of the Russian plan or policy to target the Ukrainian national group for destruction. Although, as explained in Chapter III, the existence of a plan or policy is, arguably, not a necessary legal ingredient of the crime, its inference may substantially increase the likelihood of demonstrating the existence of genocidal intent. Given the concerted nature of Russian acts throughout various occupied territories and over the extended period of time and the involvement of various forces (e.g., military, Rosgvardia, law-enforcement, riot patrol forces, civilian occupation

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17 January 2026; 'A monument to the Holodomor victims was destroyed in occupied Luhansk' (*The Holodomor Museum*, 18 July 2024) <https://holodomormuseum.org.ua/en/news-museji/a-monument-to-the-holodomor-victims-was-destroyed-in-occupied-luhansk/> accessed 17 January 2026.

754 Lori Hinnant *et al*., 'Russia scrubs Mariupol's Ukraine identity, builds on death' (*Associated Press*, 23 December 2022) <https://apnews.com/article/russia-ukraine-war-erasing-mariupol-499dceae43ed77f2ebfe750ea99b9ad9> accessed 17 January 2026; 'Russia renames 86 streets named after Ukrainian figures in occupied Melitopol' (*Kyiv Independent*, 5 February 2023) <https://kyivindependent.com/russia-renames-86-streets-named-after-ukrainian-figures-in-occupied-melitopol/> accessed 17 January 2026.

755 Richard Ovenden, 'Putin's War on Ukrainian Memory' (*The Atlantic*, 23 April 2023) <https://www.theatlantic.com/ideas/archive/2023/04/russia-war-ukraine-occupation-libraries-archives/673813/> accessed 17 January 2026; Halya Coynash, 'Russian invaders remove Ukrainian language and literature from schools' (*The Kharkiv Human Rights Protection Group*, 13 September 2022) <https://khpg.org/en/1608811138> accessed 17 January 2026; 'Russians seize and burn Ukrainian books' (*Ukrainska Pravda*, 6 February 2023) <https://www.pravda.com.ua/eng/news/2023/02/6/7388039/> accessed 17 January 2026; Cahal Milmo, 'Ukraine war: Russia is 'erasing Ukrainian history' by ransacking libraries and burning books' (*iNews*, 6 February 2023) <https://inews.co.uk/news/world/ukraine-war-russia-erasing-ukrainian-history-ransacking-libraries-burning-books-2131753> accessed 17 January 2026.

756 Maksym Vishchyk, 'Occupation of Minds: IHL Response to Russian Education Policies in the Occupied Ukrainian Territories' (*EJIL.Talk!*, 12 October 2022) <https://www.ejiltalk.org/occupation-of-minds-ihl-response-to-russian-education-policies-in-the-occupied-ukrainian-territories/> accessed 17 January 2026.

757 Kayleen Devlin, Maria Korenyuk, 'Ukraine war: History is rewritten for children in occupied areas' (*BBC News*, 31 August 2022) <https://www.bbc.com/news/world-62577314> accessed 17 January 2026; Yuliia Nazarenko, Iryna Kohut, Tetiana Zheriobkina, 'Education in the occupied territories of Ukraine (February 24 – April 30, 2022)' (*CEDOS*, 2 May 2022) <https://cedos.org.ua/en/researches/education-in-the-occupied-territories-of-ukraine-february-24-april-24-2022/> accessed 17 January 2026; Oleksandr Yankovskiy, ''Teaching Children To Hate': Russian Occupation Officials Preparing To 'Russify' Ukrainian Schools' (*RFERL*, 9 July 2022) <https://www.rferl.org/a/ukraine-russify-schools-invasion-parental-rights/31936097.html> accessed 17 January 2026.

758 Humanitarian Research Lab at Yale School of Public Health, 'Russia's systematic program for the re-education & adoption of Ukraine's children' (14 February 2023) <https://reliefweb.int/report/ukraine/humanitarian-research-lab-yale-school-public-health-russias-systematic-program-re-education-adoption-ukraines-children-enruuk> accessed 17 January 2026, 14-15; Olena Kurenkova, 'So that I did not hear that you are from Ukraine. You were born in the Russian Federation" – how Russia "re-educates" kidnapped Ukrainian children' (*Suspilne*, 10 April 2023) <https://suspilne.media/440985-sob-a-ne-cuv-so-vi-z-ukraini-vi-narodilisa-u-rf-ak-rosia-perevihovue-vikradenih-ukrainskih-ditej/> accessed 17 January 2026.

authorities, penitentiary system personnel, etc.) in the commission of acts of the same nature, by the same methodology and targeting the same victims, it appears unlikely that the commission of acts did not follow a clearly outlined plan or policy. This finding is corroborated by the fact that often victims were targeted pursuant to the "lists" obtained or compiled by the Russian authorities,[759] and other measures of identification of potential "pro-Ukrainian" individuals, such as door-to-door visits[760] and filtration measures.[761]

In addition to the very nature of the acts on the ground, the potential inference of genocidal intent is strengthened by the anti-Ukrainian hate speech, propaganda, and discriminatory rhetoric that has been both spread on the state level and expressed by individual perpetrators on the ground. As indicated in Section 4.3.3 above, on a state level, various Russian authorities and public figures have consistently been denying the Ukrainian nation's right to exist as a separate national group, depicting any opposition to this vision as "nationalist" or "Nazi" worth of elimination, particularly in the pursuit of the "denazification" objective of the full-scale invasion. The references to individual victims as "nationalists", "Nazis", "fascists" or the use of other derogatory statements have been equally common among individual perpetrators.[762] Finally, given the important role that a link to an idea of a sovereign and independent Ukrainian state bears for the Ukrainian national group, open and consistent denial of the right of Ukraine to exist as a state and Ukrainians to exist as a group separate from the "triunite" Russian people may support the inference of the intent to target and destroy the national group.

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[759] OHCHR Report (23 September 2025), para. 32; OHCHR Report (20 March 2024), para. 38; 'Russians use lists to target Ukrainians with detention, torture and executions: "This knife killed nine people. You'll be the tenth."' (*CBS News*, 22 December 2022) <https://www.cbsnews.com/news/russians-hunt-down-ukrainians-lists-detention-torture-executions-ap-investigation/> accessed 17 January 2026.

[760] IICI on Ukraine, A/HRC/52/CRP.4, para. 498; Iryna Romaliyska, 'Kherson Clampdown: Russian Authorities Going Door-To-Door, Mandating Russian Passports, Official Says' (*RFERL*, 15 August 2022) <https://www.rferl.org/a/kherson-clampdown-russia-passports-ukraine/31989546.html> accessed 17 January 2026.

[761] Media Initiative for Human Rights, '"Filtration" as a series of war crimes of Russia: from collecting personal data to torturing' (2022) <https://mipl.org.ua/wp-content/uploads/2022/07/OSCE_Filtration_eng_web.pdf> accessed 17 January 2026; The Media Initiative for Human Rights, The Human Rights Center ZMINA, The World Organisation Against Torture, "You're loyal to Ukraine – are you a Nazi?" Torture and other violations as crimes against humanity by the Russian army in Ukraine (July 2024) <https://zmina.ua/wp-content/uploads/sites/2/2024/07/rapport-ukraine-trorture-final-omct-web-pages-1-1.pdf> accessed 17 January 2026, 31.

[762] IICI on Ukraine, A/HRC/52/62, para. 73; IICI on Ukraine, A/78/540, para. 67; UNGA 'Independent International Commission of Inquiry on Ukraine. Note by the Secretary-General' (25 October 2024) UN Doc. A/79/549, paras 44, 69.

At the same time, certain factors may be seen as undermining the existence of the intent, offering alternative potential explanations of the Russian conduct. First, one may allege that Russia's selected method of targeting, instead of the massive, large-scale and blatant destruction, raises doubts as to the existence of the intent to destroy the national group. A potential argument, based on the comparison with the previous contexts where the commission of the crime of genocide was established through the judicial procedure, may suggest that the selected targeting was indicative of the persecutory rather than genocidal intent. For example, a potential concern may arise as to the number of killings, which is (based on the official statistics) relatively insignificant in comparison to, e.g., Rwanda or Srebrenica contexts. The second question that may arise is: if the Russian occupying authorities intended to destroy the Ukrainian national group, why would they miss the opportunity to physically exterminate every identified member of the national group under their immediate control?

Another potential argument undermining the existence of the intent may relate to the fate of the victims of underlying acts, many of whom were released upon detention instead of being subjected to further, more violent scenarios (e.g., executions, termless *incommunicado* detentions, prolonged imprisonment in inhumane conditions, etc.). In other words, if the Russian occupying authorities intended to destroy the Ukrainian national group, why would they miss the opportunity and let the victims go?

The third argument potentially refuting the allegations of genocidal intent may refer to potential countervailing intentions for targeting individual victims. This argument may suggest that victims were targeted not because of their national identity or membership in the national group *per se*, but, e.g., for the real or perceived support of the Ukrainian Armed Forces or the resistance movement in occupied territories. Hence, the argument may proceed, cruel as they were, the atrocities were primarily driven by the revenge and/or intention to eradicate security threats rather than the intent to destroy the national identity. Based on the combination of these factors, the alternative argument may suggest that, at most, Russian acts directed at the Ukrainian national group amounted to the crime against humanity of persecution on national and other grounds falling short of manifesting a clear genocidal intent without raising parallel potential reasonable inferences from the available evidence.

Finally, doubts as to the existence of the accompanying special intent may arise in relation to the underlying act of creating deadly conditions of life and transferring children. In relation to the former, a broader reading provided in Section 4.2 above would dictate that siege-type conditions (like in Mariupol) may potentially qualify as genocide in the form of creating deadly life conditions for the national group, since, despite the siege's ostensibly indiscriminate character, it creates the risk of the group's inescapable elimination in the area or occupation-type targeting should the area fall to the perpetrator forces' control. However, such broader reading is susceptible to criticism as well from the perspective of establishing the *mens rea* element without any alternative reasonable inference. A counterargument may suggest that when a perpetrator forces indiscriminately target the civilian population, their target is *precisely* the civilian population and not a protected group within such a civilian population. Otherwise, all indiscriminate atrocities always entail the risk that they may target a section of a protected group alongside the civilian population and thus every protected group may claim to be affected. It arguably deludes the definition of the intent since it does not allow for tracing its direction and creates a risk of blurring the crime against humanity of extermination with genocide. It also creates a risk of differentiated standards in relation to different underlying acts, where for acts committed by perpetrator forces against victims under their immediate control one have to demonstrate that the intent was directed at a victim belonging (or believed to belong) to a protected group but for siege-type of destruction such individualized rigour is not necessary and it is enough to suggest that the act *per se* created a risk of the group's destruction. At the same time, as Section 4.2 showed, broad reading is not necessarily devoid of reason.

As to the transfer of children, the evaluation of the intent is also complicated by the understanding that the transfer must represent a form of biological elimination of the group's ability to survive rather than merely reshaping its identity by re-education. This can be problematic in the case of transferred Ukrainian children for several reasons, in particular, since it is difficult to evaluate the children's exact affiliation with a protected group and its identity. In other words, many of the transferred children may sometimes arguably be too young to understand and claim their membership in a group or do not yet self-identify with any groups. This argument faces criticism in return: even where the transferred children lacked clear self-identification, their transfer deprives them of *any potential* for future self-identification with the national group by undermining the roots of their national identity from the outset.

Another argument potentially undermining the existence of genocidal intent in the transfer of the Ukrainian children relates to the fact that some children have been returned to Ukraine, thus, if it was Russia's intention to use them as a vehicle for the Ukrainian national group's destruction, why would Russian authorities not keep the children but release them instead? A counterargument here would indicate that genocidal destruction again should not be performed in the most efficient or effective method and can be left incomplete, especially due to the perpetrator forces' sensitivity to public opinion or the prospect of obtaining incentives. Therefore, if releasing a number of children is important, for instance, to maintain an image of "good faith" negotiations or create a media perception of the willingness to facilitate children's return home, the presence of the intent in transferring and keeping the majority is not necessarily excluded. Moreover, if the intent is to destroy the national group in occupied territories under the perpetrator forces' control, the children's return to a broader group outside of occupied territories does not negate the proof of the intent (a parallel can be made with Srebrenica and allowing Bosnian Muslim children to continue their existence elsewhere, yet not in Srebrenica).

Lastly, one may argue that the fact that not all children have been transferred also risks undermining the intent. An argument can suggest that if the intent was to truly undermine the Ukrainian national group's ability to survive, procreate and reconstitute itself in occupied territories, why would not *all children* as potential holders of the national identity be transferred? A counterargument, however, may point to the categories of children transferred, namely, orphans and other children deprived of parental care or children taken from parents during filtration measures.[763] In the absence of guardians or parents, the national identity of these children could be directly amended through transfer and subsequent re-education, while children with parental care would be subjected to socio-cultural targeting affecting their identity directly in occupied territories (e.g., through the education system, direct or indirect pressure on parents,[764] etc.). Therefore, the transfer of such children would be unnecessary if the same result could be achieved in occupied territory via other methods of socio-cultural targeting. This counterargument is, however, susceptible to criticism on the grounds of asking why Russia could not apply the same methods of targeting against kids without parental care in occupied territories, needing to transfer them to Russia instead of maintaining orphanages controlled by the occupation authorities.

The combination of these factors, both supporting and potentially undermining the existence of genocidal intent, will be analysed in the next Section, offering a preliminary hypothesis on the commission of the crime of genocide in Ukraine.

4.5. Preliminary hypothesis on the commission of the crime of genocide against the Ukrainian national group

Publicly available evidence provides the basis at least for the following plausible hypothesis linking Russian atrocities against the Ukrainian population to the crime of genocide directed at the destruction of the Ukrainian national group. An important caveat is that the hypothesis in question is merely a provisional allegation linking various factual

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[763] Paige Farrenkopf, Caitlin N. Howarth, Nathaniel A. Raymond *et al.*, 'Ukraine's Stolen Children: Inside Russia's Network of Re-Education and Militarization' (*Humanitarian Research Lab at Yale School of Public Health*, 16 September 2025) <https://files-profile.medicine.yale.edu/documents/e6294def-3f80-4d71-9cc7-91f6af70a523> accessed 4 January 2026, 3.

[764] Human Rights Watch, 'Education under Occupation. Forced Russification of the School System in Occupied Ukrainian Territories' (20 June 2024) <https://www.hrw.org/report/2024/06/20/education-under-occupation/forced-russification-school-system-occupied-ukrainian> accessed 17 January 2026; CrimeaSOS, 'Torture, violence, pressure and propaganda: what do Ukrainian children face under occupation?' (1 August 2025) <https://krymsos.com/en/katuvannya-nasylstvo-tysk-ta-propaganda-z-chym-zishtovhuyutsya-ukrayinski-dity-v-okupacziyi/> accessed 17 January 2026; Centre for Civil Liberties, 'How Russia violates the human rights of Ukrainian youth in the occupation: indoctrination, military propaganda, and forced change of citizenship' (12 August 2024) <https://ccl.org.ua/en/positions/how-russia-violates-the-human-rights-of-ukrainian-youth-in-the-occupation-indoctrination-military-propaganda-and-forced-change-of-citizenship/> accessed 17 January 2026.

patterns under the applicable legal conclusions above. The hypothesis in question only operates based on publicly available evidence, is not conclusive and is susceptible to change in light of the evidence disclosed by the Ukrainian justice actors. Nevertheless, it is important to outline in order to properly test legal conclusions against the background of the aforementioned facts in the case where the destruction of a national group is alleged.

The consistent, repetitive, and systematic pattern of the Russian conduct seems to reveal a two-stage methodology of targeting the Ukrainian national group, eventually leading to its (gradual but steady) disappearance in Russian-occupied territories of Ukraine. It has involved:

- Stage 1. Targeting the most representative members of the national group on the community level by the commission of underlying acts and other accompanying violent conduct.
- Stage 2. Targeting the remainder of the national group via a broader range of persecutory conduct, such as deportations and forcible transfer, harassment, suppression or suspension of a range of economic, social, cultural, and linguistic rights, deprivation of the Ukrainian nationality, etc.

The first step in the Russian *modus operandi* has involved focusing on the elimination of the most emblematic members of the targeted communities through one of the five underlying acts. This entails focusing on the Ukrainian national group's leaders on the community level, i.e., persons who by virtue of their official position, occupation, or other special qualities or features defining their profile, can influence the national group's opinions and actions (particularly maintaining support of the Ukrainian nationhood and national identity in occupation).

This category of persons can be labelled the skeleton that holds the national group together. They include various categories of the Ukrainian population, particularly, as explained above, current or former community leaders, political leaders, activists, civic society representatives, journalists, participants in anti-occupation and pro-Ukrainian demonstrations, educational staff, artists, current or former law-enforcement personnel and veterans as potential group defenders, etc.

With a flow of occupation and ongoing resistance, a category of "leaders" in the Russian authorities' mindset seemingly expanded to include anyone with a real or perceived pro-Ukrainian national identity, so that even the possession of national symbols could become a ground for targeting. While, as indicated above, an alternative argument regarding countervailing intentions may suggest that often, targeting was based on the allegations of the cooperation or affiliation with the Ukrainian Armed Forces (and therefore was directed at the perceived "security threat" rather than national identity), in the eyes of the Russian perpetrators, real or perceived assistance to the Ukrainian Armed Forces seemingly represented more than merely a threat but an expression of loyalty to Ukraine and manifestation of the national identity. This is manifested by the rhetoric often employed by lower-level perpetrators, labelling victims as "nationalists", "Nazis", "Banderovites", etc. In other words, persons suspected of any pro-Ukrainian position – due to verbal expressions, or participation in public events, or social media publications, or actual assistance to the Armed Forces – were perceived as a target for elimination based on their national identity and support of the Ukrainian nationhood.

This way, the first manifest element of the pattern of conduct involves focusing on individuals who form the core of the national group in the occupied territories, a "connective tissue" holding the group together, and whose disappearance is highly likely to undermine the viable survival of the national group under the occupation. The persons in question most often become victims of underlying acts. While, as discussed in Section 4.2 above, their physical elimination through killing has not been the most prevalent method of destruction, in most cases, victims were subjected to serious bodily and/or mental harm, including via imprisonment accompanied by torture, rape and other forms of sexual violence, as well as other forms of inhumane treatment. By targeting the leaders via underlying acts and other heinous conduct, Russian forces appear to ensure that the foundations of the Ukrainian national group in occupied territories are effectively removed.

The removal of leaders and their connection to the Ukrainian national group is at the heart of the Russian targeting policies. At the same time, the effects of the leaders' disappearance have to be examined against the background of the fate of the rest of the Ukrainian national group. The leaders' fate was emblematic to other members of the national group, i.e., anyone expressing their Ukrainian national identity, facing violent retribution. Given the fluidity of the national identity and the intangible ties binding its members, the leaders' fate can send a potent signal to other group members with lesser "public visibility" or will to express their national sentiments with the purpose of repressing or eradicating the signs of national identity and support to the Ukrainian nationhood. Russian policies seemingly followed the logic where the most representative members of the national group are subjected to underlying acts while the remainder can simply be expelled, subjugated or assimilated. As Timothy Snyder once put it, Putin's logic in 2022 thought of the presence of "some kind of artificial elite which is ruling Ukraine" without "really a Ukrainian nation" so with the elite's destruction, "the masses will be happy to be colonised and do what you say".[765]

Therefore, the second step of the Russian methodology has involved targeting the national identity of those who have not expressly manifested it but have nevertheless been capable of preserving and maintaining it (even if covertly). Therefore, in parallel with targeting leaders through underlying acts, the Russian authorities commenced a campaign to dismantle any other pillars of the national identity of the remainder of the group. This occurred through the eradication of the Ukrainian cultural and linguistic elements pertaining to the support of the national identity in all spheres of social life, particularly in education, media, or public spaces (e.g., via propaganda, monuments' removal, street renaming, etc.).

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[765] Robin Pomeroy, Kateryna Gordiychuk, 'What we need to know about Ukraine's history: Professor Timothy Snyder on the Radio Davos podcast' (*World Economic Forum*, 29 July 2022) <https://www.weforum.org/agenda/2022/07/timothy-snyder-ukraine-history/> accessed 4 January 2026.

In parallel, the Russification campaign aimed not merely at eliminating the Ukrainian national identity but, to the greatest effect possible, replacing it with the Russian national identity. This also imposed breaking the population's ties with the Ukrainian state and nationhood, not just on a cultural level but also via eradicating their Ukrainian citizenship, representing a legal manifestation of the links to the Ukrainian independent state. Although, as discussed above, citizenship is not in itself a prerequisite for defining the national group, it may nevertheless represent an important attribute of national identity as a manifestation of allegiance to a state and the nation it represents.

In this model, the transfer of children to Russia can be seen in two ways. First, it can constitute a separate underlying act committed with the intent to facilitate the destruction of the national group by impacting its future in a biological way, whereby children are taken as a vessel for the Ukrainian national group's continuous survival in occupied territories. The cases of children's return to Ukrainian-controlled territories in themselves do not negate the existence of the intent to destroy, which is directed at a part *in the occupied territories.* Second, children who remained in occupied territories were targeted alternatively, through a combination of various socio-cultural tactics, eliminating their links to the national group. These acts, as well as the fact of children's "re-education" upon transfer, serve as additional indicators of the intent.

In targeting the Ukrainian national group, the Russian authorities thus abstained from a massive and blatant destruction of its members. Instead, they employed a campaign of selected targeting of the most representative national group's members at the community level, whose disappearance would significantly undermine the remainder's ability to survive as a national group while also exposing such a remainder to a broad range of discriminatory conduct aimed at eliminating their national identity. As explained in Section 2.2, while establishing the commission of genocide requires the intent to destroy a national group via one (or several) of the five underlying acts of physical or biological destruction, the intended destruction sought does not require physical or biological destruction of every member of the targeted part of the group. As established by the ICTY's precedent in the Srebrenica context, the majority of the targeted part may survive physically or biologically even if the group to which they belonged disappears. The Ukrainian context is marked by a remarkable parallel: even if most of the Ukrainian national group in occupied territories is not targeted by underlying acts *per se*, this fact does not automatically negate the finding of genocidal intent.

Equally, the relatively low (publicly known) number of incidents of killings of the group members does not refute the allegations of genocidal intent. Genocide aimed at destroying the national groups should not necessarily be committed via killing a large percentage of group members (as associated, e.g., with the Holocaust or Rwanda). Killing of group members is only one of the five alternative underlying acts, and the commission of genocide can occur through the combination of acts, where killing only occupies a secondary place. The underlying act of infliction of serious bodily and mental harm that is widespread and systematic is equally capable of leading to the Ukrainian national group's destruction, even with the survival of its individual members.

The fact that the Russian forces have not employed what would otherwise appear to be the most "effective" methods of the group's destruction (i.e., methods bearing the highest possible destructive potential, such as blatant and mass elimination via killing) likewise does not negate the potential presence of genocidal intent. As noted by *Krstić (Appeal)*, even if the chosen method of targeting does not implement the destructive intent to the fullest and leaves the destruction incomplete, the failure to employ the most direct and efficient method may be explained by the increased public attention and the desire to minimise the risk of retribution.[766] In the age of increased media scrutiny, the perpetrators do not want to expose themselves to the risk of public scrutiny and retribution associated with the commission of widespread and systematic physical extermination of thousands or millions of victims. They can be more inclined to adopt techniques susceptible to "plausible deniability" and associated, e.g., with the relatively low numbers of victims or the fact that not all of them are killed in a brutal fashion. The perpetrators may be more

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[766] *Krstić* (Appeal Judgement), para. 32.

inclined to adopt more sophisticated methodologies of destruction, focusing on the key pillars holding the group together, such as the national group's leaders, in combination with targeting other attributes of the national identity, eventually leading to the group's disappearance. This factor may explain why Russian forces in occupied Ukrainian territories did not resort to a campaign of mass and large-scale physical targeting via killings. For maintaining plausible deniability for the public, it may be easier to adopt a more selective – yet, in the end result, not less effective – method of targeting dismantling the very pillars of the national group, which, as perpetrators may claim, was justified by the removal of "security threats". With the removal of the national group pillars via underlying acts, the targeting of the remainder via underlying acts was simply unnecessary: in combination with a range of other discriminatory acts, the targeting of the pillars would inevitably lead to the group's destruction.

Neither should the commission of the crime of genocide be immediate or rapidly executed. The previous contexts of the Holocaust, Rwanda and Srebrenica dictate this association, but the crime of genocide is not premised on the requirement of promptness. It can take the form of a gradual but persistent elimination of the group, achieved through the multiplicity of techniques and tactics. There appears to be no difference in whether the destruction of national group is achieved via mass rapid killing of the group members as a primary underlying act, or prevention of births or child transfer aimed at the elimination of the group in a long-term perspective, or the infliction of serious bodily or mental harm leading to the group's gradual elimination in combination with other discriminatory acts.

Especially in the case of an attempted destruction of national groups bound by intangible identity features (more than other protected groups), identifying every single potential group member for their destruction can be a complex – if not an impossible – exercise for perpetrators. The membership in a national group is not always defined by a uniform set of material attributes (e.g., cultural ones) or objective facts (e.g., religious practices or physical traits). Therefore, the selective nature of targeting the Ukrainian national group's members can equally be explained by the fact that it was objectively impossible for Russian forces to identify every single person supportive of the Ukrainian national identity, thus prompting a focus on individuals whose support for such identity was manifest.

Equally, the destruction of national groups does not require mass killing. For example, genocidal destruction of religious groups may take the form of a limited number of underlying acts directed against the group leaders coupled with the preclusion of the remaining members of the group from accessing their religious heritage, practices or places of worship, leading to the group's elimination, combined, at the same time, with a physical survival of the majority of group members. The destruction of the national group is premised on the elimination of key features binding the group (i.e., pillars of national identity), as well as emblematic persons fundamental for their preservation.

One of the key factors emanating from the international jurisprudence, after all, goes to the group's ability to reconstitute itself in the geographically limited locality that was the object of targeting. The combination of underlying acts leading to the physical destruction of the most emblematic national group's members coupled with the assimilation and/or expulsion and/or deportation of the others (actually professing or potentially capable of professing the national identity) would seemingly preclude the ability of the Ukrainian national group from reconstituting itself in occupied territories even if most of the national group members physically survived.

Finally, genocidal intent may be conditional. If the ultimate goal is the destruction of the national group, and if membership in national groups (like ethnic and religious groups) is not always inherited and predetermined but amendable and susceptible to abandonment (however complicated it is for an individual), genocidal intent may be conditional on the fact of an individual's decision to preserve their national identity and manifest it. In other words, the conditional genocidal intent may entail, upon targeting the most emblematic members of the national group, sending a message to the remaining members: abandon your identity (and thus membership in a national group) or face the same consequence via subjecting to an underlying act. The vision that genocide entails an unconditional and blatant destruction is tunnel vision. Since the object of the destruction is the group as such, the achievement of such destruction can be both unconditional and conditional, if accompanied by the commission of underlying acts (i.e., a simple ultimatum to abandon the identity to avoid targeting will not suffice).

4.6. Conclusions on the allegations of genocide in the context of Russian atrocities in Ukraine

Based on the factors outlined above, there are reasonable grounds to believe that Russian authorities' actions in occupied Ukrainian territories bear the signs of genocidal intent to destroy a substantial part of the Ukrainian national group.

While the full certainty of this conclusion will necessarily be premised on the evidence available in the Ukrainian authorities' criminal proceedings materials, a preliminary assessment of the publicly available evidence raises a reasonable inference of genocidal intent. First, there is clear evidence of several underlying acts systematically directed at the persons primarily because of their real or perceived Ukrainian national identity. Second, the commission of the acts in question, in combination with a broader range of discriminatory conduct, have borne a significant destructive potential capable of eliminating the Ukrainian national group in occupied territories. In parallel with the systematic acts of physico-biological targeting directed at the key holders of the national identity, Russian authorities employed a broad range of tactics of socio-cultural destruction directed at the key features of national identity.

Third, the establishment of genocidal intent does not require the massive, blatant and immediate elimination of every member of the group targeted. The fact that the methodology of the destruction employed, on the face of it, differs from the tactics employed in the previous contexts that either gained widespread and uniform recognition as genocidal and/or went through the process of international adjudication (e.g., the Holocaust, Rwanda, Srebrenica) should not be taken as an unconditional basis of comparison to argue that with the flow of history perpetrators do not evolve in the sophistication of their plans and strategies. The type of methodology employed to achieve destruction necessarily differs from context to context, particularly depending on the nature of the group targeted, both in general terms (i.e., the category of a protected group out of the four) and given the specific characteristics of every individual group (i.e., the one made an object of a particular targeting). For the Ukrainian national group in occupied Ukrainian territories, the selected targeting of emblematic group members via underlying acts coupled with all-encompassing socio-cultural targeting of the national identity appears sufficient to bring about the destruction of the part of the group as such.

FINAL CONCLUSIONS

The interpretative frameworks of the law of genocide have traditionally overlooked the nuanced contextualisation of the crime's elements application based on the identity of the protected group targeted. A substantial volume of legal doctrine – consciously or recklessly – has been adopting a blindfolded approach, almost pretending that the elements of the crime of genocide apply in a universal and identical manner regardless of the special features defining the group. The present study highlights that such an approach is erroneous. Since a human group and its right to exist is at the heart of the criminalisation of genocide, the interpretation of the crime's elements – despite preserving the necessary interpretative core – inherently depends on the very identity of the targeted entity.

The case of the national groups' targeting for destruction is the most illustrative of this debate. National groups represent one of the most complex forms of human social entities, defined by the mixture of various identity layers. The current study aimed at highlighting the most critical of them. It focused on three fundamental questions: (i) how a national group should be defined when it is an object targeted for destruction; (ii) what scope (in whole or in part) and methods (physico-biological or, more broadly, social) the prohibited intended destruction requires; and (iii) how intent to achieve this destruction can be substantiated. Altogether, these three issues provide for the interpretative contours of genocidal intent to destroy a national group. Additionally, the present study contextualised and tested the findings in relation to the ongoing Russian attacks directed against the Ukrainian national group.

As to the first block of issues related to the definition of a national group as an entity protected by the criminalisation of genocide, the study arrives at the following conclusions. The case-law and legal doctrine have developed into two approaches to defining protected groups. The "aggregationist" approach views the concept of "protected groups" in a generic fashion, cautioning against drawing clear lines between the four groups protected by the internationally recognised definition of genocide. While this approach may seem attractive in cases where multiple protected identities overlap, it fails to adequately address situations in which one of the protected entities is singled out for destruction. Fluid and overlapping as they may seem, human identities nevertheless share a relatively defined core. Therefore, as human history has shown, a group's identity can incorporate several protected characteristics (e.g., with ethnic and religious identity closely intertwined), though this is not a universal case. Moreover, the "aggregationist" approach risks undermining the effective interpretation of the treaty provisions, as the drafters' intention to incorporate several standalone concepts must be given due weight in light of the autonomous meaning associated with each of them.

Instead, the "distinctionist" approach seeks to define each of the four protected groups separately. The application of this approach, while normatively sound and well-founded, has not come without its difficulties in international jurisprudence. Traditionally and largely uncontestably, the case-law has leaned towards defining national groups in connection with the concept of state citizenship. Such a definition is flawed in several ways. Firstly, it confuses the concept of "nationality" in its legal sense (i.e., citizenship) with its socio-political meaning. Secondly, it contradicts the intention of the Genocide Convention's drafters, making a clear reservation that the concept of nationality for the purpose of defining national groups must not be associated with state citizenship. Thirdly, such an approach defies the concept of national identity and reduces it to a purely political technical matter of possessing a state passport, rather than focusing on the broader range of complex layers that underpin national identity. Human history also shows it is extremely unlikely that perpetrators intend to destroy a group defined solely by common citizenship.

National groups have to be defined in terms of the concept of "a nation". Social sciences offer different approaches to defining nations, with some focusing on the ethno-cultural core (e.g., ethnic origin or linguistic features) and others on civic-political identity (i.e., a chosen desire to self-identify with a nation as a political community regardless of one's ethnic or cultural background). Both visions represent absolute sides of the spectrum, and every nation incorporates both elements to varying degrees. What represents the core of the national group's identity is a common will to cohesion and mutual self-identification with a broad socio-political community, combined with a shared vision of a national project, a common past, present and future based on the shared patterns of values and norms.

The identity of national groups – as all human identity – is inherently fluid. At the same time, a national identity possesses a core that distinguishes it from other related identities. Unlike ethnic groups, national groups are not simply premised on a shared culture or language: they possess an additional layer of political self-identification that goes beyond a merely shared cultural background. Unlike political groups, national groups are not merely products of shared political ideology as are political parties or movements. Nations are political communities, yet their core is deprived of ideological politics, instead uniting members regardless of and despite political affiliations and ideologies.

Interpreting the essence of national groups through these lenses may be criticised for undermining the stability and permanence of their definitions. This criticism, however, is rooted in a wrong understanding of the protected groups under the Genocide Convention. While arguments about the need to protect stable and permanent groups only were indeed raised by certain delegations during the Convention's drafting process, they are unlikely to be well-founded. Certain groups were excluded from the Convention's scope of protection out of political consideration and desire to achieve the highest possible rate of ratifications, not because these groups were realistically less permanent than the four that made it to the final list of protected groups. Even the four protected identities are amendable and fluid. For example, "racial groups" do not have a clearly defined scientific core and represent (as other groups) an imagined social construct. Individuals can also choose to abandon their religious or ethnic identities and adopt a new one instead of the inherited ones. Protected identities, while preserving some stable core, largely remain a matter of conscious human choice.

The second fundamental issue at the core of the present study relates to the scope of the intent to destroy a national group. The first important consideration concerns how the manifestations of intent to destroy a national group "in whole" or "in part" are defined. While international jurisprudence does not provide clear guidance on defining the group "in whole", the definition remains contextual depending on the identity of a protected group targeted for destruction. In cases involving ethnic or religious groups, the definition of the group "in whole" may rest on a "universalist" approach that takes into account group members worldwide. In cases of national groups (and as proved by the prevailing jurisprudential trend), the definition of the "whole" can be and should remain territorially limited within the boundaries of a particular state and/or region ("territorialist" approach). At the same time, the subjective perceptions of a victimised group and perpetrators – given a specific political, social and cultural context – may help define the "whole" and understand its distinctiveness from other groups.

Another critical aspect in understanding the intent's scope is defining the "part" of the group – when it becomes an object for destruction – and evaluating its substantiality. Substantiality assessment is guided by both quantitative (numeric significance in absolute and relative terms) and qualitative considerations. Quantitative evaluation forms the initial starting point for the analysis. Qualitative assessment focuses on the prominence of the targeted part within the "whole", which can be manifested in the part being emblematic or essential to the survival of the group.

In turn, prominence can hypothetically be viewed in two dimensions: personal or territorial/communal. The personal dimension assesses the special qualities or features of individuals targeted by underlying acts within the group. One of the most obvious manifestations of personal prominence considerations relates to the "leadership factor", i.e., targeting persons who – due to their status, position or special qualities – are capable of significantly influencing the group's actions or opinions. At the same time, personal prominence can be difficult to establish within the methodology of the substantiality assessment: it will likely require perpetrator forces' control over the group "in whole", and, in turn, perpetrator forces' focus on a selected stratum of the group as a targeted substantial part, which is a rare scenario to imagine. This moves personal prominence considerations into the realm of other indicators relevant for the intent's assessment, namely the destructive potential posed by the perpetrators' targeting of a selected group's section.

A more conventional approach to assessing prominence within the jurisprudence focuses on territorial or communal considerations. It evaluates whether a geographically limited section of a group (such as a community) can qualify as emblematic or essential to the group's survival. There can be multiple factors influencing the determination, such as the strategic importance of a targeted part to the rest of the group and/or to the perpetrators, increased public and media focus on the fate of the geographically limited part and the emblematic nature of its targeting for the group "in whole".

The next important consideration regarding the scope of genocidal intent directed against a national group concerns the methodology of the substantiality assessment. Amid the multitude of potential cues in international case-law, two approaches appear to provide the soundest interpretation of the law on genocide. Substantiality can be examined by assessing the significance of targeted prominent group members towards the group (which, as explained above, is a rare scenario, likely where perpetrators hold control over the entire group). Alternatively, and more likely, substantiality is evaluated by weighing the significance of the targeted geographically limited part towards the entire group (where personal prominence of particular strata of the population serves as an additional indicator of genocidal intent). At the same time, the trends in international jurisprudence conclusively lead to the finding that substantiality assessment cannot rest on evaluating: (i) victims of underlying acts towards their respective communities; or (ii) victims of underlying acts towards their communities and, subsequently, communities towards the group "in whole". These two approaches lead to an impermissible compartmentalisation of a group and undermine the very essence of the substantiality requirement.

Lastly, while the substantiality requirement implies the need to prove a considerable impact of targeting the part on the "whole", it does not necessarily require the effect to endanger the "survival" of the "whole". It is sufficient to demonstrate that targeting of the substantial part "affected" the "whole" in a meaningful way.

The final substantive question relevant to the determination of the scope of the intent to destroy national groups concerns the nature of the destruction sought. In contrast to destruction as a *modus operandi* in the meaning of the five underlying acts, the intent does not have to seek to achieve physical or biological destruction only. Five underlying acts indeed represent forms of physical or biological targeting only, but intent can likewise be directed at eliminating the group as a social entity.

Genocidal intent can rarely (if ever) be proved with direct evidence. Therefore, the intent's deduction can be premised upon multiple factors. The first and most fundamental consideration concerns the evaluation of "destructive potential" in two dimensions: the methodology adopted by perpetrators (e.g., systematicity, repetition, violence, and the scale of underlying acts) and the identity of the victims targeted by them (i.e., their significance to the group's survival). Other considerations relate to perpetrators employing methods of socio-cultural targeting of the group falling short of the five underlying acts, evaluating perpetrator forces' range of opportunities, area of control and reach, spreading of hate speech and propaganda, as well as discriminatory or inflammatory language, the existence of a plan or policy – all juxtaposed against the potential countervailing intentions (e.g., military consideration, or ethnic cleansing or political persecution) falling short of establishing the intent directed at the group's destruction.

With these considerations, the analysis arrives at the case study of Russian atrocities in Ukraine and the potential existence of genocidal intent accompanying them. The facts testify convincingly to two important findings: (i) there is conclusive evidence of Russian forces committing several underlying acts of genocide; (ii) these acts are directed at the members of the Ukrainian national group specifically based on their national identity. Preliminary evidentiary open-source analysis testifies to the likely presence of genocidal intent in the acts of Russian forces in Ukraine. Russian forces' acts are seemingly directed at the elimination of the Ukrainian national group in the occupied territories of Ukraine, forming a substantial part of the Ukrainian national group "in whole" based on qualitative considerations.

In occupied territories, Russian forces have employed a concerted system of targeting the key representatives of the Ukrainian national group via underlying acts of genocide, while additionally subjecting the remaining members of the national group to a broader range of socio-cultural targeting methods. By eliminating the key pillars of the national identity (i.e., leaders) physically and eradicating the remainder of the national identity in other members via other persecutory measures, the Russian authorities ensure the disappearance of the Ukrainian national group in the controlled occupied territories.

And the final conclusion comes here: genocide does not require a blatant, massive extermination of every human member of a targeted group. Group identities are intangible and changing, linked to minds and not bodies. The crime of genocide indeed requires physical or biological destruction of a certain degree via the commission of underlying acts; yet it does not require the Holocaust-type scenario. With the increasing public scrutiny and awareness in the 21st century, the recipe for killing a nation can be much simpler. It can involve limited targeting of the most emblematic national group's members via physical or biological methods of destruction (e.g., the group leaders), with the subsequent extermination of the remainder via persecutory policies. The recipe to kill off a national group in the 21st century.

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ANNEXES

ANNEX A

LIST OF PUBLICATIONS OF THE CANDIDATE

List of scientific publications in which the primary research results of the dissertation are published:

1. Maksym Vishchyk, 'Construing national and Ethnic Groups under the Genocide Convention through Soviet and Russian Narratives on the Ukrainian Identities' [2024] 13 *NaUKMA Research Papers. Law* 15–25. https://doi.org/10.18523/2617-2607.2024.13.15-25.
2. Maksym Vishchyk, 'Targeting of the Protected Group's Leadership and Otherwise Representative Members as an Indicator of Genocidal Intent' [2025] 14 *NaUKMA Research Papers. Law* 19–31. https://doi.org/10.18523/2617-2607.2024.14.19-31.
3. Maksym Vishchyk, 'Undoing the Group's Fabric: Social Disintegration as a Possible Manifestation of Genocidal Intent' [2025] 11 *Kyiv-Mohyla Law and Politics Journal* 91–109. https://doi.org/10.18523/2414-9942.11.2025.91-109.
4. Maksym Vishchyk, 'Indicators Relevant for the Evaluation of the Alleged Genocidal Intent to Destroy a National Group' [2025] 92(5) *Uzhhorod National University Herald. Series: Law* 102–108. https://doi.org/10.24144/2307-3322.2025.92.5.15.

List of scientific publications confirming dissemination of the dissertation findings:

1. Conference “Development of the Legal System of Ukraine in the Context of European Integration Aspirations” (Lutsk National Technical University, 10 December 2025), Statements titled “Methodology for Assessing the Alleged Genocidal Intent to Destroy the Ukrainian National Group in the Russian War against Ukraine” published in the “Development of the Legal System of Ukraine in the Context of European Integration Aspirations: Materials of the 1st All-Ukrainian Academic and Practical Conference for Young Scientists with International Participation, Dedicated to the Week of Law” (Lutsk, 10 December 2025)” [ed.: L.L. Kovalchuk et al.]. – Lutsk, 2026. – 531 p.
2. Roundtable “Crimes of the Russian Federation During the Aggression against Ukraine in Light of the Rome Statute of the International Criminal Court”, Presentation on the topic “Issues of Justice for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations Between Ukraine and Russia and the Potential Future Peace Agreement” (National University of “Kyiv-Mohyla Academy” and Ukrainian Free University (Germany), 14 July 2025), Statements titled “Accountability for International Crimes and Other Gross Human Rights Violations in the Peace Negotiations between Ukraine and Russia and the Potential Future Peace Agreement” [2025] 26 *Scientific collection of the Ukrainian Free University* 22-33, ISBN: 978-3-928687-90-4.

List of other conferences and events confirming dissemination of the dissertation findings:

1. Lecture – Academic Discussion “Anatomy of Genocide: Breathing New Life into the Crime” (National University of “Kyiv-Mohyla Academy”, 19 November 2025).
2. Doctoral Presentation, “Social Disintegration as a Possible Manifestation of Genocidal Intent” (National University of “Kyiv-Mohyla Academy”, 14 October 2025).
3. Lecture – Summer School, “Lviv Summer School of International Law”, Lecture on the topic “Anatomy of Genocide: Breathing New Life into the Crime” (Ukrainian Catholic University, 19 August 2025).
4. Conference and Panel Discussion “Justice 2030: Scenarios for Ukraine”, Presentation on the topic “Critical Aspects of Assessing Genocidal Intent Aimed at the Destruction of a National Group” (Centre for Civil Liberties, 18 July 2025).
5. Academic discussion “Russian Aggression in Ukraine: Holodomor/Genocide, War Crimes and Crimes against Humanity”, Presentation on the topic “Physical Extermination, Cultural Destruction, and Social Disintegration: Soviet-Russian Tactics Directed against the Ukrainian Nation in the Context of the Crime of Genocide” (National University of “Kyiv-Mohyla Academy”, 29 October 2024).
6. Conference “Re-imagining Transitional Justice in Ukraine: Ukrainian Identities, Russian Colonialism, and the Crime of Genocide”, Presentation on the topic “Critical Legal Considerations in Assessing Genocidal Intent Aimed at the Destruction of a Nation in the Context of Russian Aggression against Ukraine and Historical Colonial Rule” (Northwestern University (The USA), 12 April 2024).
7. Doctoral Presentation, “Relevance of Socio-Cultural Factors and Indicators to the Assessment of an Alleged Genocidal Intent to Destroy A National Group” (National University of “Kyiv-Mohyla Academy”, 14 March 2024).
8. Conference “Genesis of Russia’s Criminal Conduct against Ukraine”, Presentation on the topic “Key Components of the Russian Intent Aimed at the Destruction of the

Ukrainian Nation in the Context of Proving the Crime of Genocide" (National University of "Kyiv-Mohyla Academy", 1 February 2024).

9. Lecture "Status of Territorial Concessions, Trials of Prisoners of War and Allegations of Genocide" (Yale University, 30 January 2024).
10. Conference "Unpunished Crimes Repeat Themselves: the Holodomor and the Ongoing Genocide Against the Ukrainian Nation", Presentation on the topic "Particularities of Proving the Alleged Crime of Genocide Committed Against the Ukrainian National Group Today: Challenges, "Gray Zones" and Prospects of the Law" (National University of "Kyiv-Mohyla Academy" and Ukrainian Free University (Germany), 29 November 2023).
11. Panel Discussion "Russian War Crimes and Genocide in Ukraine" (Friedrich-Naumann-Stiftung für die Freiheit, National University of "Kyiv-Mohyla Academy" and Ukrainian Free University (Germany), 23 October 2023).
12. Symposium "Human Rights in times of War and Conflict: Comparative and Interdisciplinary perspectives from Ukraine and Ireland", Presentation on the topic "Multidisciplinary Approach to Genocide-Related Investigations and Case Building: Academic and Practical Considerations" (National University of "Kyiv-Mohyla Academy", 30 October 2023).

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