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The Crime of Genocide as Exemplified by the Holodomor and the Russian Military Aggression Against Ukraine

Abstract

The authors focus on the elements of the definition of the crime of genocide using the example of the Holodomor and the Russian military aggression against Ukraine. The article presents the relationship between the concept of genocide and its definition in the Rome Statute of the International Criminal Court. However, the main objective of the paper is to point out certain similarities between the actions of Stalin's regime against the Ukrainian nation during the Holodomor genocide and the recent actions within the Russian military aggression against Ukraine, which are supported by genocidal propaganda and therefore, among other aspects, constitute the crime of genocide.

KEYWORDS: genocide, Rome Statute of the International Criminal Court, Holodomor, Russian military aggression, Ukraine

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1 | Introduction

Lemkin's definition of genocide^[1], as analyzed in the literature, was transposed into the Convention on the Prevention and Punishment of the Crime of Genocide on December 9, 1948^[2]. However the concept of cultural genocide was not included and therefore the issue of non-physical or non-biological destruction of protected groups remains relevant. Based on the concept of Raphael Lemkin, Vladislava Bakalchuk analyzed the acts of destruction by the Russian Federation (RF) of the culture and national identity of the Ukrainian people^[3]. E. Novich defines cultural genocide as the systematic destruction of traditions, values, language and other elements that distinguish one group of people from another^[4]. Nevertheless, cultural genocide is not limited to destruction of culture. Mechanisms of destruction of culture also relate to the very material existence of the group, disrupting the possibilities of group formation and reproduction of itself as a national-cultural community. Y. Zakharov analyzed the aim, subject, circumstances and composition of the crime of genocide, its motive and direct intention for the Holodomor^[5].

Stalin's artificially created Great Famine (Holodomor) of 1932-1933 constitutes a destruction of Ukrainian national group in part, where the most accurate analysis presents the number of 10.5 million Ukrainians who died during the widespread and artificially created famine. Within the Russian military aggression against Ukraine, which actually began in 2014 and February 24, 2022 must be considered as another phase, which includes a full-scale military invasion of the sovereign territory of Ukraine, Russian

¹ Raphael Lemkin, *Axis Rule in Occupied Europe: Law of Occupation, Analysis of Government, Proposals for Redress* (New Jersey: The Lawbook Exchange, Ltd., 2005), 79-89. https://books.google.com.ua/books/about/Axis_Rule_in_Occupied_Europe.html?id=yoin2wOY-WoC&redir_esc=y [accessed: 2.12.2023].

² Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, adopted on 9 December 1948.

³ Vladyslava Bakalchuk, „Cultural genocide as international crime committed by the RF in Ukraine” *Strategic Panorama*, (2022): 77. <https://doi.org/10.53679/2616-9460.specialissue.2022.07> [accessed: 2.12.2023].

⁴ Elisa Novich, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford: Oxford University Press, 2016). <http://hdl.handle.net/1814/43864> [accessed: 2.12.2023].

⁵ Yevhen Zakharov, *Conclusion. Legal qualification of the Holodomor of 1932-1933 in Ukraine and the Kuban as a crime against humanity and genocide* (Human Rights Protection Group, 2008). <https://khp.org/1221206914> [access: 2.12.2023].

soldiers have been committing the most severe international crimes and some of them may constitute the crime of genocide. The relation between Holodomor and the current Russian military aggression which includes action that may constitute crime of genocide has been partially discussed by some experts, for instance Yevhen Zakharov^[6], or in other press materials. Nevertheless, there is still the need to analyze this issue in a more complex manner, taking into account as much elements of the crime of genocide as possible. Therefore, the aim of this article is to analyze the Holodomor and the current Russian military aggression against Ukraine in terms of the concept of genocide and its definition established in the Rome Statute of the International Criminal Court^[7], identifying its elements. Additionally, the research is it to indicate similarities in the actions of the perpetrator during both events that are separated by more than eighty years.

2 | The concept of genocide

According to Lemkin the genocide (from the Greek word *genos* – race, and the Latin *occidere* – to kill) was the most serious case of crimes against humanity. Lemkin did not limit the Nazi crime of genocide only to acts of physical extermination^[8]. He indicated specific spheres of social life in which this crime could be committed: political^[9], social^[10], cultural^[11], economic^[12], biological^[13], physical^[14], religious^[15], moral^[16]. Unfortunately,

⁶ Text of the legal analysis available on the following websites: <https://www.atlanticcouncil.org/blogs/ukrainealert/many-ukrainians-see-putins-invasion-as-a-continuation-of-stalins-genocide/>; <https://thehill.com/homenews/administration/4327051-biden-russia-ukraine-war-soviet-era-famine/> [accessed: 13.04.2024].

⁷ The Statute of the International Criminal Court, adopted on 17 July 1998, 2187 U.N.T.S. 3 (hereinafter – Rome Statute).

⁸ Lemkin, *Axis Rule*, 81.

⁹ *Ibidem*, 82.

¹⁰ *Ibidem*, 83.

¹¹ *Ibidem*, 84.

¹² *Ibidem*, 85.

¹³ *Ibidem*, 86.

¹⁴ *Ibidem*, 87-88.

¹⁵ *Ibidem*, 89.

¹⁶ *Ibidem*, 89.

Lemkin did not analyze the actions of Soviet Russia toward other nations where genocidal practices could easily be found at that time^[17]. Maybe if he had done so, today's Russian military aggression against Ukraine and actions that may constitute genocide against the Ukrainian nation would not have happened. Although the term genocide proposed by Lemkin remained flexible enough to also cover the criminal practices of the Soviet system. Lemkin's definition of genocide was included into the Convention on the Prevention and Punishment of the Crime of Genocide and was unanimously adopted^[18]. Nonetheless, it should be clarified that this article examines the definition of the crime of genocide provided in the Rome Statute, together with its elements established in the document „Elements of Crime” and therefore the issue of the application of the provisions of 1948 Convention to the Holodomor or the current Russian military aggression is not the subject of the analysis in this article.

Genocide is one of the crimes under the jurisdiction of the International Criminal Court. Ukraine has submitted two declarations. The first declaration was submitted by the Ukrainian government in April 2014 and concerned crimes against humanity and war crimes committed on its territory between November 21, 2013 and February 22, 2014^[19]. Subsequently, on September 8, 2015, the Minister of Foreign Affairs of Ukraine submitted a second declaration, in which the Ukrainian government agreed to the jurisdiction of the ICC over international crimes committed on the territory of Ukraine since February 20, 2014, without an end date^[20]. It has already been proved that the famine in Ukraine in 1932-1933 meets of the necessary criteria of a crime of genocide^[21] according to its definition in the Rome Statute of the International Criminal Court of 1998 and a crime of

¹⁷ James J. Martin, *The Man Who Invented «Genocide»: The Public Career and Consequences of Raphael Lemkin* (Torrance, California: Institute for Historical Review, 1984).

¹⁸ Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, adopted on 9 December 1948.

¹⁹ The text of the declaration available on the following website: <https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJurisdiction09-04-2014.pdf> [accessed: 2.12. 2023].

²⁰ The text of the declaration available on the following website: https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine [accessed: 2.12. 2023].

²¹ Volodymyr Vasylenko, Myroslava Antonovych, *The Holodomor of 1932-1933 in Ukraine as a Crime of Genocide under International Law* (Kyiv: Kyiv-Mohyla Academy, 2016), 16.

genocide according to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

3 | Definition of the crime of genocide in the Statute of the International Criminal Court

According to Art. 5 of the Rome Statute, the Court's jurisdiction is limited to the following most serious crimes of concern to the international community as a whole: genocide, crimes against humanity, war crimes and the crime of aggression. The Rome Statute in Art. 6 defines the crime of genocide as „any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group;
- e. forcibly transferring children of the group to another group”.

This definition of the crime of genocide consists of two elements – *mens rea* and *actus reus*. The *mens rea* element of genocide should not be identified as a general intent to commit that crime, but of a special one – *dolus specialis*^[22]. *Mens rea* consists therefore of two elements: a general one that could be called „general intent” or *dolus*, and an additional „intent to destroy” a particular group^[23]. Genocidal intent has been diversely defined,

²² Sandra Fabijanic Gagro, „Mental and material elements of genocide” *The Lawyer Quarterly*, nr 11 (2021): 45.

²³ Kai Ambos, „What does «intent to destroy» in genocide mean?” *International Review of the Red Cross*, No. 91 (2009): 834. See also: International Commission of Inquiry on Darfur, Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, pursuant to SC Res. 1564, 18 September 2004, Annex to letter dated 31 January 2005 from the UN Secretary-General addressed to the President of the Security Council, S/2005/60, 1 February 2005, para. 491; Prosecutor v. Omar Hassan Ahmad Al Bashir, Decision on the Prosecution's Application for

inter alia, as an „extended mental element”, an „extended subjective or extra-subjective” criterion^[24] and an ulterior intent characterized by an „extended [...] mental element or a transcending internal” tendency. The fact that the word „extended” is common to all of these definitions underscores the critical fact that the crime of genocide is often understood as having a dual *mens rea*^[25]. The issue that has been widely debated in the jurisprudence of international criminal tribunals. In the *Akayesu* case, the International Criminal Tribunal for Rwanda provided that „intent to destroy” as a „special intent” (or *dolus specialis*) means „the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged”^[26]. In the *Jeliscic* case the International Criminal Tribunal for the former Yugoslavia underlined that existence of a plan or policy is not a legal element of the crime of genocide, however, in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases^[27]. Additionally, it is important to prove that the perpetrator with his actions intends to destroy a protected population group^[28]. In case of crime of genocide the term „protected group” means one of the following: national, ethnical, racial or religious. The crime of genocide cannot be therefore committed against sexual minority, if they are of mixed nationalities or races. Ukrainian scholars argue that Putin’s language (for example, the denial of the existence of the Ukrainian state and nation) proves the genocidal intent of every act committed by Russian armed forces on the territory of Ukraine and reflects Russia’s aims, among others forcible transfer along

a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009 (ICC-02/05-01/09), para. 139.

²⁴ Hans Vest, „A Structure-Based Concept of Genocidal Intent” *Journal of International Criminal Justice*, (2007): 781, 783.

²⁵ Janine Natalia Clark, „Elucidating the Dolus Specialis: an analysis of ICTY jurisprudence on genocidal intent” *Criminal Law Forum*, nr 26 (2015): 499.

²⁶ Prosecutor v. Jean-Paul Akayesu, Trial Judgement, Case No. ICTR-96-4-T, 2 September 1998, para. 498. See also: Prosecutor v. Athanase Seromba, Trial Judgement, Case No. ICTR-2001-66-I, 13 December 2006, paras. 175, 319; Prosecutor v. Juve´nal Kajelijeli, Trial Judgement, Case No. ICTR-98-44A-T, 1 December 2003, para. 803. International Tribunal for the Former Yugoslavia followed similar approach towards the interpretation of “intent to destroy”, “special intent” for instance in the case Prosecutor v. Goran Jeliscic, Prosecutor’s Pre-Trial Brief, Case No. IT-95-10-PT, 19 November 1998, para. 3.1.

²⁷ Prosecutor v. Jeliscic, Appeal Judgement, Case No. IT-95-10-A, 5 July 2001, para. 48.

²⁸ Martin Shaw, „Russia’s genocidal war in Ukraine: radicalization and social destruction” *Journal of Genocide Research*, Vol. 25 (2023): 5-6.

with the process of „russification” of Ukrainian children and the deliberate infliction of conditions of life aimed at the physical destruction of the Ukrainian nation^[29]. It is important to underline that *ad hoc* tribunal’s and the ICC’s case law confirms that the judicial assessment of genocide is subject to the facts of the individual situation – particularly, the contextual embedding of crime of genocide is formed by its application in individual cases and adapted to the actual legal, political and historical realities^[30].

The *actus reus* elements of the crime of genocide represent the forms^[31], in which this crime can be committed, namely killing, causing serious bodily or mental harm, inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group – including deportation to another country.

According to the „Elements of Crime”^[32] document, which explains the structure of crimes that fall under the jurisdiction of the ICC, crime of genocide committed by killing members of the particular group includes the following elements:

- a. the perpetrator killed one or more persons;
- b. such person or persons belonged to a particular national, ethnical, racial or religious group;
- c. the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such;
- d. the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction^[33].

²⁹ Denis Azarov, Dmytro Koval, Gaiane Nuridzhanian, Volodymyr Venher, „Genocide Committed by the RF in Ukraine: Legal Reasoning and Historical Context” *SSN Papers* (2022): 27.

³⁰ Marjolein Cupido, „The Contextual Embedding of Genocide: a Casuistic Analysis of the Interplay Between Law and Facts” *Melbourne Journal of International Law*, vol. 15 (2014): 35.

³¹ Elizabeth Santalla Vargas, „Una mirada al crimen de genocidio en las jurisdicciones latinoamericanas” *Criminal Law Review*, No. 4 (2010): 63.

³² Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (United Nations publication, Sales No. E.03.V.2 and corrigendum), part II.B (hereinafter – Elements of Crimes).

³³ Elements of Crimes, p. 2.

What concerns genocide committed by forcibly transferring children of one group to another the following elements have to be taken into account:

- a. the perpetrator forcibly transferred one or more persons;
- b. such person or persons belonged to a particular national, ethnical, racial or religious group;
- c. the perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such;
- d. the transfer was from that group to another group;
- e. the person or persons were under the age of 18 years;
- f. the perpetrator knew, or should have known, that the person or persons were under the age of 18 years;
- g. the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction^[34].

The above mentioned forms of committing the genocide have a common element – the act must have been committed in the context of a manifest pattern of similar conduct directed against the group or was conduct itself capable of causing such destruction. Consequently, an emerging pattern has to be identified. This element should not be considered as an additional *actus reus* element, but rather as an objective point of reference for determining the intent that accompanied the crime of genocide^[35]. Additionally, in order to be found guilty of genocide it is sufficient that the perpetrator merely intended “to destroy, in whole or in part, a group, as such”. As a result, the perpetrator need only intend to achieve what he intends, and it does not matter whether he succeeded or not^[36].

³⁴ Elements of Crimes, p. 3.

³⁵ Claus Kreß, „The Crime of Genocide and Contextual Elements: A Comment on the ICC Pre-Trial Chamber’s Decision in the *Al Bashir* Case” *Journal of International Criminal Justice*, No. 2 (2009): 299-302.

³⁶ Otto Triffterer, „Genocide, Its Particular Intent to Destroy in Whole or in Part the Group as Such” *Leiden Journal of International Law*, Vol. 14 (2001): 401-402.

4 | Holodomor as genocide

Every year, the truth about the Holodomor of 1932-1933 in Ukraine spreads more and more among the Ukrainian and world community. The first Ukrainian legal act that qualified the Holodomor as a crime of genocide was adopted by the Verkhovna Rada of Ukraine on November 28, 2006 and was called „On the Holodomor of 1932-1933 in Ukraine”^[37]. The investigation of the Holodomor began in May 2009, when the Security Service of Ukraine initiated criminal case No. 475 on the fact of committing genocide in Ukraine in 1932-1933 on the basis of Art. 442 of the Criminal Code of Ukraine^[38]. When initiating abovementioned criminal case, it was regulated by both national legislation and those international treaties, which, in accordance with Article 9 of the Constitution of Ukraine and Article 3 of the Criminal Code of Ukraine, constitute part of the criminal law of Ukraine. At the World Congress of Researchers of the Holodomor, the genocide of Ukrainians, held on November 7, 2023 held under the title „Unpunished Genocides – Repeated!” it was established that 10.5 million Ukrainians died during 1932-1933, including 4 million children, while 3.5 million Ukrainians died during the mass artificial famine of 1921-1923 and 1.5 million Ukrainians died during the mass artificial famine of 1946-1947^[39]. The actions of the Ukrainian party regarding the recognition of the Holodomor are actively supported by international organizations and states at the interstate and state levels^[40].

All forms of genocide specified in Art. 6 of the Rome Statute of the International Criminal Court can be applied to the Holodomor, especially the fact that during the Holodomor the Soviet authorities deliberately created living conditions for the Ukrainians that were calculated to lead to their at least partial, if not complete, physical destruction^[41]. The genocide committed by the communist totalitarian regime in 1932-1933 was directed against Ukrainians, who made up the vast majority of the population in

³⁷ Verkhovna Rada of Ukraine, Law on the Holodomor of 1932-1933.

³⁸ Holodomor 1932-1933 in Ukraine, materials of criminal case No. 475 (2014):17-21 <http://history.org.ua/LiberUA/978-966-02-6769-5/978-966-02-6769-5.pdf> [accessed: 2.12.2023].

³⁹ World congress of researchers of the Holodomor-genocide of Ukrainians took place in Kyiv, 2023 <https://umoloda.kyiv.ua/number/o/2006/179422/> [accessed: 2.12.2023].

⁴⁰ Worldwide Recognition of the Holodomor as Genocide. Holodomor Museum <https://holodomormuseum.org.ua/en/recognition-of-holodomor-as-genocide-in-the-world/> [accessed: 2.12.2023].

⁴¹ Vasylenko, Antonovych, *The Holodomor of 1932-1933*, 84-85.

Ukraine (more than 80%). Famine as one of the tools of genocide, along with terror, repression, deportations, executions, was used to create living conditions designed for the physical destruction of Ukrainians, the destruction of the Ukrainian nation and keeping Ukraine within the borders of USSR. The fifth element of the crime of genocide, according to the „Elements of the crime”, is that the genocidal act took place in the context of a series of similar acts directed against a certain group, or was an act that could itself cause such destruction. Holodomor was organized as one of the crimes in a series of other actions aimed at the destruction, in whole or in part, of the Ukrainian nation, and emphasizes that Lemkin presented the Soviet genocide against Ukrainians as the regime’s intention to destroy the Ukrainian nation in four stages: 1) the destruction of the national elite – the most prominent minds of the nation, 2) the destruction of the national church – the soul of the nation, 3) the extermination of Ukrainian peasants – the custodians of Ukrainian culture, language, traditions, 4) decomposition of the Ukrainian nation due to mixed families of Ukrainians with other nationalities through resettlement that led to a radical change in the composition of the population^[42]. It is worth paying attention to the fact that each stage of Stalin’s genocide against the Ukrainian nation separately contains particular forms of the crime of genocide. In all four phases of the systematic destruction of the Ukrainian nation, the national character of a protected group (Ukrainians) was decisive, since even the main victims of the Holodomor – starving Ukrainian peasants – are presented as bearers of the national spirit and those traits that make them a cultural group and a nation, not to mention the intelligentsia and the clergy^[43]. Planning the extreme confiscation of the agricultural products produced by the peasants is equivalent to planning the Holodomor. Thus, it can be argued that the plan to exterminate Ukrainian peasants was disguised as excessive plans for grain procurement (quite large amounts of grain were accumulated in the state reserves of the Indestructible and Mobilization Funds, but this resource was not used to provide aid to starving Ukrainians). When revealing the legal characteristics of the crime of genocide of the Ukrainian nation in 1932-1933, it is necessary to use the national legislation of Ukraine and the norms of international law.

⁴² Ibidem, 91.

⁴³ Raphael Lemkin, *Soviet genocide in Ukraine* (Kyiv: Majsternia knyhy, 2009): 208. URL: <https://holodomormuseum.org.ua/publikacija/radyanskiy-genocid-v-ukraini/> [accessed: 2.12.2023].

Genocide is such a crime to which the statute of limitations does not apply. In 2001 Article 442 was introduced to the Criminal Code of Ukraine, which provides for responsibility for the crime of genocide. The fact that the Art. 442 entered into force on September 1, 2001, does not exclude the retroactive effect of the norms of the 1948 Convention and their application to the events in Ukraine in 1932-1933^[44].

In addition to military aggression, the RF has been conducting an information war against Ukraine all the time using archival materials too. Professor Victoria Malko points out that the underestimated number of the 3.9 million victims of the 1932-1933 Holodomor^[45]. Ukrainian demographers of the 1930s or modern historians^[46] who carried out research on the available new archival materials, established the number of around 10.5 million people that have died as a result of Soviet crimes^[47]. Recently, scientists prove the failure of the minimum concept of victims imposed by Russia (about 3.9 million deaths). What is more, the judicial review conducted in Ukraine confirmed falsifications and the lack of scientific verification and approval of the method of supporters of the minimum number of victims^[48].

Our calculations using the applied model as a method used in both cognitive and practical activities^[49], presents the program STELLA^[50], which calculates the potential possible population size in Ukraine in 1937. The model uses 35,200,000 people^[51] lived in 1913, the birth rate as 44.1 and

44 Vasylenko, Antonovych, *The Holodomor of 1932-1933*, 138, 149, 152-153, 159.

45 Viktoriya Malko, „Holodomor-genocide. The History of the Number «3.9» and Russian Disinformation” *Radio Svoboda*. <https://www.radiosvoboda.org/a/holodomor-killist-zhertv-rosiyska-dezinformatsiya/31604692.html> [accessed: 2.12.2023].

46 Volodymyr Serhiychuk, *The Holodomor of 1932-1933 as a Genocide of Ukraine* (Vyshhorod: PP, 2016); Olesya Stasiuk, *Essays on the Holodomor* (Kyiv: MarkoBook, 2019); Educational guide for teachers, *The Holodomor of 1932-1933 – Genocide of the Ukrainian Nation* (Kyiv, 2021), 220.

47 *World Congress*. <https://umoloda.kyiv.ua/number/o/2006/179422/> [accessed: 2.12.2023].

48 Oleksandr Petryshyn, Mykola Herasymenko, Olesya Stasiuk, *Genocide of Ukrainians 1932-1933 based on the materials of pre-trial investigations* (Kyiv; Kharkiv: Pravo, 2022), 140.

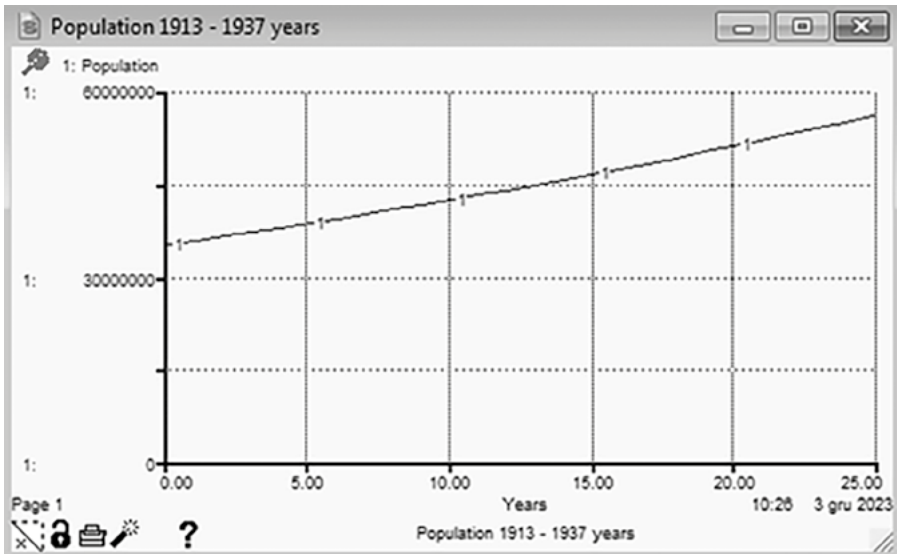
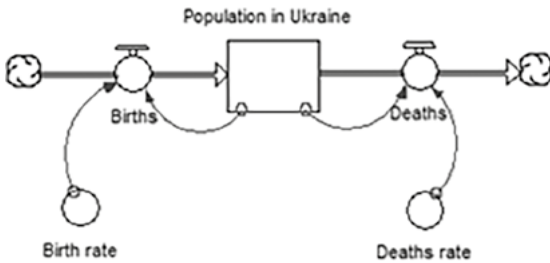
49 Hanna Wolska, „Model jako forma poznania naukowego Próba zdefiniowania” *Prawo i Więż*, nr 2 (2023).

50 Ihor Kozak, Vasyl Parpan, *Ecological modelling with STELLA software* (Ivano-Frankivsk, 2009): 86.

51 *Statistical yearbook of Ukraine* (Kyiv, 2005), 359.

death rate as 25.2 people per 1,000 inhabitants^[52] which were inserted into the model (Fig.).

Fig. Scheme of the model (top) and potential size (bottom) of the population of Ukraine



Assuming that the trend of changes in 1913 would have continued, the simulation shows an increase population from 35,200,000 in 1913 to 55,169,640 in 1937 (Fig.). In reality, the population decreased from 1913 to 1937 to 28,926,000 people^[53]. Therefore, potentially 26,243,640 lives could

⁵² Ibidem, 366.

⁵³ Stanislav Kulchytskyi, *Terror by Hunger as a Tool of Collectivization of Agriculture*. Mat. Int. Conf. „Famine of 1932-1933 in Ukraine: causes and consequences”, 9-10 September 1993. Kyiv (1995): 32.

have been lost in Ukraine from 1913 to 1937. The main reason for this were the famines of 1921, 1932, 1933 with their terrible consequences for the people of Ukraine.

An important number of 64 countries had condemned Holodomor – among them UN member states by the Joint Declaration of 7 November 2003, OECD members in the Joint Declaration of 2007^[54]. Recently, on 15 December 2022 the European Parliament recognized the artificial famine of 1932-1933 in Ukraine, caused by a deliberate policy of the Soviet regime, as a genocide against the Ukrainian people^[55].

5 | Actions within Russian military aggression against Ukraine that constitute genocide

During the full-scale Russian military aggression against Ukraine there are a number of actions that can be considered as a part of the planned, deliberate destruction in whole or in part of the Ukrainian nation as such. All systematic actions of the authorities of the RF are designed for the gradual destruction of the Ukrainian people as a nation and the „russification” of Ukraine. After the full-scale invasion on February 24, 2022 the article *What Russia should do with Ukraine?* was published on the website of the Russian state channel *RIA Novosti*. In the article there was provided a justification for the genocide of Ukrainians. The article contains calls for repression, de-Ukrainization, de-Europeanization and ethnocide of the Ukrainian people^[56]. The President of Ukraine Volodymyr Zelenskyi said that this article will be one of the evidences for the future tribunal^[57].

⁵⁴ United Nations General Assembly, Letter of 7 November 2003, A/C.3/58/9.

⁵⁵ European Parliament resolution of 15 December 2022, ‘90 years after the Holodomor: recognizing the mass killing through starvation as genocide’ (2022/3001(RSP)), OJ 2023, C 177/14, para. G.

⁵⁶ The Kremlin media published an article openly justifying the necessity of genocide in Ukraine <https://web.archive.org/web/20220404121503/https://24tv.ua/kremlivskiy-zmi-viyshla-stattya-de-vidkrito-obruntovyuetsya-neobhidnist-n1936412> [accessed: 2.12.2023].

⁵⁷ Zelensky about the RIA Novosti article: One of the pieces of evidence for the future tribunal. *Ukrainian Pravda* <https://web.archive.org/web/20220404200508/https://www.pravda.com.ua/news/2022/04/4/7337177/> [accessed: 2.12.2023].

On April 14, 2022 the Verkhovna Rada of Ukraine adopted the Resolution On the Perpetration of Genocide by the RF in Ukraine, recognizing the actions of the RF during the last phase of the military aggression against Ukraine, which began on February 24, 2022 as a genocide of the Ukrainian people^[58]. It has been indicated that acts of genocide in the actions of the RF are manifested, in particular, in the commission of mass atrocities in the cities of Bucha, Borodyanka, Gostomel, Irpin and others. Since February 2022 to the end of October 2023, 98221 cases of damage or disruption due to military activities were reported in 3401 Ukrainian settlements^[59]. Based on the collected data^[60] there can be identified over 1497 cases of ecocide. Invaders not only destroy cities, infrastructure, farms, food, means of livelihood, but also remove Ukrainian books from libraries and homes and destroy them, just as the Nazis did. This is how Russia demonstrated the continuity of its non-humanitarian methods from the Holodomor to the time of the full-scale military aggression against Ukraine. According to the latest estimates, in 2022 a total of 170,000 people in Mariupol were suffering from hunger, while the Russian occupiers did not allow humanitarian workers from Ukraine and international organizations to enter the city to provide necessary assistance. Ukraine's famine was pre-planned by Putin^[61].

On March 4, 2022 the UN Human Rights Council established the Independent International Commission of Inquiry on Ukraine^[62], whose task is to investigate human rights violations and crimes committed by the RF army on the territory of Ukraine in connection with the beginning of a new stage of aggression armed forces. As of September 10, 2023 the Office of the United Nations High Commissioner for Human Rights recorded

⁵⁸ Verkhovna Rada adopted the Resolution on Statement of the Verkhovna Rada of Ukraine, *On the Russian Federation committing genocide in Ukraine*, 2022. <https://web.archive.org/web/20220415104926/https://www.rada.gov.ua/news/razom/221778.html> [accessed: 2.12.2023].

⁵⁹ Ecodozor. *Analytical bulletin* <https://ecodozor.org/report/report.php?month=2023-10&lang=en> [accessed: 2.12.2023].

⁶⁰ Vypadky potentsiinoi shkody dovkilliu, sprychyneni rosiiskoiu ahresiiieu. <https://ecoaction.org.ua/warmap.html>. [accessed: 2.12.2023].

⁶¹ Putin could face new war crime case as evidence suggests starvation of Ukraine was pre-planned. *Independent*. <https://www.independent.co.uk/news/world/europe/putin-grain-theft-ukraine-russia-latest-b2447644.html> [accessed: 2.12.2023].

⁶² United Nations General Assembly Resolution adopted on 4 March 2022, A/HRC/RES/49/1.

27,149 civilian casualties, including 9,614 killed and 17,535 wounded^[63]. However, the actual number is undoubtedly higher, since the experts of the Investigative Commission did not manage to reach all the locations where gross violations of human rights and crimes against the civilian population were committed on the territory of Ukraine. According to the report of the United Nations High Commissioner for Human Rights 6,204,600 people have left the territory of Ukraine (as of October 3, 2023), while 5,088,000 are internally displaced (as of June 2023)^[64]. The United Nations Office for the Coordination of Humanitarian Affairs estimated that 17.6 million people in Ukraine are in need of humanitarian assistance, and humanitarian access to areas affected by hostilities remains significantly hampered^[65]. The commission collected new evidence of violations of international human rights law and international humanitarian law and crimes committed by Russian soldiers. The Commission investigated unlawful attacks using explosive weapons, including rocket fire and their impact on civilians, torture, sexual and gender-based violence, and the displacement and deportation of Ukrainian children. It is virtually impossible to estimate the size of the territory affected by military operations. The RF shells civilian objects in various cities, towns and villages almost every day, which means that, in the opinion of other countries, the international armed conflict as a result of Russian armed aggression is spreading to the entire territory of Ukraine and there is a risk of suffering serious harm as a result of the widespread use of violence against the civil population.

Lemkin defined two phases of cultural genocide^[66]: the first is the destruction of the national model of the oppressed group; the second is the imposition of the national model of the oppressor. The analysis of the first phase of the Russian cultural genocide against Ukraine can be seen through the prism of the policy of „russification” of Ukrainian society. In 1932-1933 Russians were brought into so-called re-settlement procedure to the households of Ukrainians who died during Holodomor. This act greatly influenced the demography of the Eastern part of Ukraine and the language residents of these regions speak. One of the arguments

⁶³ Report of the Independent International Commission of Inquiry on Ukraine, 19 October 2023, A/78/540, s. 4.

⁶⁴ Report of the Independent International Commission of Inquiry on Ukraine, 19 October 2023, A/78/540, s. 4.

⁶⁵ Informacja dostępna na stronie: <https://reports.unocha.org/en/country/ukraine/> [accessed: 4.11.2023].

⁶⁶ Lemkin, *Axis Rule*, 79-95.

of Russian propaganda justifying the reason of full-scale invasion on Ukrainian sovereign territory was the liberation of people residing in Eastern part of Ukraine who speak Russian and as a result they are persecuted by Ukrainian authorities. In fact, these regions were the ones that Russian army destroyed most and where most people suffered or died. The formation of Ukrainian statehood since the declaration of independence in 1991 was accompanied by overcoming the consequences of the colonial policy of the Soviet Union towards Ukraine, which Lemkin called genocide as early as 1944^[67]. The failure of the international community to recognize and condemn the Soviet Union's genocide against Ukraine led to systematic revanchist efforts by the RF to preserve colonial claims to the Ukrainian nation – its culture, identity, historical past, and territory. The RF considered Ukraine as a zone of its influence and actively opposed attempts made by Ukrainians towards the establishment and development of its own national culture and identity in all spheres of public life. This confrontation was carried out in accordance with the concept of the „Russian world” (*русского мира*) – an illiberal model of the influence of the „soft” power of the RF^[68], which was based on an instrumental approach to achieving the RF's own goals and consisted in preserving its dominant influence in the post-Soviet sphere, with the aim of restoring the Soviet Union. The application of the cultural influence of the RF was actually aimed at creating favorable conditions for a full-scale occupation. Measures of „russification” of Ukraine are used by the RF to prepare for its further territorial conquest, just as it was carried out in the east of Ukraine and in the Crimea^[69]. Since the establishment of the RF control over the temporarily occupied territory of Crimean Autonomous Republic, the attack on Ukrainian culture and identity has been carried out through the tools of the policy of ethnocide^[70], as well as the capture of 14,000 cultural monuments, 54 museums, 300,000 museum objects, 6 historical and cultural

⁶⁷ Lemkin, Soviet genocide (2009). <https://holodomormuseum.org.ua/publikacija/radyanskiy-genocid-v-ukraini/>.

⁶⁸ Marlene Laruelle, „Russia's Soft Power: Sources, Targets, and Channels of Influence” *Russie.NEI.Visions*, 122 (2021): 20.

⁶⁹ Amos Fox, „Russo-Ukrainian Patterns of Genocide in the Twentieth Century” *Journal of Strategic Security*, No. 4 (2021): 66. <https://digitalcommons.usf.edu/jss/vol14/iss4/4>.

⁷⁰ Kateryna Rashevskaya, „Ethnocide and cultural genocide in Crimea: fiction or objective reality?” *Voice of Crimea*. (2022). <https://culture.voicecrimea.com.ua/uk/etnotsyd-ta-kulturnyj-henotsyd-u-krymu-vyhady-chy-ob-iektyvna-realnist/> [accessed: 2.12.2023].

reserves located on the territory of the Crimean Peninsula. The provisions of the concept of cultural genocide, developed by Lemkin, are most fully reflected in international law regarding the forced transfer of children from one group to another. This aspect of the cultural genocide of the RF in Ukraine should be considered primarily with regard to orphans and children deprived of parental care from the temporarily occupied territories of Ukraine. This is the reason why International Criminal Court on 17 March 2023 issued warrants of arrest for Vladimir Putin (President of the RF), and Maria Lvova-Belova (Commissioner for Children's Rights in the Office of the President of the RF) for as they are considered suspected of committing the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the RF, in prejudice of Ukrainian children^[71]. Lemkin also illustrates the mechanism of depriving children of their identity through the educational system of the occupying authorities without removing them from the family circle that doing RF through the integration of children into the Russian educational process, and implements a policy of replacing the identity of minors.

Due to the gravity and the scale of the crimes committed by the Russian army on the territory of Ukraine, as a result of the unprovoked military aggression against Ukraine, there appeared the need of establishing a special criminal tribunal for Russian crimes in Ukraine, even though those crimes, except for the crime of aggression, fall under the jurisdiction of International Criminal Court. As a result, on 3 April 2024 the Political Declaration of the Ministerial Conference on Restoring Justice for Ukraine held in the Hague (at seat of the International Criminal Court) was signed by 44 states. In the text of the declaration 44 states agreed to express the support for the establishment of a special tribunal for the crime of aggression and initiatives to use frozen Russian assets for the benefit of Ukraine^[72].

⁷¹ Press release available on the following website: <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> [accessed: 2.12.2023].

⁷² Information available on the following website: <https://www.pravda.com.ua/eng/news/2024/04/3/7449398/> [accessed: 13.04.2024].

6 | Conclusion

There are a number of similarities between the actions of Stalin's regime directed against Ukrainians during the Holodomor and the actions within the ongoing Russian military aggression against Ukraine. First of all, in addition to killing Ukrainians, causing serious bodily or mental harm to Ukrainians, deliberately inflicting on conditions of life of the Ukrainian nation calculated to bring about its physical destruction at least in part, and forcibly transferring Ukrainian children, both Holodomor and the ongoing Russian military were and are supported with evident signs of genocidal intent (intent to destroy Ukrainians) in public speeches or publicly available sources. Second of all, in both cases Russia carried out particular „russification” actions, whose aim was either to reestablish Russians and Russian speakers from Soviet Russia in those parts of Ukraine and households that were left by millions of Ukrainians that had died during the Holodomor or to change Ukrainians self-identity during the ongoing Russian military aggression by: sending Ukrainians from occupied territories to infiltration camps, forcing Ukrainians to accept Russian citizenship, forcible transfer and deportation of Ukrainian children to other parts of occupied territories or to Russia along with changing their identity, including citizenship. Third of all, Stalin's Russia was and today's Russian regime still is targeting Ukrainian civilians, civilian infrastructure (hospitals, schools, universities, resident buildings, etc) and destroys the whole cities in order to make it impossible for Ukrainians to re-establish their life there, and in this way, influence the future demographics on these territories, in the way that there will be no Ukrainian residents. As a result, both the Holodomor and the ongoing Russian military aggression against Ukraine were planned and constitute genocide and had or will have long-term negative effects on Ukrainian nation. Holodomor had seriously changed the demographic situation in the eastern parts of Ukraine, which had a significant impact on the Ukrainian political situation, while through the ongoing Russian military aggression, the Russian regime is pursuing similar goals, but using different, more technologically advanced means

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