

3 The crime of genocide

Historical aspects, political discussions and memory laws in Ukraine

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3.1 Introduction

The history of every country has dark and tragic pages of the past. The scale and intensity of the mass violence that took place on the territories of modern Ukraine are striking example. These lands became the battlegrounds of two world wars, accompanied by ethnic cleansing, pogroms, deportations, and mass murders. The topic of the Stalinist regime and Nazi crimes stands apart. Finally, at the present stage, Ukraine has become the object of Russian aggression. After Ukraine gained its independence, an open discussion about the tragic events of the past, including the crime of genocide in the country's history, was launched. As a result, a system of memory laws condemning systemic acts of mass violence and genocide in the past was formed at the official state level. Among the central topics for discussion were the events of the Holodomor, the Great Terror, and the Holocaust. These laws aim to form their own inclusive and critical national picture of the past. In addition, from the perspective of transitional justice, they can be seen as a form of reconciliation of different narratives of the past within the country, as well as at least symbolic reparation for the crimes committed. At the same time, the process of incorporating international law into the current legislation of Ukraine was underway to prevent atrocities of this kind and establish responsibility for such actions in the future.

How is the invention of the crime of genocide related to the history of Ukraine? What are the peculiarities of the legal interpretation of the crime of genocide in modern Ukrainian legislation? What is the place of genocide in the system of memorial laws of Ukraine? How has the military aggression of the Russian Federation against Ukraine actualized the theme of genocide in the modern world? How did the Russian Federation instrumentalize the crime of genocide during the war against Ukraine? What do Ukraine's past and present genocidal experiences tell us from a global perspective? I will try to answer these questions in the present chapter.

3.2 Lemkin, genocide, and Ukrainian context

The concept of the crime of genocide, proposed by Raphael Lemkin, allows us to explain a significant part of acts of violence in Ukraine, trace the connections

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between past events and the nature of contemporary crimes, and consider the dynamics of the official policy of memory in the country. Thus, when we talk about the study of the crime of genocide in the history of Ukraine, we are in one way or another addressing various aspects of this topic – legal, historical, and political.

According to Douglas Irvin-Ericson, in 1933 Lemkin proposed a number of radical changes in the structure of international criminal law: “The rampant discrimination, the desecration of cultural diversity, the pogroms, the state terror, and the killing of people to destroy their group were to be outlawed as international crimes. In 1933, Lemkin called these crimes ‘barbarism’ and ‘vandalism’.”¹ In 1942, he called them “genocide.”² As Lemkin himself noted:

In the acts of barbarity, as well as in those of vandalism, the asocial and destructive spirit of the author is made evident. This spirit, by definition, is the opposite of the culture and progress of humanity. It throws the evolution of ideas back to the bleak period of the Middle Ages. Such acts shock the conscience of all humanity, while generating extreme anxiety about the future. For all these reasons, acts of vandalism and barbarity must be regarded as offenses against the law of nations.³

Lemkin’s many years of work as a lawyer culminated in the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide on 9 December 1948, which entered into force on 12 January 1951.⁴ However, from the very beginning, the adoption of the convention at the international level was a compromise. In particular, due to the influence of the Soviet delegation, political groups as potential victims of genocide were removed from the original text. Anton Weiss-Wendt noted that the Genocide Convention bears the stamp of Stalin. Earlier, he and his followers, including Molotov, had signed execution lists during the Great Terror, but 10 years later they were already signing international humanitarian conventions: “Under ideal circumstances, Stalin and the Soviet Union could no doubt be indicted for genocide.”⁵

As a result, following World War II, the Nazi regime and its crimes were condemned and judged internationally, while the top leadership of the Soviet Union and the regime as a whole were not even formally accused. At the time, this was acceptable to representatives of the international community, but not to the inventor of the notion of genocide. He was probably aware of the threat that the Soviet Union continued to pose to Eastern Europe, and the Ukrainian case was indicative for him.

In September 1953, the Ukrainian community in New York City held a demonstration dedicated to the anniversary of the “Great Ukrainian Famine” – the Holodomor (literally “death inflicted by starvation”), which was also aimed at condemning the crimes of the communist regime. As Roman Serbyn noted: “Raphael Lemkin spoke to the audience of several thousand people. He named the intentional murder of millions of Ukrainians by famine, as well as extermination of Ukrainian intelligentsia (intellectuals) and Church, a classic example of Soviet genocide [...]”⁶ According to the researcher, this speech laid a long-term methodological basis for

the study of the Holodomor. Thus, after World War II, Lemkin actualized the study of Soviet genocidal policy against Ukraine in a historical context. However, it is also important that he viewed the genocide in Ukraine as an exemplary, but not the only, example of Soviet genocide.

Interest in Lemkin's ideas and the concept of genocide has experienced ups and downs. His contemporaries also focused on more global international criminal law issues, including the problem of aerial bombardment of civilians and civilian objects as massive acts of human rights violations. According to Dirk Moses: "From the 1920s to the 1940s, international lawyers were debating civilian destruction in broad terms in relation to aerial warfare and blockades. Lemkin ignored these discussions in fixating on ethnic categories."⁷

In any case, Lemkin's ideas greatly influenced the understanding of the nature of mass violence in the 20th century. While analyzing Lemkin's unpublished work on "Thoughts on Nazi Genocide,"⁸ Dan Stone focuses on Lemkin's description of phenomena that are relevant today. For example, he mentions "political religion," a term that has been used after the end of the Cold War to explain the appeal of both fascism and communism. Dan Stone says that Lemkin intended to suggest that what motivated followers of these ideologies was less to do with rational choice and more to do with a kind of need for community and devotion in a modernized world in which "traditional" forms of affiliation had broken down: "We find a leader, bewitched by his own twisted conviction and enormous power to bewitch others. We find a small clique of followers, imbued by the same fanatical spirit and willing to execute his orders. We also find a large mass of people who follow blindly or remain indifferent, except for a few who go into exile or underground."⁹ We can say that this scheme is also characteristic of contemporary Russian "*ruscism*" as a state ideology.

Thus, during the 20th century, many events of mass violence took place on the territory of Ukraine, most of which occurred during the period of Soviet rule and Nazi occupation: Jewish pogroms, soviet collectivization, the Holodomor of 1932–1933, the Great Terror, the Holocaust, the Roma genocide, deportations, and ethnic cleansing during World War II, and so on. Raphael Lemkin was the first to speak about Ukraine's genocidal experience, but he was unable to develop this topic during his lifetime. In Ukraine, the study of this topic became possible only after the collapse of the Soviet Union and the attainment of independence.¹⁰ Studying genocide and mass violence remains important for the formation of a critical vision of the past in the public consciousness, which Yaroslav Hrytsak referred to as the process of "overcoming the past."¹¹

3.3 The crime of genocide in Ukrainian law after independence

For the past 30 years, Ukraine has been in a state of overcoming the influence of the Soviet totalitarian past, during which massive gross human rights violations and crimes took place. In particular, over the past decades, attempts have been made at the legislative level to incorporate the norms of international law on the crime of genocide into national legislation.

On 1 September 2001, the Criminal Code of Ukraine came into force, replacing the Criminal Code of the Ukrainian Soviet Socialist Republic of 1960. The new code included Article 442, which defines the crime of genocide and the relevant liability, repeating almost identically the provisions of the Convention with the exception of the concept of “mental harm,” which has not yet been clearly defined in Ukrainian legislation:

Genocide, that is, an act intentionally committed with the intent to destroy in whole or in part any national, ethnic, racial or religious group by taking the lives of members of such group or causing them grievous bodily harm, creating for the group living conditions calculated to bring about its physical destruction in whole or in part, reducing or preventing childbearing in such group or by forcibly transferring children from one group to another shall be punishable by imprisonment for a term of ten to fifteen years or life imprisonment.¹²

Subsequent normative acts were related to the desire to rethink the events of the past Soviet era as acts of genocide. Such decisions are formalized in special laws and individual resolutions of the Verkhovna Rada of Ukraine (VRU), the Cabinet of Ministers of Ukraine, and decrees of the President of Ukraine. For example, on 8 October 2004, in preparation for the International Day of Commemoration of the Roma Genocide, the 60th anniversary of the mass killing on the territory of Ukraine, the VRU adopted a resolution “On the commemoration of the International Day of the Roma Holocaust.”¹³ In this case, the term “Holocaust” was used in a broad sense, as a crime committed by the Nazis against various categories of victims, in contrast to the term “Shoah,” denoting the exclusive Jewish experience during World War II. The date for the memorial day was set at the internationally accepted date of 2 August the day when in 1944, the Nazis massacred Roma in the Auschwitz-Birkenau death camp.

In 2006, the Law of Ukraine about the Holodomor of 1932–1933 in Ukraine was passed. Article 1 defines the Holodomor of 1932–1933 in Ukraine as the genocide of the Ukrainian people.¹⁴ This law was one of the results of the political activity of President of Ukraine Viktor Yushchenko, which helped to draw attention to the recognition of the Holodomor as genocide abroad. Prior to that, the Holodomor was officially recognized by seven countries (Estonia, Australia, Canada, Hungary, the Vatican City State, Lithuania, and Georgia). However, Ukraine specifically has created a basic memorial law on the Holodomor.

Paragraph 2 of the Decree of the VRU of 5 July 2011, was established “to commemorate Holocaust Memorial Day on January 27 every year.”¹⁵ This important step demonstrated the tendency of the state and Ukrainian society to understand the Holocaust as a tragedy that occurred on the territory of Ukraine and to take responsibility for the memory of Ukrainian and European Jewish victims of the Holocaust. This act became important for the formation of the current official policy of memory in Ukraine, according to which we should study all tragedies that happened on the territory of Ukraine, including crimes against ethnic minorities. It’s important in light of the formation of Ukrainians as a modern political nation.

At the same time, it was a necessary step for the further process of Ukraine's European integration.

Thus, during the first decades after the independence of Ukraine, we see that the recognition of genocides formed a peculiar hierarchy of legislation – from special laws to individual clauses of resolutions of the VRU.¹⁶ These were mostly memory laws.

3.4 New lawmaking and debates around genocide after 2014

On 30 November 2013, the events of the Revolution of Dignity began in Ukraine. The main reason for this was the development of a protest movement against the policies of President Viktor Yanukovich, who had drastically changed his policy concerning the integration of Ukraine with the European Union. Attempts to suppress the protest movement by force ended with the fall of his authority. At the same time, this led to the weakening of Russian influence in Ukraine and pushed the Russian Federation to launch direct aggression against Ukraine.

In February–March 2014, Russian troops occupied and annexed the Autonomous Republic of Crimea. On 15 April 2014, the VRU adopted a law defining the Autonomous Republic of Crimea and the city of Sevastopol as “territories under temporary occupation.”¹⁷ The aggression continued with the invasion of Donetsk and Luhansk regions in eastern Ukraine. This stage of the war lasted for 8 years until the full-scale invasion of Ukraine by Russian troops on 24 February 2022.

From the very beginning of the aggression in 2014, the crime of genocide began to appear in the rhetoric of the Russian Federation, which resorted to manipulation aimed at justifying the act of aggression by protecting the Russian-speaking population of Ukraine and the “people of Donbas.”¹⁸ Attempts to stop Russia's aggression within the framework of the Normandy format group (representatives of Ukraine, Russia, Germany, and France) in 2014–2021 proved ineffective. The next day after the regular meeting of the negotiators on 9 December 2019, in Paris, Russian President Vladimir Putin said in a press interview: “The Ukrainian side is constantly asking the question: give us the opportunity to close the border with troops. Well, I can imagine what will happen next – there will be Srebrenica.”¹⁹ Thus, he resorted to another manipulation by comparing the events in eastern Ukraine to the act of genocide that took place in 1995 in Bosnia and Herzegovina. Thus, for years, Russia has resorted to instrumentalizing current international law and the crime of genocide, in particular, to justify its criminal actions in Ukraine.

After the outbreak of Russian aggression in 2014, the Ukrainian legislature adopted a number of regulations that condemned the genocide in a historical context, while also giving impetus to the current political debate.

In 2015, the VRU passed a resolution on the recognition of the genocide of the Crimean Tatar people.²⁰ It was a new step to rethink the national history of Ukraine, which was caused by the annexation of Crimea by the Russian Federation and the beginning of the military conflict in eastern Ukraine. The resolution demonstrated a further trend away from an ethnocentric view of Ukrainian history and respect for the rights of ethnic minorities. This decision

received solid support from officials in Ukraine and abroad and from many people who supported singer Jamala during her performance and victory at the Eurovision Song Contest in 2016 with the song “1944.” The song was dedicated to the memory of the victims of the deportation of Crimean Tatars organized by the Soviet authorities in 1944. In 2021, the Verkhovna Rada adopted the Law of Ukraine on Indigenous Peoples of Ukraine. Article 1, paragraph 2 of the law states that “The indigenous peoples of Ukraine, which were formed on the territory of the Crimean peninsula, are the Crimean Tatars, Karaites, and Krymchaks.”²¹ All of these legislative initiatives, in addition to their direct purpose of supplementing and ensuring the rights of ethnic minorities in Ukraine, have become an important signal from the authorities to representatives of these minorities in Crimea that the state does not plan to give in and will fight for the liberation of the territories occupied by Russia.

The Law of Ukraine on the Condemnation of Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propaganda of Their Symbols became both a memory and a sanctioning law. In particular, its provisions amended Article 436 of the Criminal Code of Ukraine, which provides for a penalty of up to 5 years’ imprisonment for:

Production, distribution, and public use of symbols of the communist, national socialist (Nazi) totalitarian regimes, including in the form of souvenirs, public performance of the anthems of the USSR, the Ukrainian SSR (Ukrainian SSR), other union and autonomous Soviet republics or their fragments throughout Ukraine [...].

The memorial significance of the law is enshrined in Article 5, which states that:

The state shall investigate crimes of genocide, crimes against humanity and humanity, war crimes committed in Ukraine by representatives of the communist and/or national socialist (Nazi) totalitarian regimes, and shall take measures aimed at eliminating the consequences of such crimes and restoring historical justice [...].²²

On 19 February 2016, the Verkhovna Rada registered a draft law on amendments to certain legislative acts of Ukraine (regarding criminal liability for denial of the Holodomor, Holocaust, genocide of the Crimean Tatar people), which was supposed to criminalize the denial of genocides, but after several years of consideration, the draft was withdrawn on 29 August 2019, due to the recognition of the provisions as unjustified and such that may violate basic human rights principles.²³

In 2017, at the session of the VRU, a draft law was registered on amendments to some legislative acts of Ukraine (concerning criminal liability for denial of the Holodomor as a genocide of the Ukrainian people).²⁴ The content of the bill led to a discussion about the admissibility of such sanctions, and in 2019 the draft

was withdrawn. In the context of the Russian war in Ukraine, the bill could have meant criticizing the official Russian position that denies the genocidal nature of the Holodomor, but it caused a debate within the country, in particular, around the fact that certain provisions of the law contradict the principle of academic freedom. Therefore, this and other similar initiatives were not adopted and implemented.²⁵ As the recent events in Bosnia and Herzegovina have shown, ill-conceived memory laws can lead to an escalation of the “war of memories” and the intensification of hate speech rather than reconciliation. Therefore, every initiative of the Ukrainian parliament should be balanced.²⁶

On 3 June 2021, at the first reading of the VRU, the Draft Law on Preventing and Combating Anti-Semitism in Ukraine was passed. Article 2 states that denial of the persecution and mass murder of Jews during World War II (the Holocaust) can be considered an expression of anti-Semitism.²⁷ This law became important in the context of Ukraine’s European integration path, where the memory of the Holocaust has become one of the foundations of European identity. In addition, it had an important symbolic meaning on the eve of the 80th anniversary of the tragic events of the Holocaust on the territory of Ukraine. On this occasion, in early October 2021, the leaders of Israel and Germany arrived in Kyiv to participate in a joint commemorative event at Babyn Yar. This place has become symbolic in the context of the history of the Holocaust not only in Ukraine but throughout the former Soviet Union as the site of the largest mass murder of Jews and other victims of the Nazis in the occupied Soviet territories. However, open discussion and commemoration of the Holocaust became possible only after Ukraine gained independence and the abolition of Soviet censorship.

Once the President signs Law No. 5110, which amends Article 161 of the Criminal Code of Ukraine to criminalize anti-Semitism, *anti-Semitism will be punishable by a fine of 200 to 500 tax-free minimum incomes (UAH 3,400 to 8,500) or imprisonment for up to 5 years, with or without deprivation of the right to hold certain positions or engage in certain activities for up to 3 years.*²⁸

Thus, until 2022, the topic of genocide in Ukrainian legislation was mainly aimed at condemning the crimes of the past and forming an appropriate policy of memory in the state. At the same time, the first attempts to instrumentalize the crime of genocide during the Russian Federation’s aggression against Ukraine should be noted.

3.5 Shifting the focus after 24 February 2022

From the very beginning, the full-scale invasion of Ukraine by the Russian Federation was accompanied by massive destruction of civilian objects and violence against civilians. This instantly attracted the attention of researchers, including international law experts, who tried to provide their own qualifications for the events and to plan the way to investigate and convict the crimes. Some questions arose: what are we dealing with here? Are these war crimes, crimes against humanity, or is there a special intent that allows us to talk about genocide

against the Ukrainian people? How do we investigate, prosecute, and organize justice?

As Alexander Etkind noted:

Russian actions in Ukrainian cities and villages included mass murders and deportations combined with intentional destruction of their cultural sites (monuments, museums, theatres, and so on), educational facilities, and history textbooks. This is exactly what Lemkin in 1933 called barbarity and vandalism, and renamed this combination into genocide in 1944.²⁹

The researcher noted that the debate on genocide in light of the current events of Russian aggression was raised at the highest political level by the leaders of major countries, including the presidents of the Russian Federation, Ukraine, France, and the United States. Thus, at the initial stage, the political aspect dominated over the functionality of international laws.

Dominique Arel and Jesse Driscoll noted that Russian aggression was not provoked. The claim that the population of eastern Ukraine needed “protection from genocide” turned out to be completely fabricated. The researchers note that after the outbreak of violence in 2014–2015, the number of civilian casualties remained low until the full-scale invasion:

The full strategy was unveiled in the morning of February 24 [2022]. Putin announced a ‘military operation for the protection of Donbas,’ allegedly because the Ukrainian army was attacking civilians and conducting ‘genocide’ [...]. Both were phenomenal lies.³⁰

Russia’s full-scale invasion of Ukraine on 24 February began not with the condemnation of genocide, but with the instrumentalization of this crime to justify the aggression, which was an unprecedented act in the international practice. According to the Kremlin’s official reports, the invasion was aimed at preventing the genocide of Donbas residents. On 26 February 2022, Ukraine filed in the Registry of the International Court of Justice an “Application instituting proceedings against the Russian Federation concerning a dispute relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.”³¹ In an order on 16 March 2022, the court called among others for a ruling that “The Russian Federation shall immediately suspend the military operations that it began on February 24, 2022 in the territory of Ukraine.”³² Thus, Ukrainian lawyers managed to draw the attention of the global community and international justice to the attempt to instrumentalize the crime of genocide by the Russian Federation to justify aggression against Ukraine. The discussion initiated then continues to this day within the framework of the court’s work. Public sitting in the case of *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation: 32 States intervening)*, were held in September 2023. The case is ongoing.³³

As a result of the full-scale invasion, massive crimes against civilians were committed, accompanied by the destruction of infrastructure of both large cities and smaller settlements. In the first weeks of the war, it became apparent that all this violence could not be explained by the accompanying risks that coincide with any hostilities. The torture and murder of people who actively or passively resisted the Russian military, together with the destruction of schools, universities, museums, libraries, theaters, and other cultural sites that had no military significance, gave reason to talk about the special intent of such actions.³⁴ On 14 April 2022, referring to the Convention on the Prevention and Punishment of the Crime of Genocide, customary international law and taking into account the provisions of the Rome Statute of the International Criminal Court, the VRU decided to approve the Declaration of the Verkhovna Rada of Ukraine “On the Genocide Commitment by the Russian Federation in Ukraine.”³⁵ In particular, this decision actualized the topic of ratification of the Rome Statute by Ukraine, to which it became a signatory in 2000. Ratification would allow for a more effective investigation of war crimes, crimes against humanity and genocide within Ukraine. Representatives of Ukraine could take up a seat in the Assembly of States Parties to the International Criminal Court. Also, ratification could strengthen Ukraine’s position on the ICC and its members, increase Ukraine’s credibility as a signatory, and allow for the ratification of the amendments on the crime of aggression. The main argument against the ratification of the Rome Statute in Ukraine is that after such a step, the International Criminal Court would potentially begin investigating alleged crimes of the Ukrainian army, as it would be almost impossible to prosecute the Russians. However, this opinion was criticized by Ukrainian lawyers and human rights activists as the ICC already has jurisdiction over Ukrainians.³⁶

In the Explanatory Note, considerable attention was paid to the characteristics of the policy of the Russian Federation towards Ukraine in recent years, which contributed to the rooting of hate speech against Ukrainians and led to an aggressive war. The continuity of this policy to the tragic events of the Soviet period of Ukraine’s history, in particular, the times of Stalin and his genocidal policy, was noted.

An important aspect was to note the prospects for which the investigation of the crimes of the Russian Federation in Ukraine is not limited only to the investigation of the crime of genocide. Also, the Prosecutor General’s Office, the Ministry of Foreign Affairs of Ukraine, and the Ministry of Justice of Ukraine were instructed to take measures to properly document the facts of crimes against humanity, war crimes, and other serious crimes on the territory of Ukraine. This will allow for a more flexible policy in investigations initiated in Ukraine and abroad.

On 7 February 2023, the Draft Law on the Creation of the National Memorial Complex of Genocide in Ukraine, War Crimes, and other serious crimes committed by the criminal regime of the Russian Federation on the territory of Ukraine was submitted to the Parliament of Ukraine for consideration.³⁷ This was the first step that was taken regarding the future commemoration of war victims.

The special attention of legislators was drawn to the plight of Ukrainians who are in the territories controlled by Russia. The Draft Resolution on the Statement

of the Verkhovna Rada of Ukraine on the Genocide of the Ukrainian People by the Russian Federation and Systematic Discrimination of Ukrainians in Russia and in the Territories of Ukraine temporarily occupied by Russia was devoted to this.³⁸ But there was no further movement after the draft resolution was received by the VRU on 19 January 2023.

On 22 November 2022, the VRU approved a Resolution on the Address to the parliaments of the world countries regarding the recognition of the Holodomor of 1932–1933 as genocide of the Ukrainian people.³⁹ This document contributed to attracting attention to the topic of crimes committed by the Kremlin on the territories of Ukraine.⁴⁰ As a result, a number of new countries (Czech Republic, Brazil, Ireland, Moldova, Romania, Germany, Bulgaria, Belgium, Slovenia, Great Britain, Iceland, France, Luxembourg, Croatia, and Slovakia) recognized the Holodomor as genocide at the state level.

In order to understand the nature of the anti-democratic regime of modern Russia and its aggression against Ukraine, knowledge of modern politics alone is not enough. This can only be done by understanding the historical context. That is why explanations of events by historians became extremely important. Moreover, Putin and his closest entourage quite freely manipulate history, which was put at the service of Russian propaganda to influence both its own population and people abroad.

Timothy Snyder in his “9 Theses on Putin’s Fascism for 9 May” tried to deconstruct the Russian narrative of the genocidal war in Ukraine in relation to the history of the Second World War:

Russian propaganda about 1945 and 2022 is summarized in the popular slogan: ‘We can repeat!’... The whole idea of repetition involves choosing a particular point in the past, idealizing it, ignoring all the context and everything that followed, and then imagining that it can be relieved. Whoever performs this exercise eliminates any sense of responsibility: we were right back then, therefore we are right now, and we will always be right — no matter what we do. And so fascism’s ‘redemptive excess’ of ‘patriotic arbitrariness’ is attained.⁴¹

However, comparing Russia’s war against Ukraine with the Second World War sometimes draws too many parallels that could harm the process of holding Russia accountable in the future. That is why it has become extremely important to call the crimes of Russia today and here, its regime by its name. That is why, on 2 May 2023, the VRU adopted the Resolution “On the Statement of the Verkhovna Rada of Ukraine ‘On the use of the ideology of *ruscism* by the political regime of the Russian Federation, condemning the foundations and practices of *ruscism* as totalitarian and misanthropic.’”⁴² According to the Press Service of the Apparatus of the VRU,

the Draft Resolution is aimed at the adoption of the Statement of the Verkhovna Rada of Ukraine, which will allow to determine the forms of aggression of the Russian Federation and will encourage the countries of the world to condemn

its policy, which leads to the commission of war crimes and the genocide of the Ukrainian people.⁴³

Thus, *ruscism* was defined as the state ideology of the Russian Federation. Prior to this, the phenomenon of *ruscism* has been studied by researchers for several years and has gone from a meme to a well-founded and legally established term. Ukrainian researcher Larisa Yakubova characterized *ruscism* as

the highest stage of the ‘Russian world.’ Ruscism is a historically new phenomenon – a delayed/mutant fascist/Nazi syndrome on the Russian ethno-political soil. It is the mutant nature of the post-Soviet organism of the Russian Federation that makes direct analogies with Nazism or fascism impossible, as is generally stated in the mass discourse.⁴⁴

On 22 May 2023, members of the NATO Parliamentary Assembly stated that they were “Determined to hold accountable the Russian regime, its co-aggressors in the Belarusian regime and all other perpetrators, including for the crime of aggression, war crimes, crimes against humanity and possible acts of genocide committed in Ukraine.”⁴⁵ The text does not provide a detailed definition of *ruscism*, but calls it part of Russian ideology and practice in the context of aggression against Ukraine. Thus, a detailed interpretation and inclusion of the concept of *ruscism* in other language dictionaries is a pressing issue.

Currently, both Ukrainian and foreign lawyers are dealing with the qualification of the crime of genocide in Ukraine. On 14 April 2023, in Vilnius, members of the joint investigative team for the investigation of serious international crimes in Ukraine (JIT) signed an agreement to investigate not only war crimes but also the crime of genocide. Prosecutor General of Ukraine Andriy Kostin noted in his report that

Since the beginning of the full-scale invasion, we have seen a system in the war crimes of the Russian Federation. Currently, in our investigations, we are checking two main aspects: whether individual war crimes have signs of genocide and whether the revealed patterns indicate a planned policy of genocide.⁴⁶

Thus, it is very important to investigate not only specific crimes, but also pre-war rhetoric, official statements, and other sources, where the roots of the modern Kremlin’s genocidal policy should be sought.

British lawyer Wayne Jordash, analyzing the genocidal nature of Russian violence in Ukraine, noted that after the Russian command and Russian troops encountered Ukrainian resistance and learned about the origin or existence of the genocidal campaign, they may have developed a specific intent to commit physical genocide in addition to the existing intent to commit cultural genocide: “Under such conditions, they will be responsible for war crimes and crimes against humanity, which constitute cultural genocide and genocide covered by the Convention on the Prevention of the Crime of Genocide.”⁴⁷ We can agree with this, because the

tendency to commit conventional genocide can be traced from the Kremlin's public speeches, texts, and statements before a full-scale invasion. One of the most eloquent sources for study and analysis, and at the same time evidence, is Putin's article "On the historical unity of Russians and Ukrainians," which contains an actual denial of the right of Ukrainians to their own national identity and state independence:

[...] I said that Russians and Ukrainians are one people, a single unit [...] I have spoken about it many times, this is my belief [...] I am sure that the true sovereignty of Ukraine is possible only in partnership with Russia [...]. Together we have always been and will be immeasurably stronger and more successful. After all, we are one people.⁴⁸

In connection with the subsequent full-scale aggression and numerous murders of representatives of the civilian population, deportations and transfer of Ukrainian children to Russian families for upbringing, we can talk about various ways of committing genocide against the Ukrainian people.⁴⁹ In order to draw attention to this problem, the VRU adopted a number of resolutions to address the UN Human Rights Committee, the UN Committee on the Rights of the Child, the International Court of Justice, the UN High Commissioner for Refugees,⁵⁰ as well as parliaments and governments of foreign countries, international organizations and their inter-parliamentary assemblies⁵¹ to condemn the crimes of forced deportation of Ukrainian children committed by the Russian Federation and the Republic of Belarus and to demand the return of such children to their parents or legal representatives. Today, these cases are carefully studied by investigators in Ukraine and abroad, and their qualifications should become a task for a special international court. In particular, ICC judges issued arrest warrants against President of the Russian Federation Vladimir Putin and Commissioner for Children's Rights in the Office of the President of the Russian Federation Maria Lvova-Belova.⁵²

In addition to the purely Ukrainian context of the investigation of the crime of genocide, the deputies of the VRU considered and approved a number of resolutions recognizing Russia's policy towards the peoples of the North Caucasus as acts of genocide. On 24 June 2022, the VRU registered a draft resolution on the recognition of the genocide of the Circassian (Adyghe) people during the Russian–Caucasian war.⁵³ On 18 October 2022, the Draft Resolution on the Statement of the VRU on the Recognition of the Chechen Republic of Ichkeria as Temporarily Occupied by the Russian Federation and Condemnation of the Genocide of the Chechen People was signed.⁵⁴ Also, on 11 May 2023, the Draft Resolution on the Recognition of the Genocide of the Circassian People Committed by the Russian Empire was registered.⁵⁵ These legislative initiatives are important, as the events in the North Caucasus have shown how Russia conquered and brutally suppressed the efforts of the peoples of the Caucasus to gain their own sovereignty from the 19th to 21st century. The same Russian policy continues to threaten modern Ukraine and other neighboring countries.

3.6 Conclusion

In 1949, the Ukrainian Soviet Socialist Republic, as a UN member state, supported the adoption of the Genocide Convention. However, this did not lead to a review and condemnation of all crimes of the communist and national socialist regimes in the country, as its international position provided only for formal representation of the state as an independent entity and full control by Moscow. This process became possible only after Ukraine gained independence when mass violence and the genocidal experience of Ukrainians became available for free discussion. Genocide as a crime and its precedents in Ukrainian history were enshrined in sanctions legislation and a number of memory laws.

The Holodomor, the Great Terror, the Holocaust, and the Genocide of the Crimean Tatar people were the central themes of the memory laws around which the legislative work was conducted. In general, these initiatives were based on the idea of historical justice in relation to crimes that were not timely condemned. At the same time, individual legislative acts may differ in their content and goals. For example, the official condemnation of the Holocaust is one of the important conditions on Ukraine's path to European integration, and initiatives to protect the Crimean Tatar population of Ukraine have actually become one of the responses to the aggression of the Russian Federation and the attempted annexation of Crimea. However, this should not mean that these topics depend only on the political situation. It is also about the request of Ukrainian society for a critical revision of history, which plays an important role in the modern formation of Ukrainians as a political nation in which there should be no place for other people's tragedies. Accordingly, it is important to study all manifestations of mass violence, including the crime of genocide, which was experienced not only by Ukrainians but also by representatives of ethnic minorities. One of the next steps in assessing Ukraine's genocidal experience should be to agree on common themes with neighboring countries. For example, Ukraine and Poland still do not have a consistent view of the Volyn Massacre of 1943 (in the Polish version, the Wołyń Massacre) that took place on the territory of Ukraine. The official discourse of Ukraine is dominated by the version of mutual violence as a "tragic event," while in Poland these events were labeled genocide committed by Ukrainian nationalists and their supporters at the legislative level.

Russia's full-scale invasion of Ukraine on 24 February 2022, was a new milestone in the study of Ukraine's experience of international crimes, including the crime of genocide. The legislative initiatives of the Verkhovna Rada of Ukraine have launched investigations and political debates at home and abroad about the Russian genocide in Ukraine. These debates are accompanied by a journey into the past to understand the nature of Russia's contemporary genocidal violence against Ukrainians. The impunity of the Soviet leadership gave rise to the confidence of the modern leadership of the Russian Federation that a world in which real politics remains a powerful tool will come to terms with aggression against Ukraine and annexation of its territories. However, it is obvious that such a solution would open up opportunities for

new global conflicts and ambitions to redistribute the world and disrupt the already shaky peace that was established after World War II.

Thus, Ukraine continues to develop a legal framework that seeks to condemn genocide and other international crimes in a historical context and to investigate and prevent the future recurrence of these crimes.

This chapter is only an attempt to organize the understanding of genocide in the history and present of Ukraine at the official state level. In particular, it reflects the legal framework that serves as a tool for qualifying and preventing crime. This process is not complete and continues today. Critical reflection on the tragic events of the past plays an important role in shaping Ukraine's legal and democratic system. Similar processes are taking place in other democratic countries, while anti-democratic regimes tend to conceal and deny genocidal and other international crimes.

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