

## **Holodomor: The Ukrainian Genocide**

The Holodomor ("Extermination by hunger"), also known as the Terror-Famine or Famine-Genocide in Ukraine, was a genocide in 1932 and 1933 that was carried out by the Soviet Union through an artificial, man-made famine in Ukraine. Up to 10 million Ukrainians died, although the precise number is virtually impossible to calculate. Most of the victims died of starvation. The Holodomor has been recognized by Ukraine and 14 other countries as a genocide of the Ukrainian people.

Although certain natural factors and bad economic policies contributed to the famine, the primary cause was the intentional and long-term plan of Joseph Stalin and other Soviet leaders to eliminate the Ukrainian independence movement through mass starvation. This plan was effectively carried out in a variety of ways, including the continuing export of food from Ukraine, the rejection of outside aid, confiscation of household foodstuffs from starving Ukrainian families, and restriction of population movement or migration. Since the intent of these Soviet policies was to target the Ukrainian population for death through starvation and to eradicate the rise of Ukrainian nationalism, the Holodomor unquestionably falls under the legal definition of genocide.

Robert Conquest, the author of the *Harvest of Sorrow*, has stated that the famine of 1932–33 was a deliberate act of mass murder, committed as part of Joseph Stalin's collectivization and subjugation plan for Ukraine. Dr. Michael Ellman of the University of Amsterdam has noted that 1.8 million tons of grain were exported during the mass starvation (enough to feed more than five million people for one year). He also estimates that, by preventing migration from famine afflicted areas, an additional 150,000 lives were lost. During this 1932-1933 time-frame, the Soviet authorities made no effort to secure grain assistance from abroad and rejected any offers

of aid, which alone caused an estimated 1.5 million excess deaths. The Stalinist regime in 1932–33 also took the attitude that many of those starving to death were "counter-revolutionaries", "idlers" or "thieves" who fully deserved their fate.

According to Genocide scholar Adam Jones, the actions of the Soviet leadership during 1931–32 should be considered as genocidal, not only because the famine killed millions, but it also took place against "a backdrop of persecution, mass execution, and incarceration clearly aimed at undermining Ukrainians as a national group."

Both during and after the famine, Soviet authorities steadfastly denied that the Holodomor had ever occurred, or that if it did occur, it was not a premeditated act. In the Soviet Union, authorities all but banned discussion of the famine, and even Ukrainian historian Stanislav Kulchytsky was ordered by the Soviet government to falsify his findings and depict the famine as an unavoidable natural disaster, in order to absolve the Communist Party and uphold the legacy of Stalin.

Eventually, however, the truth came out, and the full scope of this horrific genocide was finally recognized by the international community. On November 10, 2003, on the seventieth anniversary of the Holodomor, 25 countries including Russia, Ukraine and United States signed a joint statement at the United Nations, recognizing "The Great Famine of 1932–1933 in Ukraine (Holodomor)", which was caused by "the cruel actions and policies of the totalitarian regime." On November 28, 2006, the Verkhovna Rada (Ukrainian Parliament) passed a law defining the Holodomor as a deliberate act of genocide and made public denial illegal. On October 23, 2008, the European Parliament adopted a resolution that recognized the Holodomor as a crime against humanity, and on April 27, 2010, the Parliamentary Assembly of the Council of Europe passed a similar resolution, finding Stalin guilty of causing the famine.

The Holodomor has also been specifically acknowledged by the U.S. Government. On November 13, 2009, President Barack Obama released a statement on Ukrainian Holodomor Remembrance Day. In this he said that "remembering the victims of the man-made catastrophe of Holodomor provides us an opportunity to reflect upon the plight of all those who have suffered the consequences of extremism and tyranny around the world". On November 19, 2011, the U.S. day of remembrance of Holodomor, the White House released a statement reflecting on the significance of this date, stating: "...in the wake of this brutal and deliberate attempt to break the will of the people of Ukraine, Ukrainians showed great courage and resilience. The establishment of a proud and independent Ukraine twenty years ago shows the remarkable depth of the Ukrainian people's love of freedom and independence." On November 7, 2015, the Holodomor Genocide Memorial was opened in Washington D.C.

Russia, as the successor in interest to the Soviet Union in the Stalinist era, is liable in U.S. courts for its responsibility for the Holodomor under both the Alien Tort Statute and the Convention Against Genocide.

The Alien Tort Statute (28 U.S.C. § 1350), also called the Alien Tort Claims Act (ATCA), was one of the first statutes enacted by the U.S. Congress as part of the Judiciary Act of 1789. It opened the doors of the U.S. courts to all foreign citizens (*i.e.* "aliens") with regard to any civil wrongs (*i.e.* torts) committed in violation of customary international law. The language of the statute is both short and simple: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

The Genocide Convention, enacted by the U.N. General Assembly in 1948, defines 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 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 ....

The "conditions of life" referred to in the definition were designed to be a catch-all that encompassed situations in which the actor does not actually kill the victim, but intends to cause a slow death that may or may not be realized. This item was included, primarily, to prevent situations like "the ghetto, where the Jews were confined in conditions which, either by starvation or by illness accompanied by the absence of medical care, led to their extinction." Yet it was also intended to include a wide variety of conduct that could not be easily described as "killing." The Genocide Convention thus prohibits actions that fall short of actual killings.

While there were almost no prosecutions in the forty years following the passage of the Genocide Convention, the end of the Cold War led to numerous prosecutions for the crime of genocide, including those brought by the International Criminal Tribunal for the former Yugoslavia ("ICTY, the International Criminal Tribunal for Rwanda ("ICTR"), and the International Court of Justice ("ICJ").

It is now fully understood under customary international law that that the crime of Genocide is so serious that there is Universal Jurisdiction under the Genocide Convention, which means that genocide cases may be brought in the courts of any "civilized nation."

International courts, such as the ICTY and the ICTR, are unanimous that the *mens rea* requirement for direct responsibility is “specific intent or purpose.” They have defined the requirements for specific intent for genocide as consisting of two elements: “(1) the prohibited act must be committed against an individual because of his membership in a particular group and (2) as an incremental step in the overall objective of destroying the group.” This *mens rea* requirement is distinct from knowledge. “Knowledge is a subjective, practical certainty that a particular result will occur in the ordinary course of events, but without any positive desire to bring it about. If an actor knows that his or her acts will destroy a protected group, but the destruction was not the purpose of the act, he or she is not liable for genocide.

There can be little question, therefore, that the Soviet Union and its leadership are liable under international law for the Holodomor, since they had the specific intent (*mens rea*) to effectuate a genocide of the Ukrainian people. In fact, this genocide was partially successful, and the Soviet authorities “re-populated” entire rural areas of Ukraine with ethnic Russians after the Ukraine peasantry in these areas were virtually wiped out.