

The Ukrainian Famine, International Law, and Political Will¹

By Dr. Gregory H. Stanton²

The Ukrainian famine was, under today's international law, both a crime of genocide and a crime against humanity. But under the international law of 1932 and 1933, it was not a crime at all. What a sovereign nation-state did to its own citizens was a subject for national, but not international, law. The monarchists' myth of sovereignty – a myth America's founders explicitly rejected by placing sovereignty in the people – made even tyrants immune from accountability to the law. The only remedy for the crimes of tyrants was revolution.

There was no international law against mass murder. There was no Genocide Convention. The Nuremberg Tribunal had not declared Nazi leaders guilty of crimes against humanity, which remained undefined. There were no courts, other than national courts, where killers could be tried. National courts were controlled by the same tyrants who committed the crimes. So Josef Stalin got away with mass murder.

In 1933, the second year of the Ukrainian famine, a Polish, Jewish lawyer named Raphael Lemkin traveled to Madrid to a meeting of the Legal Council of the League of Nations to propose an international treaty to outlaw mass murder as an "act of barbarism." The Council refused to consider it. The Polish government was pursuing a policy of conciliation with Nazi Germany. Lemkin had to leave his post as a public prosecutor in Warsaw and in 1939 was wounded while fighting the Nazi invasion. He escaped to Sweden and the United States, and in 1944 invented the name for what Churchill had called the "crime without a name," genocide. Lemkin advised the prosecution at Nuremberg and relentlessly led the way to the first convention outlawing mass murder, the Genocide Convention of 1948.

In the negotiations for the Genocide Convention, Stalin's Soviet Union insisted on excluding the mass killing of political, economic, and social groups from the definition of genocide. Stalin, the most murderous dictator of all time, has been laughing from his

¹ Presented at the Conference on *The Ukrainian Famine of 1932 – 1933: Lessons Learned and Not Learned*, held in Washington, D.C. on November 13, 2003. Co-sponsored by the Kennan Institute of the Woodrow Wilson International Center for Scholars; the Embassy of Ukraine to the United States; the U.S. – Ukraine Foundation; and the Ukrainian Congress Committee of America.

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grave ever since, while lawyers debate whether this or that mass killing meets the legal definition of genocide. The prevention and prosecution of genocide has been plagued by “definitionalism.” The most notorious recent example was the State Department’s refusal to call the Rwandan genocide by its proper name until it was nearly over.

The United Nations said in 1948, “Never again.” But for the past fifty-five years the pattern has been “again and again.” Since 1948, there have been at least fifty-five genocides and political mass murders (politicides), over one per year, with more than eighty million victims. 35 million of those victims have died in government caused famines, including 27 million during the communist Chinese “Great Leap Forward,” two million in North Korea, over a million in Khmer Rouge Cambodia (in addition to another million murdered directly), and half a million in Ethiopia under Mengistu’s communist Dergue regime. Not all of the famines have been imposed by communists. Sudan’s Islamic north has starved two million southern Sudanese. Nigeria’s siege during its civil war cost a million lives in secessionist Biafra.³

Most of these famines did not quite fit the definition of genocide because they did not intentionally destroy, in whole or in part, a national, ethnical, religious, or racial group, as such. Destruction of part of a national group might qualify as genocide even if part of a national group intentionally kills another part of the same group. Khmer Rouge targeting of Cambodia’s Eastern Zone, Mengistu’s targeting of Ethiopia’s rebellious Tigray and Wollo provinces, and North Korea’s cut-off of food to its Northeast region might thereby have been crimes of genocide. Sudan’s destruction of Nuba, Nuer, and Dinka ethnic groups almost certainly have been genocidal. Another problem is that the Genocide Convention’s requirement of specific intent has again and again confused lawyers trying to distinguish tactics in civil war from genocide. What they ignore is something that Robert Melson pointed out years ago: that most genocides occur during wars.⁴ The two categories of killing are complementary, not mutually exclusive.

International Law: Does the world need a treaty that outlaws famine crimes?

In his seminal article in this year’s American Journal of International Law,⁵ David Marcus calls for a convention making it criminal to intentionally or recklessly create, inflict, or prolong conditions that result in the starvation of a significant number of people. Like Raphael Lemkin, he is right. The Genocide Convention’s definition of genocide includes “deliberate infliction of conditions of life calculated to bring about the physical destruction, in whole or in part, of a group.” Lemkin originally wanted political, economic, and social groups included. Marcus’s proposal would put them back in for

³ Siege of civilian populations is an ancient tactic of war, and was not made a war crime until 1977 with Additional Protocol II of the Geneva Conventions, to which neither Sudan nor the U.S. is a party. Nigeria’s civil war occurred before Additional Protocol II went into force. Nigeria became a party in 1988. Nigeria is still not a party to the Genocide Convention.

⁴ Melson, Robert F., Revolution and Genocide: On the Origins of the Armenian Genocide and The Holocaust, Chicago: University of Chicago Press, 1992.

⁵ Marcus, David, “Famine Crimes in International Law,” *The American Journal of International Law*, volume 97, pp. 245 – 281, 2003.

famine crimes. As we have finally seen in the Rwanda and Yugoslav tribunals, precise definition of crimes against humanity is very important for prosecuting perpetrators.

Some would say that a new convention is not needed because “extermination” is included as a crime against humanity in the Rome Statute of the International Criminal Court.⁶ Article 7 (2)(b) defines “extermination” as “the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.” So there is already an international convention that outlaws famine crimes. Ninety-two nations have ratified the ICC Statute. It entered into force in July 2002. All that remains is to get it ratified by the nations that have not done so.

The problem is that the nations that have not ratified the ICC Statute represent about half of the people on earth. They include the U.S., Indonesia, the Peoples’ Republic of China, India, Pakistan, North Korea, Ethiopia, Libya, and Iraq. Russia, Ukraine, Bangladesh, Burkina Faso, Iran, Syria, Zimbabwe, and Sudan have signed but not ratified. There is no universal ratification, judicial opinion or state practice by which one can claim that the ICC Statute’s prohibition of extermination has become customary international law. Three countries where government created famine is currently underway – Sudan, North Korea, and Zimbabwe – are not covered by the ICC Statute.

Would the governments of these same states also refuse to ratify a convention against famine crimes? More importantly, would the new treaty create institutions for preventive intervention that the ICC Statute cannot?

Last week’s Human Rights Watch report on Zimbabwe’s use of food as a political weapon illustrated the need to clearly outlaw famine crimes. Robert Mugabe’s ZANU-PF party and Shona youth militias are systematically refusing to distribute World Food Program, World Vision, CARE, Catholic Relief Services and other food relief, much of it provided by the U.S. government, to hundreds of thousands of people without ZANU-PF party membership cards.⁷ Many of those affected by these selective food shortages are ethnic Matabele, a group subjected to Zimbabwe army massacres in 1982 – 1983. So the denial of food carries potential genocidal as well as political intent. But it is not genocide yet, so the only human rights obligations that Human Rights Watch can claim Zimbabwe has violated are the vague “right to food” provisions of the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights.

⁶ Rome Statute of the International Criminal Court, July 17, 1998, UN Doc. A/CONF.183/9* (1998), reprinted in 37 ILM 999 (1998), corrected through May 8, 2000, by UN Doc. CN.177.2000.TREATIES-5, available at < <http://www.un.org/icc> > [hereinafter ICC Statute].

⁷ Human Rights Watch finds, *inter alia*, that “Those experiencing trouble accessing ...maize share a common identity: they are perceived as political enemies of ZANU-PF and the government.... Rural and urban people without ZANU-PF party cards are unable to register for or receive ...maize. The government compounded food shortages and consolidated its control by halting private merchants and all but a handful of NGO’s from importing grain. The government also closed down relief operations in areas where residents were thought to support the [opposition] MDC. For instance, the government disrupted feeding operations in the MDC stronghold of Binga by the Catholic Commission for Justice and Peace and by Save the Children Fund – UK.” Available at < <http://www.hrw.org/press/2003/10/zimbabwe102403.htm> > pp.2-3.

The Man-Made Famine Process

Following the Ethiopian famine of 1983 – 1985, the United Nations Food and Agriculture Organization developed its Global Information and Early Warning System and U.S.A.I.D. its Famine Early Warning System. They focus on drought, floods, and other natural disasters, but have also begun to consider man-made causes of famines. Since the Rwandan genocide there have also been attempts to develop early warning indicators for genocide and violent conflicts, and many multi-factoral, statistical models have resulted, all of them far too complex for policy makers to use to make policy. There has also been a growth industry in conflict transformation and research institutes.

Man-made famines have the same criminal intent as genocide and politicide. The Man-Made Famine Process is strikingly similar to the genocidal process because it actually is a type of genocide. The genocides of the twentieth century all followed the same eight stage process. The Ukrainian famine was a classic example.

Classification: Ukrainian nationalists and land-owning small farmers and money lenders were classified and identified.

Symbolization: People belonging to these groups were named (“kulaks”).

Dehumanization: Kulaks and Ukrainian nationalists were declared “class enemies” to be “liquidated,” a euphemism for killed.

Organization: Stalin’s secret police, the OGPU, organized gangs of thugs to enforce Communist Party orders. They had their own guarded dining halls that were off limits to the starving Ukrainians. Private property was abolished and peasants were forced into collective farms. All collective production was declared to be state property.

Polarization: The Ukrainian intelligentsia, religious and political leaders were arrested.

Preparation: Stalin’s government set grain quotas for Ukraine impossibly high, so that they could not be met. Withholding of grain and stealing food were made capital crimes. Rural areas of Ukraine were cordoned off and those without permits were forbidden to travel to cities or out of Ukraine to find food.

Extermination: The secret police stripped every rural collective of all its food, leaving the rural peasants to starve. Those caught with food were shot or sent to the Gulag. Stalin allowed no food imports or food aid to Ukraine. The Communist Party refused to release “emergency supplies” held as state reserves right in Ukraine. This intentional famine was not deemed an “emergency.” Over five million people starved.

Denial: Throughout the famine, the Soviet state denied that any food shortages existed. Fellow-traveler reporters like Walter Duranty of the New York Times and Sydney and Beatrice Webb denied that there was any famine in Ukraine. The Communist Party of Russia still denies the famine to this day.

International Institutions

Early warning wasn't what prevented intervention to stop many of the genocides and politicides of the twentieth century. There are two institutional reasons why the world still has genocides and politicides:

1. The early warnings don't get to the leaders who can act on them and to the public, who could pressure their leaders to act.
2. There is no standing military or police force that transcends national interests.

In 1932 – 1933, there was no United Nations. But even with a United Nations, there have been few efforts to stop genocides.

The United Nations still has no official you can call if you know of an impending genocide. Who do you call? Ghostbusters? Ambassador David Scheffer, U.S. War Crimes Ambassador under President Clinton, organized an inter-agency Atrocities Working Group that met monthly to look for early warnings of genocide. I don't know if it still meets. These early efforts have shown that the key to effective early warning is the level of decision maker they reach.

Early warning responsibility should be placed not in NGO's or think tanks or middle levels of bureaucracies. They should be at the highest level. A genocide early warning specialist should be on the Policy Planning staffs of the U.N. Secretary General, the Secretaries of State and Defense, and the National Security Advisor.

Second, when a genocide is coming, the United Nations should have standing, armed rapid response military and police brigades available to intervene. One of the excuses for the U.N.'s withdrawal at the beginning of the Rwandan genocide was that the 2,500 U.N. peacekeepers already in Rwanda were inadequately armed and lacked the mandate to stop the genocide. Such a failure must never happen again.

Articles 43 through 47 of the U.N. Charter call for member states to hold immediately available army and air force contingents for combined international enforcement action, and would set up a Military Staff Committee to command such forces. These articles have never been implemented. They should be. The United Nations will not act unless the U.S. leads the way.

For truly genocidal regimes like Saddam Hussein's, the only solution is regime change. But as we are now learning in Iraq, without U.N. authorization, U.S. intervention will be seen by many people, both in Iraq and among our allies, as illegitimate. If the U.S. cannot get the U.N. to follow, we should at least continue to lead NATO, support African forces in Liberia, and the U.N. peacekeeping mission in Sierra Leone. The European Union is creating its own rapid response force. We should encourage that initiative.

Political Will

International institutions will not work if there is no political will to lead them. The reason why most of the genocides of the twentieth century went unchecked was the lack of political will to stop them. Appeasement let Hitler think he could get away with the Holocaust. Isolationism let Stalin think he could inflict the Ukrainian famine. Vietnamese War fatigue let the Khmer Rouge think they could commit mass murder. Indifference let the Hutu power movement think it could commit the Rwandan genocide.

As I have learned from writing the U.N. Resolutions to create the Rwanda Tribunal and working for twenty-three years to bring the Khmer Rouge to justice, the problem is no longer the absence of law, but is rather the absence of political will to enforce it.

Political will is not a magic potion that is created by witchcraft. It is created by popular pressure, organized into a political movement, and directed toward specific goals. Government leaders will not act unless political movements in their countries demand that they act. What is needed today is an international movement to end genocide on the scale of the anti-slavery movement of the nineteenth century.

There are often times when armed intervention would make matters worse or even result in unthinkable nuclear war, as it would with North Korea. In facing such challenges, we should learn from the history of Ukraine. For over seventy years, Ukraine was held captive by a communist tyranny. But eventually, through the heroism of the Ukrainian people, with active support from groups like the AFL-CIO and the Ukrainian Congress Committee of America, Ukraine rose up and overthrew its Soviet totalitarian masters. The same revolution will occur in the remainder of the communist empire – in China, Vietnam, Cuba, Burma, and North Korea. The forces of freedom will also liberate the Islamic states of Sudan and Iran.

I have felt freedom's power. In May 1991, in Kyiv, Ukraine, Stepan Khmara, an elected member of the National Assembly, was in prison again, about to go on trial with seven other independence activists, my clients. The KGB had the gall to arrest Khmara on the floor of the National Assembly.

A rally was to be held in the center of Kyiv, beneath a gigantic statue of Lenin. The organizers told me the permit had been denied, so the rally was illegal. I could be arrested. Did I still want to speak?

Over 5000 people came to the rally. I read them these words:

“We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness – That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the consent of the Governed, that

whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government.”

The crowd roared. Those words are just as revolutionary today as they were in 1776.

We marched to the prison and demanded to see Stepan Khmara. That evening Stepan Khmara and his co-defendants were released.

In October of 1991, I saw Stepan Khmara again. We visited Babi Yar. And we then stood together and watched cranes dismantle that gigantic statue of Lenin, block by block.