Holodomor: Implications on a Neo-Soviet Ukraine

Laura Umetsu, Louisiana State University Law Center

Available at: http://works.bepress.com/laura_umetsu1/4/
Holodomor: Implications on a Neo-Soviet Ukraine

Laura Umetsu

This paper delves behind the Holodomor as genocide, its ties to the lingering tensions between the Ukrainian and Jewish communities, and proposed introduction of its history into modern classrooms.

Louisiana State University
Ernest N. Morial Scholar
Louisiana State University
Paul M. Hebert School of Law
January 19, 2013
Holodomor and its Implications on a Neo Soviet Ukraine
Laura Umetsu*

I. ABSTRACT

This paper delves behind the Holodomor as genocide, its ties to the lingering tensions between the Ukrainian and Jewish communities, and proposed introduction of its history into modern classrooms.

II. INTRODUCTION

On the evening of the seventh worst day of her life, Katerina Tymoshenko¹ decided which of her five beloved children she would starve to death by the end of the month, so that the stronger ones might live.

She cradled the bony frames of her two youngest and weakest. Though she had doomed them, she would not eat them, she would not feed them to the others, nor would she lose them to the local roving, cannibalistic bands of starving neighbors who hunted, killed, and stewed children too weak to run.² The fields just outside her thatched home were ripe with corn, but she did not dare go outside to pick an ear or two to stave off starvation because she had seen too

---

* Comparative Law Candidate and Ernest N. Morial Scholar, Paul M. Hebert Law Center, Louisiana State University. The author would like to deeply thank the Ukrainian Genocide Foundation, her peers and supportive faculty at Louisiana State University, and members of the Slavic Christian Community who made this paper happen. Special thanks go to Ivan Golovkin, Nick Mischenko, Anna Zinchenko, Leonid Vasilyevich Svetlov, and associated members of Slavic Baptist Church.

¹ Not her real name. Subject’s grandson was willing to be interviewed on sole condition that real name not be used. Telephone interview with D.M., Holodomor descendant (February 20, 2012). See also generally, Ukrainian Genocide Foundation, Soviet Policy and the Ukrainian Genocide 1932-1933 (2012), Timothy Snyder, Bloodlands: Europe Between Hitler and Stalin 39 (2010).

² Id.
many of her neighbors shot to death for even less by the sharp-eyed armed sentries at the watchtowers that loomed over the fields.³

Precious little evaded Stalin’s gangs of Soviet confiscators who came at all hours, measured the walls for hollowed spaces in which to hide grain, smashed and destroyed furniture to look for hiding spots, and raided the storage shed for hidden potatoes.⁴ Sometimes they came seeking dinner, stealing the food from her children’s plates.⁵ Sometimes, realizing that her absent husband had either been deported or shot, they came eyeing her female frame for more. What they saw they wanted, what they wanted, they took. Since her village had not met Stalin’s mandatory grain quota, their supply lines were cut off, travel was blocked by Soviet roadblocks. The Soviets decreed all food Soviet property, and executed those caught hiding food.⁶

Yet Katerina still hid food to survive. A few kernels in a hollowed footstool, cords of wheat woven into her thatched roof, some grain hidden in the depths of a cradle, a secret potato store by the root of a tree, and a newfound palate for worms ensured that she would survive 1933 in Soviet-blockaded Ukraine.⁷

Only one of her children survived with her.

During the Holodomor, Stalin’s anti-Ukrainian genocidal campaign which peaked from 1932-1933, the Soviet government starved up to ten million Ukrainians to death.⁸ Unlike the killing sprees of their contemporaries, the Nazis, whose infamous mass murders of the Jewish
people were comparatively efficient and quick\textsuperscript{9}, the suffering inflicted by the Soviets on the annexed Ukrainians was designed specifically for a slow and miserable death to break their will for purposes of future enslavement and forced assimilation into Soviet culture.\textsuperscript{10} Though the number of Ukrainian deaths caused by the Holodomor possibly rivaled Jews killed in the Holocaust,\textsuperscript{11} and may have been overall more brutal because of its prolonged nature, the details of the Holodomor remains comparatively unknown by the international community and its perpetrators unpunished. Unfortunately, Ukraine has never fully recovered – economically, politically, or socially – from the genocide. Part of the reason for this situation is something that very few people are aware of: the Soviet anti-Ukrainian genocidal policies did not end abruptly in 1933. Rather, they gradually tapered off until 1985, when the Ukrainian sympathizing President Gorbachev took power.

This paper will argue that the international community can and should do its best to acknowledge the Holodomor and bring its perpetrators to justice. There are several things the international community can do to achieve its goal. First, it can enact reparation measures on behalf of the few survivors who remain, most of whom were children at the time of the tragedy. Second, while the interim fall of the Soviet empire and deaths of the principal perpetrators of the Holodomor will prevent the international community from bringing a Nuremberg justice to most of the Holodomor architects, the international community should still attempt to bring justice to its surviving victims by prosecuting current Soviet sympathizers who 1) deny the Soviet responsibility for the Holodomor or 2) were collaborators of continued acts of genocide against

\textsuperscript{10} A Timeline of the Holodomor. (2012).
\textsuperscript{11} The exact number of Ukrainians killed in the Holodomor versus the number of Jews killed in the Holocaust has been a source of tension between the two groups over the past few decades. Each group vies to “win” the persecution “contest”, with bewildered bystanders watching from both sides. See Askold S. Lozynckyj. How Insensitive Bigots Continue to Play Ukrainians and Jews Against Each Other (April 23, 2012, 5:00 P.M.), http://www.kyivpost.com/news/opinion/op_ed/detail/89252/
Ukraine that continued decades after the Holodomor. Effectively executed symbolic justice will achieve transitional justice for the remaining Holodomor survivors, and reduce incidents of anti-Semitism that are still prevalent in Ukraine today.

III. PRE-GENOCIDE: WHY STALIN TARGETED UKRAINE

In the immediate aftermath of the 1917 Revolution, the Ukrainian residents were divided into three subgroups: the Communist Bolsheviks, the Czarists (supporters of the Old Russian Empire), and the Ukrainian nationalists. Following the 1917 revolution, Bolshevik Lenin believed that in order to bring Ukraine into a new and unstable Soviet Union, he would have to allow some concessions to be made to the Ukrainian nationalists. Lenin decided to win over the Ukrainian Nationalists by confiscating the farms of the Czarists and giving them to the local peasants. Lenin’s strategy succeeded, and Ukrainian nationalism flourished into the 1920s. The Ukrainian language was taught in Ukrainian schools for the first time, the Ukrainian Orthodox Church grew exponentially, church membership in country churches expanded greatly, and an independent non-Communist Ukrainian Academy of Sciences produced proud independent nationalists.

As the Soviet Union’s power consolidated under Stalin’s leadership in the late 1920s, Ukrainian nationalism transformed from an asset, insofar as diminishing the Czarists’ power, into a liability because it diverted loyalties away from the Communist party. Stalin feared the strong Ukrainian national identity as a threat to his autocracy, and began to wage a war on the

12 See Snyder, supra note 2 at 28. See also Robert Edelman, Proletarian Peasants: the Revolution of Russia’s Southwest from 1905 56 (1988).
13 Id.
14 See Harvest of Sorrow (2010).
15 Id.
16 Id.
strong Ukrainian nationalist peasant farmers in his efforts to force them into his Soviet infrastructure.

Ukraine’s soil was well known to be among the richest in all of the Soviet Union, and for centuries, both foreign and domestic officials had dubbed it “the breadbasket of Europe.” Stalin’s plans for an expanding Soviet empire required two key elements, elements that Russia itself could not provide: a profitable good to fund a growing army and food to energize it. Stalin knew that the Ukrainian grain could provide both for his burgeoning empire, but the Ukrainian’s nationalist spirit and their subsequent relative autonomous farm ownership stood in the way. Stalin therefore decided the best way to remove this obstacle was to eliminate the Ukrainian people themselves.

IV. THE HOLODOMOR AS GENOCIDE

A. Holodomor Falls under Convention Definitions of Genocide

Many Westerners outside the Ukrainian community, because of a combination of poor journalism at the time of the famine and lingering Soviet sympathies, do not classify the Holodomor as genocide. The following section will attempt to quell this myth by explaining point by point why the Holodomor fits into the category of genocide as defined by the U.N. The Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”). This Convention was “profoundly influenced by the Holocaust and the Cold War,” and was drafted with the purpose of preventing, criminalizing and punishing acts of genocide. Article 1 addresses States’ responsibility:

---

17 Id.
18 See also Ukrainian Genocide Foundation, The Holodomor Timeline (2012).
20 Id.
“The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.”

Under this definition, though the genocide against the Ukrainians took place in a time of peace, the crime is still punishable. The same principles of retroactivity apply in the Ukrainian genocide as applied the Holocaust. In normal circumstances, applying criminal law retroactivity is not allowed, because doing so would violate justice to convict a person for a crime that was not a crime at the time of its perpetration. However, the reasoning used by the triers at Nuremberg, and should likewise be used by triers of Holodomor perpetrators, was that the Nazi perpetrators of the Holocaust violated basic laws of humanity that were already in existence. Thus, the Geneva Conventions only served to codify these laws. Likewise, knowingly creating conditions to kill millions of civilians, including millions of children, goes against the laws of humanity in a way that no reasonable court of justice would think any reasonable person would not know these acts violated existing basic laws of humanity.

Article 2 of the Convention on genocide defines genocide as follows:

In the present Convention, Genocide means 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;

---

22 Id.
23 Id.
24 See Universal Declaration of Human Rights, art. XI, Dec. 10, 1948). The Universal Declaration of Human Rights, an expression of all inherent human rights states the following: No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. Id.
25 See Kenneth Levy, Associate Professor of Criminal Law, International Criminal Law Series (Spring 2012).
The Soviet perpetrators of the Holodomor violated all five subcategories in a two-part genocide of the nationalist Ukrainian people. The first stage of the genocide was the “dekulakization”, or the mass deportations and shootings of the wealthier peasant class Stalin named as kulaks, which violated subsections (a), (b), (c), (d), and (e). The second stage of the genocide was Stalin’s brutally executed and mass organized starvation campaign, which again violated all five subsections of the genocide conventions definition. There is indisputable evidence that Stalin and his elite henchmen both knew of the genocide, planned the genocide, and intended the effects to occur, thus satisfying the mens rea necessary for culpability of the crime. Various Soviet edicts ensuring the doom of the Ukrainian peasant population bear Stalin’s signature, as do edicts ensuring the execution of key Soviet witnesses to the slaughter.

B. Stage One: Dekulakization

By 1929, Stalin had collectivized the majority of private farms into community farms, called “kolholzes,” and seized all private lands. 25,000 Soviet Communists were sent from Moscow to the rural villages, each charged with replacing the existing village leaders. Many were taken away by force in the night, never to be seen again. When villagers awoke, their leaders were gone, and heavily armed Soviet commissions from Moscow had taken their place.
Once the local leaders were shot or deported to Siberian work camps,\textsuperscript{32} the peasants were heavily pressured into joining collective Soviet farms and abandoning their private farming efforts. Most of these efforts were a disaster. Once the once private farms became public Soviet property, the peasants lost their incentive to work, and yields decreased.\textsuperscript{33} In addition, their new Soviet overseers straight from the city were intellectuals, not agricultural experts, and their clumsy supervision was mocked by the illiterate farmers whose agricultural expertise had been handed down from centuries of their forefather’s experience.\textsuperscript{34}

Embarrassed that the subsequent grain yields were far below his earlier boasted predicted success of the collectivization policies, Stalin sought a scapegoat, and he found it in the richest peasants who were the most successful farmers.\textsuperscript{35} He therefore created a new class of Ukrainian Soviets that had previously not existed, called the “kulaks.”\textsuperscript{36} Kulaks, as Stalin defined them, were “wealthy” peasants: those who hired others to help with their superior harvest,\textsuperscript{37} had wealthier households and owned livestock, and whose homes were roofed with tin, not thatch.\textsuperscript{38} By attempting to brainwash the peasantry into believing that they had fallen under the despotic rule of a new “nobility”, Stalin hoped again to exploit the same resentment against the aristocracy that Lenin had exploited in the early days immediately following the tsar’s overthrow.\textsuperscript{39} In the dekulakization stage, supposedly kulak priests, Ukrainian schoolteachers, and librarians were shot or deported.\textsuperscript{40}

\textsuperscript{32} Id.
\textsuperscript{33} See Snyder, \textit{supra} note 2 at 33.
\textsuperscript{34} Id.
\textsuperscript{35} See Snyder, \textit{supra} note 2 at 26
\textsuperscript{37} Author Unknown. \textit{Foreign News: Days of Wrath.} Time Magazine, November 26, 1928.
\textsuperscript{38} Phone interview with Aleskay S., Holodomor survivor (April 1, 2012). \textit{See also} Phone interview with Anna Zinchenko, (April 7, 2012).
\textsuperscript{39} See Snyder, \textit{supra} note 2 at 11.
\textsuperscript{40} Id.
Stalin’s anti-kulak propaganda posters depicted the kulaks as parasitic and subhuman,\(^{41}\) when in truth those branded as kulaks were among the hardest working – their success as farm managers and need to hire extra help being the fruit of their labors.\(^{42}\) Families whom the new Soviet village heads denounced as kulaks were either shot immediately or deported to remote work camps in Siberia. Most children died in transport or shortly after they reached these camps.\(^{43}\) After they killed a kulak family, the Soviets appropriated their land, livestock, and grain into the collective farms.\(^{44}\) In eliminating these members of the villages, the Soviets increased the effects of the famine by killing off the most productive farmers.\(^{45}\) Ironically, the remaining farmers who were lucky enough to avoid the Soviet kulak brand lost even more incentive to be productive. They did not want to be branded as kulaks and be killed themselves.\(^{46}\)

**C. Stage Two: Mass Starvation**

Stalin and his henchmen willingly created conditions designed to bring about massive losses of life for the Ukrainian people, thus fitting under the 1948 Genocide Conventions definition of genocide.\(^{47}\)

The dekulakization, or first genocidal stage, which lasted from 1930 to 1932, killed millions of Ukrainians, and eliminated future resistance. The second stage of the Ukrainian genocide involved more mass starvation that occurred from the carefully planned famine that Stalin executed beginning in 1932. This time, Stalin meant to eliminate the poorest of the peasants.\(^{48}\)

---

\(^{41}\) One such propaganda poster was of a supposed kulak is portrayed as a spider. Another depicted a kulak drinking milk directly from a cow’s udders. *See* Soviet Union, General Propaganda Poster, circa 1930.

\(^{42}\) *Id.*

\(^{43}\) (2012).

\(^{44}\) *Id.*

\(^{45}\) *Id.*

\(^{46}\) *See* Mischenko, *supra* note 2.

\(^{47}\) Convention on Genocide, *supra* note 21

\(^{48}\) *See* Snyder, *supra* note 2, at 45.
The mandatory grain quotas that Stalin imposed upon the Ukrainians already pushed many peasants to the brink of starvation.

In 1932, Stalin increased the Ukrainian mandatory grain output by 44 percent.\(^49\) This became an impossible quota to meet. Those who did not meet the quota output were required to requisition all grain.\(^50\) This included the precious seed grain for the next year’s planting,\(^51\) food for households, daily bread rations doled to the workers at the collective farms.\(^52\) Any withholding of this excess in lieu of the quota was decreed to be theft punishable by death.\(^53\)

In order to prevent the peasants from hiding the grain, Stalin enacted a sophisticated system of watchtowers and brigades to oversee the grain confiscation.\(^54\) Tall watchtowers were constructed in the fields of the workers harvesting the grain to ensure that the starving harvest workers did not take anything from the fields for their own consumption.\(^55\) Violators were shot on the spot.\(^56\) In addition to confiscating grain, Communist brigades roamed the countryside, looting homes, raping women living alone,\(^57\) taking personal valuables in lieu of grain quotas, confiscating all food, including supper on the stove, which they ate themselves.\(^58\) On August 7, 1932, Stalin authored and passed a law, known as “Five Ears of Grain” that imposed a sentence of death or 10 years of hard labor in exile for “misappropriation of state property.”\(^59\) The “state property” to which this law alluded to was food or personal valuables that could be taken in

\(^{49}\) See Snyder, *supra* note 2, at 43  
\(^{50}\) See V. Marochko, Holodomor 1932-1933 192 (2008).  
\(^{51}\) Id.  
\(^{52}\) Id.  
\(^{53}\) Harvest of Despair (Documentary Film from 1984)(available on file from the Canadian Ukrainian Genocide Research Foundation)  
\(^{54}\) Id. See also Snyder, *supra* note 2 at 39.  
\(^{56}\) Id.  
\(^{57}\) See Mischenko, *supra* note 2  
\(^{58}\) Id.  
\(^{59}\) Ukrainian Holodomor Museum, *supra* note 50.
payment of arrears of the food quota that was imposed.\textsuperscript{60} This new law led to mass shootings and deportations that were often arbitrary in nature. Many of the victims of this law were hungry children who were caught picking ears of corn or wheat in fields that had until very recently belonged to their families.\textsuperscript{61} Stalin also concurrently banned the purchase of bread in villages caught in arrears of their grain.\textsuperscript{62} This new edict meant peasants were reduced to bartering clandestinely in the cities for food, at times abandoning their children in the cities, in the hopes that their children wouldn’t starve.\textsuperscript{63}

Enforced isolation policies only exacerbated the famine’s devastation. Soon after the “Five Ears of Grain” decree was passed, Stalin implemented a mass system of enforced blockades, a system of internal passports,\textsuperscript{64} banned travel to outside of Soviet Ukraine, and banned food aid\textsuperscript{65} to Soviet Ukraine from sympathetic neighbors such as Poland, to which many starving Ukrainian peasants had fled.\textsuperscript{66} No other part of the Soviet Union was subject to a blockade like this.\textsuperscript{67}

By the time the famine hit its peak in 1933, Ukrainians were dying of starvation at a rate of 25,000 people a day.\textsuperscript{68} At this point, many villages simply stopped recording deaths because they became too numerous to count.\textsuperscript{69} In January 1933, Stalin’s troops sealed off the borders of Ukraine to prevent dying peasants from fleeing to other countries.\textsuperscript{70} Sales of boat or train tickets to Ukrainians were banned, as was travel to urban districts.\textsuperscript{71} Until 1933, peasants who had

\textsuperscript{60} See Mischenko, supra note 2.
\textsuperscript{61} See Mischenko, supra note 2. See also Ukrainian Holocaust Foundation, The Holodomor: A Brief History (2012), Snyder supra note 2 at 39.
\textsuperscript{63} See Snyder, supra note 2, at 49, see also L.B. Kovalenko, Holod 290 (1991).
\textsuperscript{64} Ukrainian Holodomor Museum . A Timeline of the Holodomor. (2012).
\textsuperscript{65} Id.
\textsuperscript{66} See Harvest of Despair, supra note 53.
\textsuperscript{67} Id.
\textsuperscript{68} Katya Mischenko, Holodomor Accounts 6 (Ukrainian Genocide Foundation) (2012).
\textsuperscript{69} Id.
\textsuperscript{70} See Official Letter from Soviet Headquarters to Joseph Stalin (circa 1932) with Stalin’s official seal affixed to the bottom.
\textsuperscript{71} See Conquest, supra note 62, at 185 (1987).
means to sneak into urban districts did so to barter their last valuables for food. The blockades were made possible by a system of internal passports Stalin created just for the peasant class. Law enforcement agents who caught peasants fleeing their homes forced these peasants back to their homes to face starvation.\textsuperscript{72}

Any effort, both domestic or abroad, to acknowledge the famine was treated by Stalin as anti-Soviet propaganda.\textsuperscript{73}

V. UKRAINIAN CHURCHES TARGETED, ANTI-SEMITIC TENSIONS RISE

While the Soviet policies of mass starvation was meant to eradicate the Ukrainian national identity, and thus was indiscriminate in its brutality, the Soviets specially targeted Ukrainian churches, both in the countryside and the city. This policy ironically exacerbated the strong anti-Semitism\textsuperscript{74} originated by centuries of oppressive tsarist anti-Semitic rule (which this paper will discuss later). This anti-Semitism continues today as a barrier to transitional justice.

Stalin saw the Ukrainian churches as a means of Ukrainian allegiance as a rival to allegiance the Communist regime.\textsuperscript{75} Thus, in an attempt to merge the strong Ukrainian Judeo-Christian farming culture into the Soviet one, in 1929 Stalin issued an edict known as the First

\textsuperscript{72} Id.
\textsuperscript{73} See Marochko, supra note 45 at 256. See also Dmytro Zlepko, Der Ukrainische Hunger-Holocaust 177 (1988), Conquest supra note 62 at 314.
\textsuperscript{74} While the overwhelming majority of Stalin’s peasant victims were Christian because Stalin viewed their collective religious objections as the greatest threat to his autonomous rule over Soviet Ukraine, the Jewish minorities living within these peasant communities also suffered. See Conquest, supra note 62 at 256 (1987). One prime example was a letter from a Jewish father in the Ukrainian countryside wrote to his son, who worked for the Soviet propaganda newspaper Pravda, which denied the famine. Id. His letter requested the son to say kaddish for his mother, who had starved to death. Id.
\textsuperscript{75} Stalin demanded absolute loyalty from his subjects, and saw religious devotion as a threat to absolute allegiance to his regime. This xenophobia to any ideal outside that of his Communist party led to the anti-Semitic hysteria in his late years. Many historians believe that it was only his sudden death in 1954 that prevented him from executing a mass Holocaust of the Soviet Jewish population that would have rivaled that of Hitler. See Robert Service, Stalin: a Biography 266 (2005).
Commandment, which stated, “Soviet loyalty above all.” This was meant to mirror the Judeo
Christian Commandment, “You shall have no other gods.”

Political leaders effectively use religious language to lead religious people with little
subsequent resistance if they do so 1) internally and 2) complementing existing beliefs. Soviet
Stalin’s proclamation attempted to replace the Ukrainians’ religious allegiance with an allegiance
with to a new, outsider god – himself. Stalin’s propaganda portrayed himself as an outsider
heretic to the deeply religious peasants and only succeeded in increasing the Ukrainian national
resistance. This increased resistance gave Stalin the excuse to eliminate the church leaders, who
were the first Holodomor victims Stalin chose to kill or deport to Siberian work camps.

The second reason churches in particular were targeted was to destroy their special
records books. In the days before sophisticated databases and complex census taking, the country
churches were usually the hub of local peasant history. The local priests, sometimes the only
literate people in their region, kept special church records books with detailed descriptions of
local births, baptisms, weddings, funerals, and other special celebrations. Individual peasant
names and dates associated with local special events were also dutifully recorded in these special
records books, and in some parishes these specially preserved books spanned back to the
fifteenth century. All were seized and destroyed by the Soviet invaders, who built bonfires of
them and made the locals watch as their only written records of their ancestry burned before their
eyes.

---

76 See Stanislaw Kulczycki, Holodomor, 170 (publication date unknown).
77 See Mischenko, supra note 2.
78 See Stanislaw Kulczycki, Holodomor, 75 (publication date unknown).
79 Katya Mischenko, Holodomor Accounts 6 (Ukrainian Genocide Foundation) (2012).
80 Id.
81 Id.
The third reason the Soviets targeted the churches was their local collections of traditional Ukrainian folk art, consisting of embroidered tapestries and ornate metalwork. The Soviets saw these traditional peasant folk pieces as a barrier to forced assimilation. Once the genocidal famine was well underway in 1932, the Soviets also became aware that peasants, desperate for food, began using their best embroidered pieces as bartering goods for food in the cities. In response, the Soviets passed a decree that all Ukrainian embroidery was property of the Soviet empire. Female peasants tried in vain to hide their embroidered pieces by turning them inside out and bundling them beneath their shirts. Random strip searches of peasant women began to take place. Rape became rampant under the guise of embroidery searches, especially of Ukrainian women living alone.

Many of the city churches (notably Kiev), some of which were affiliated with the churches in the countryside, were themselves beautiful samples of Ukrainian architecture. These the Soviets dynamited. The Soviets threw the best of the embroidered church tapestries into bonfires along with the church record books, or chopped up most colorful parts of the tapestries and made tobacco bags from them. Often after the Soviets left the premises, locals ran into the flames to try to rescue their treasures and were badly burned. The Soviets confiscated and melted ornate church bells and molded into bullets, some of which were

---

82 See Mischenko, supra note 2.
83 See Snyder, supra note 2 at 256.
84 Telephone interview with Ivan G., (April 4, 2012). See also Mischenko, supra note 2.
85 Mischenko, supra note 2.
86 Ukrainian Genocide Museum, Ukrainian Holodomor (1986).
87 See Snyder, supra note 2 at 39, see also Ukrainian Genocide Foundation, Memories of Survivors and Witnesses of the Ukrainian Genocide 1932-1933 (1984).
88 Mischenko, supra note 2.
89 Id.
90 Id.
91 Id.
ironically used to execute the same priests whose liturgies they once tolled.\textsuperscript{92} Once churches had been stripped of traditional folk art, the Soviets transformed them from Ukrainian community centers into official Stalinist headquarters,\textsuperscript{93} or even worse, into jails and torture chambers that held the same parishioners who once worshipped there.\textsuperscript{94}

Within the Ukrainian Christian community, there remains much lingering resentment against the Jewish community two reasons. The first was the Polish and later the German-fed propaganda that the oppressive Soviet empire was run by Jews.\textsuperscript{95} Thus, many Ukrainians believed the Jewish community responsible for the genocide of famine that befell them. Lenin, Stalin’s predecessor, came from a Jewish background.\textsuperscript{96} A large percentage of Stalin’s highest officials were Jewish like Lenin, though Stalin himself was an atheist with Catholic roots,\textsuperscript{97} who later in life became increasingly anti-Semitic.\textsuperscript{98} Many historical scholars believe that Stalin’s hatred and the fear of the Jewish people would have resulted in a second genocide that would have surpassed Hitler’s in numbers of victims, had it not been for his death in the 1950s.\textsuperscript{99} As the Soviets used the Ukrainian Christian nationalist movement to eradicate the threat of the lingering Czarist loyalists in the early 1920s, Stalin used his Jewish colleagues, under threat of deportation or assassination should they not obey,\textsuperscript{100} to eradicate the Ukrainian Christian nationalists.\textsuperscript{101}

The second, and more dominant, reason for the current Ukrainian anti-Semitic sentiment is the international community’s nearly exclusive focus on the wartime atrocities inflicted upon

\textsuperscript{92} Id.
\textsuperscript{93} See Zinchenko, supra note 38.
\textsuperscript{94} Peter Kardash Genocide in Ukraine 62 (2007).
\textsuperscript{95} This propaganda was fed to the Ukrainians by Germans. See Zinchenko, supra note 38.
\textsuperscript{96} Emmanuel Grynspan, Vladimir Lenin Was Part Jewish, Says Declassified KGB Files. Time Magazine. June 13, 2011
\textsuperscript{97} Albert S. Lindemann and Richard Levy, Anti-Semitism: A History 187-188 (Oxford University Press 2010)
\textsuperscript{98} Id.
\textsuperscript{99} Iakov Etinger, The Doctor’s Plot: Stalin’s Solution to the Jewish Question 103-106 (1995).
\textsuperscript{100} Stalin had increasingly anti-Semitic reactions to his daughter Svetlana’s Jewish lovers despite his own marriages to Jewish people. Svetlana eventually defected. See Author Unknown, Lana Peters. Telegraph, November 29, 2011. Available at http://www.telegraph.co.uk/news/obituaries/politics-obituaries/8922681/Lana-Peters.html
\textsuperscript{101} See Etinger, supra note 99 at 103.
European Jews by Germany, while ignoring more severe ones inflicted upon Ukrainian nationalists by the Soviets. In 1945, the Allied forces celebrated victory over the Nazis, whom at the Nuremberg Trials they denounced as the most evil of all nations to ever exist. While the Ukrainian Christians have also denounced the Nazis as evildoers, the ones who survived both the Soviet and the Nazi occupations recall that while both occupiers were evil, the Soviet occupiers as more evil.  

Memories of Soviet occupation in Ukraine still ring clear with Leonid Svetlov, a Holodomor survivor and covert Baptist, who was forced into the Soviet army in his early twenties following his early release from a German work camp by a sympathetic S.S. guard. Following his release from the Germans, Svetlov was sent to a Gulag camp for the crime of leading a prayer with his fellow Soviet soldiers the night before a battle. This simple act of religious defiance may have saved Svetlov’s life: most of his other comrades were killed at the banks of the Ukrainian Dnetr River in a battle with the Germans the following day. While in Siberia, Svetlov met writer and political prisoner Aleksandr Solzhenitsyn. Svetlov continued to meet with Solzhenitsyn in covert religious and political meetings by the laundry lines until it became too dangerous to do so. Many of Svetlov’s and Solzhenitsyn’s mutual friends were political enemies simply based on their educational level: Svetlov remembers meeting many teachers and doctors in his ten years of imprisonment. Solzhenitsyn’s friends at the laundry line later became inspiration for the characters in his novel, A Day in the Life of Ivan Denisovitch, which informed the West of the terrible conditions of the daily Gulag camp life.

102 Telephone interview with Leonid Vasilyevich Svetlov, Holodomor, German Work Camp, and Gulag camp survivor (April 4, 2012).
103 Id.
104 Id.
105 Id.
106 Id.
107 Id.
108 Id.
109 Id.
110 Id.
Another Ukrainian survivor of a Soviet work camp recalls the message upon entering the camp in which he was to endure over a decade of hard labor under harsh conditions on a near starvation diet: “Honest and hard work makes for an early release.” He grimly wondered if his Soviet enslavers had borrowed the slogan from their Nazi contemporaries, whose infamous motto, “Arbeit Macht Frei” (work makes free) graced the main entrance gate of Auschwitz, where millions of Jews perished. In his 10 years suffering in the Soviet camp, this Ukrainian did not recall a single prisoner who was released early for his or her work ethic, though he saw many who died of disease, malnutrition, and suicide. Another woman, a newlywed at the time of her husband’s sudden arrest during the dekulakization period, remembers frantically asking a Soviet soldier what they had done with her husband. He told her a typical lie: her husband had been sentenced to ten years of incarceration in Siberia without the right of correspondence.

The Ukrainian Christians recall the Allied World War II victory with bitter irony. This victory ensured their enslavement under Soviet rule, and that the Holodomor, which claimed four million more victims than the Nazi genocide of the Jews did, remained obscure. While Soviet spectators at Nuremberg denounced the Nazi Holocaust masterminds, Holodomor survivors recalled in silence their loved ones who suffered agonizing starvation deaths that were far more prolonged than that of the relatively efficient, though no less tragic, mass shootings and gassings of the Jews at Babi Yar, Auschwitz, and Treblinka.

The new Nazi occupiers also confiscated Ukrainian grain and livestock, and appropriated the conquered Slavic people and lands for purposes of enslavement to the benefit of the

---

111 See Kardash, supra note 94 at 323.
112 See Kardash, supra note 94 at 252. See also Svetlov, supra note 102.
113 See Svetlov, supra, note 102.
114 See Kardash, supra note 94 at 323.
117 See Snyder, supra note 2 at 263.
118 See Snyder, supra note 2 at 263
Germans. Hitler looked to the fertile Ukrainian breadbasket as a means to fill the stomachs of his Nazi empire. However, while enslavement by the Nazis was harsh, Ukrainians enjoyed a relative respite in which they did not fear immediate starvation. Like their Soviet predecessors, the Nazis also looted houses for grain and appropriated the fields for Nazi use. However, Germans' efforts to appropriate all Ukrainian grain for their own consumption fell short of full success. They lacked the knowledge of the local hiding spots or concealment tactics the Soviets did. Thus, few starved under German occupation. Ukrainian youth of age were often forced to join the German lower military ranks. However, many willingly joined the Nazi troops to have the chance to fight the Soviets and avenge some of the deaths of their loved ones. This desire for revenge was exacerbated by the Nazi-ordered and supervised mass grave-exhuming and identification of executed Ukrainian loved ones. The Soviets initially told these grave-exhuming Ukrainians that their murdered loved ones were alive and exiled in Siberia with no right to correspondence. Thus, the Ukrainians fighting with the Nazis against the Soviets were usually not doing so because they were pro-Nazi. Rather, they did so because they were either forced to fight or because they sought vengeance for their families.

As decades passed after the Holodomor, the Ukrainian Christian survivors still trapped within the Soviet empire watched in silent bitter irony as the state of Israel formed under Jewish

\[\text{References:}\]

119 See Snyder, supra note 2 at 150.
120 See Snyder, supra note 2 at 19.
121 Unlike the Soviets, Nazi occupiers did not know of all the local hiding places for food, or the methods for hiding it. See Mischenko, supra note 2. See also Snyder, supra note 2 at 19. Thus, they were less effective at extracting food than their Soviet predecessors were. Id.
122 See Svetlov, supra note 102.
123 Id.
124 Id.
125 Id.
126 Id.
127 Id.
128 Id.
rule upon the Jewish ancestral homeland, as Soviet atheist rulers once again claimed the rich Ukrainian soil. Holodomor survivors’ stories were silenced by fear of political persecution until the Iron Curtain of the Soviet Union fell in 1993. Even now, many are reluctant to share their stories due to a combination of lingering fears of personal retaliation, shame for their own actions, or other miscellaneous current ties to Russia.

VI. THE AFTERMATH AND THE PATHWAY TO TRANSITIONAL JUSTICE

A. Achieving Transitional Justice for Holodomor Victims: An Introduction

The following section will discuss options in achieving transitional justice for the few remaining survivors. Nearly eighty years have passed since the Holodomor, yet Ukraine still suffers both economically from the devastation of an entire working generation and psychologically from the anguish that their Soviet tormentors never having been brought to justice. To many Holodomor victims, the ideal source of justice would be prosecution of lead

---

129 Id.
130 Id.
131 Id. Even Ukrainians who were abroad did not escape Soviet persecution for speaking out against the genocide well into the 1980s. One well-documented instance of abroad persecution was as follows: in 1985 in New York City, a musician named Vitalii Lekhter mourned the loss of a Ukrainian nationalist musician named Volodymyr Ivasiuk, who revived many traditional pieces in Ukraine in 1979. Ivasiuk died under mysterious circumstances, and many believed he was murdered by the Russian KGB for his Ukrainian nationalist activities. See Kardash, supra note 7 at 201. Lekhter, Ivasiuk’s New York dwelling friend, was spreading news amongst Ukrainian community that he suspected his friend’s death was due to foul play. Id. Shortly afterwards, two Russian men beat him and sent him to the hospital. Id.
132 Many Ukrainians who were witnesses to the worst of the effects of the famine are deeply ashamed of what they did to survive, especially those who witnessed acts of cannibalism or let some children die in hopes that others might survive. This deep rooted may in turn provide difficulties in verifying that testimonies are accurate in a prosecution setting for any living perpetrators or collaborators of the worst of the atrocities. Telephone interview with Ivan S., Slavic Church Member (April 2, 2012).
133 Many Russian Baptist Church members were also targets of Stalin’s regime. Their current Russia-dwelling friends and relatives share possible repercussions with their close Ukrainian allies if the Ukrainians were to target Russian Soviet sympathizers. Id.
134 To this day, many Ukrainians retain psychological effects of the Soviet starvation periods. For example, in a modern day Ukrainian household, it is common for even a small family to have at least three full sized, stocked refrigerators located in several different areas of the house, and food storage in numerous living areas not typically used for food storage. Examples of post-starvation effects include hanging onion and garlic garlands and potato sacks in the attic or the garage, even if there is a cellar and working larder nearer to the kitchen. See Author’s personal visits to various anonymous Ukrainian homes of D, P, I, L, I, and I during wedding feast preparations (circa 2010-2011). An actual conversation while preparing a Ukrainian wedding feast went as follows: 1) “Laura, please walk across the yard to the garage and fetch me another sack of onions.” 2) “Mrs. S., you have a pantry right next to
architects of the Holodomor in a Nuremberg like fashion. However, time has run out for such justice. Josef Stalin, the main architect of the Holodomor, died in 1953.\textsuperscript{135} The other main architects of the Holodomor have also died,\textsuperscript{136} as have most of their adult victims.\textsuperscript{137} While there may be some lower level perpetrators of the Holodomor who are still alive today, they are likely few\textsuperscript{138} and difficult to find.\textsuperscript{139} Because the remaining Holodomor survivors are rapidly dying of old age, transitional justice for them, if it occurs, must occur soon.

Considering 1) current economic and social tensions and constraints in modern Ukraine 2) the dissolving of the Soviet state that orchestrated the genocide and 3) various challenges in identifying and prosecuting surviving ex-Soviets. I conclude that the optimal solution, given all these complex considerations, would be to select a few symbolic genocide perpetrators with relatively weak Russian and Jewish ties, to achieve healing justice for Ukrainians at minimum cost, without sparking economic reprisals or inciting further acts of genocide.

\textbf{B. Barrier to Transitional Justice: Soviet Empire Fall of 1992}

One chief barrier to transitional justice, which is related to the interim deaths of the Holodomor architects, is the collapse of the Soviet state that inflicted the genocide. Today, the former Soviet empire and leadership is broken into pieces, with many Soviet-sympathizing Russians controlling Ukraine, due to their economic dependency on Russian energy sources. While the new Russian regime is not as brutal towards Ukraine as the Soviet one under Stalin, it

\begin{flushleft}
\textsuperscript{136} See Mischenko, supra note 2.
\textsuperscript{137} Id.
\textsuperscript{138} During the filming of the 2002 documentary, \textit{Holodomor}, many of the subjects died before the screening could take place the following year. See Holodomor: Ukraine’s Genocide. \url{http://holodomorthemovie.com/index.html} (last visited April 21, 2012).
\textsuperscript{139} Post-World War II in Germany, Nazis were difficult to find because nobody wanted to admit their allegiance to the former Nazi party. See Levy, supra note 32.
\end{flushleft}
is far from cordial. Many Ukrainians do not speak out about past abuses, for fear of strong
sociopolitical repercussions.\footnote{Telephone interview with Alla Svetlova, Relative (April 4, 2012), see also Mischenko, supra note 2, Golovkin, \textit{supra} note 128, and Zinchenko, \textit{supra} note 38.} The few Russians who attempt to intervene on behalf of the
Ukrainians, or avoid associating themselves with the Soviet-sympathizing Russian leaders due
to personal convictions are subject to harassment.\footnote{Telephone interview with Ivan S., Member, Slavic Baptist Church (April 11, 2012).} This might lead to possible witness
tampering problems.

While the worst of the Ukrainian genocide peaked in 1933, many Ukrainian genocide
scholars argue that the anti-Ukrainian policies that instigated the genocide never ceased until
even decades after Stalin’s death. For example, in the period from 1945 to 1950, Stalin deported
more than half a million Ukrainians to remote Siberian work camps to prevent any future rise in
Ukrainian nationalism.\footnote{Id.} Stalin’s Soviet successor, Nikita Khruschev, also saw Ukrainian
nationalism as a threat to Soviet autonomy and routinely carried out mass arrests of the
Ukrainian church leaders in retaliation for work of Ukrainian freedom fighters, who had gone
underground by the 1950s.\footnote{To maintain secrecy of congregational membership, many churches began to meet in the forests to avoid
detection, leaving their old churches unused. \textit{See} Telephone interview with Alla Svetlova, Relative (April 5, 2012)\footnote{Id.}} To prevent Ukrainian nationalism from rising again, Soviet
executions and mass deportations of suspected Ukrainian nationalists and their families to
remote, harsh Gulag camps were commonplace until as late as 1985.\footnote{Telephone interview with Alla Svetlova, Relative (April 7, 2012), see also Mischenko, \textit{supra} note 2, Golovkin, \textit{supra} note 128, and Zinchenko, \textit{supra} note 38} In 1985, President
Mikhail Gorbachev took power over the Soviet Union, and released the majority of the surviving
Ukrainian prisoners.\footnote{See I.B. Tauris, \textit{Moral Lessons of the Twentieth Century: Gorbachev and Ikeda on Buddhism and Communism} 11 (2005).} Gorbachev, who was of both Russian and Ukrainian descent,\footnote{See I.B. Tauris, \textit{Moral Lessons of the Twentieth Century: Gorbachev and Ikeda on Buddhism and Communism} 11 (2005).} was far
more sympathetic to the Ukrainians than his predecessors were, and made efforts to end Soviet-sponsored anti-Ukrainian policies.\footnote{Whatever Russian-Ukrainian bridges Gorbachev’s relatively lax policies towards Ukraine might have fostered was far outweighed by the Chernobyl nuclear disaster in 1986. See BBC News, Gorbachev weighs Chernobyl Disaster (April 23, 2012, 9:00 A.M.), http://news.bbc.co.uk/2/hi/europe/4918940.stm; See also Associated Press, Prosecute Gorbachev, Ukrainians Urge December 12, 1991 Gainesville Sun, available at http://news.google.com/newspapers?nid=1320&dat=19911212&id=_EBWAAAAIBAJ&sjid=UOoDAAAAIBAJ&pg=5360,3636315}

Holodomor survivors might be able to achieve transitional justice for the Holodomor through effective prosecution of Soviet persecutors of Ukraine that occurred decades later.\footnote{Ukrainians genocide survivors are unhappy that the definition of genocide has been expanded under international law theory to encompass many other kinds of crimes, including destruction of art. See Mischenko, supra, note 2. See also Kenneth Levy, Associate Professor of Criminal Law, International Criminal Law Series (Spring 2012).}

There are several obstacles to finding and prosecuting the worst of the Soviet offenders, given the fall of the Soviet empire. First, many or most of them are dead.\footnote{See Mischenko, supra note 2.} Second, the breakup of the Soviet state has made it harder to find and prosecute the worst of the Soviet offenders. Third, modern Soviet-sympathizing Russians inherited Stalin’s propensity to use propaganda to minimize wrongs and scapegoat.\footnote{See Author Unknown, Lana Peters. Telegraph, November 29, 2011. Available at http://www.telegraph.co.uk/news/obituaries/politics-obituaries/8922681/Lana-Peters.html, See also Mischenko, supra note 2.} If the current culture is to blame shift and scapegoat, current Soviet sympathizing leaders might shift blame to relatively innocent people in an attempt to shield the worst of their own genocide offenders from prosecution. Thus, the search for symbolic perpetrators must be cautious so that limited resources won’t be wasted on sham trials of relatively innocent individuals. Fourth, Russian unity is key to retain regional stability in the face of another potential global financial crisis.

C. Barrier to Transitional Justice: Shame for Past Actions and Witness Fear of Prosecution

In desperate times, the worst of humanity shows itself, and those who survive may be wracked with feelings of intense shame over their actions that led to their survival. Katarina’s
nephew was very reluctant to give me the full details of his aunt’s ordeal.\footnote{See Dmitry M, \textit{supra} note 1.} Even though she is now deceased, I had to conduct my interview several times to get the whole story, and even so, I’m not sure if I did. Killing off one’s own children, or engaging in cannibalism to ensure others’ survival is not a tale that many would be proud to tell, and many would also fear possible prosecution. Yet such stories must be told to effectively identify and prosecute those responsible for orchestrating circumstances that led to her, and countless other parents, from making this terrible choice.

I encountered a similar roadblock when interviewing D, a young Ukrainian man for his family history. I learned from D’s female cousin that his great grandparents were starved, imprisoned, tortured, and deported to a Gulag camp for religious-based refusal to swear allegiance to the Soviet party. The following dialogue ensured.

Me: “Tell me more specifics about the oppression your family endured, and how they survived, so I can make my paper come alive.” D: “Paper? What paper?” Me: “I’m writing a paper on the Ukrainian genocide, and I…” D (interrupting): “My family was never oppressed.”\footnote{Telephone interview with anonymous subject D (January 28, 2012).}

That was the end of the conversation. D’s abrupt behavior could have been because I am a woman, and Ukrainian men, even younger ones like D, do not disclose problems to women. If this is the case, and if D’s behavior were representative of Ukrainian males, this problem can be easily solved by creating gender-specific components of truth commissions to prepare witnesses for trial. Based on my previous interactions with him, however, and knowing the elder-respecting Ukrainian culture, he more likely was trying to protect his relatives for their past actions.\footnote{\textit{Id.}} I suspect this was the case, for when I contacted D’s cousin for a subsequent interview, she
declined without explanation.\textsuperscript{154} In order to overcome the fear of prosecution, international prosecutors should publicly offer Ukrainian witnesses guilty of certain offenses, such as cannibalism or selective manslaughter to ensure the survival of other stronger children, mitigating defenses. Mitigating defenses the prosecution could potentially offer such witnesses could be duress,\textsuperscript{155} necessity,\textsuperscript{156} and temporary insanity.\textsuperscript{157}

\textbf{D. Barrier to Transitional Justice: Fragile Ukrainian Economy}

Ukraine has struggled economically since the Soviets once again annexed it in 1945. Economic analysts predict Ukraine will continue to suffer. The elimination of both the intellectual elite\textsuperscript{158} and numerous purges and deportations of young, working-age Ukrainian nationals that continued until the fall of the Soviet empire ensured Ukraine’s economic ruin for generations to come.\textsuperscript{159} As one Holodomor descendant grimly joked, Ukraine is the ravaged “Africa” of Europe that can never fully recover because coveting conquerors have always and

\begin{itemize}
  \item\textsuperscript{154} Telephone interview with anonymous subject I (January 30, 2012).
  \item\textsuperscript{155} Elements of duress are 1) an unlawful threat 2) that threat is imminent, and 3) the threat must be of physical harm. \textit{See} Joshua Dressler, \textit{The Oxford Handbook of Philosophy of Criminal Law} 271 (2011). Being denied food under genocidal conditions is unlawful, thus fitting the first element. The threat of starvation was definitely imminent, as up to a quarter of Ukraine’s population perished in the Holodomor. \textit{See} Mischenko, \textit{supra} note 2.
  \item\textsuperscript{156} Necessity under general criminal law is defined as performing an evil to prevent the greater of evils. \textit{See} Christie, \textit{The Defense of Necessity Considered from the Legal and Moral Points of View}, 48 Duke Law Journal, 975 (1999). For example, a mother who murdered a child to feed several children might claim necessity to sacrifice one weaker one who appeared to be dying to give the stronger ones a chance to live. \textit{See} Dmitry M., \textit{supra} note 1.
  \item\textsuperscript{158} Telephone interview with Alla Svetlova, Relative of Holodomor survivor (April 4, 2012).
  \item\textsuperscript{159} Telephone interview with Vitalik D., Survivor (March 15, 2012).
\end{itemize}
Laura Umetsu

will always wish to colonize and subjugate its people for its resources: its rich soil and enormous grain yields.160

Following its independence in 1992, Ukraine suffered double digit inflation and lost up to sixty percent of its GDP over an eight year period,161 as Soviet sympathizers residing within Ukraine resisted Ukraine’s transition to independence and undermined development within the country.162 Ukraine’s economy still suffers from decades of exploitation and violence inflicted by the Soviets.163 Due to the lack of economic opportunities, one of the chief exports of Ukraine is human beings for sex slaves.164 Hundreds of thousands of hungry orphans roam Ukraine’s streets in urchin bands.165 HIV infection rates are high166 due to the very high prostitution rate,167 and orphanages are overrun with abandoned babies.168 The nuclear disaster at Chernobyl in the 1990s created a plethora of costly and debilitating health problems that continue to plague what would otherwise be a young, healthy Ukrainian generation.169 The world crash in 2008 worsened many of the problems.170 Most independent economic analysts predict that Ukraine’s economy will suffer more in the next few years in response to the global recession.171

162 Internet chat interview with J.P., Russian investment banker and international consultant (April 13, 2012).
166 Id.
167 Id.
168 Id.
169 Id.
170 Internet chat interview with J.P., Russian investment banker and international consultant (April 13, 2012).
171 Id.
To complicate matters, the majority of current Soviet sympathizers and Holodomor deniers are Russian nationals. The worst of these offenders are Russian nationals in positions of significant authority in both Russia and Ukraine. This means that potential prosecution of Holodomor perpetrators will likely be Russian nationals.

But prosecuting Russian nationals is a problem for three reasons. First, their favorable political situation will be a barrier to their prosecution. The current president of Ukraine is a Soviet-sympathizing and Russian-born Viktor Yanukovych, who is a Holodomor genocide denier and whom Ukrainians around the world have denounced as the main hindrance towards finding and prosecuting surviving Holodomor perpetrators. Second, any attempts at international justice must take into account the very limited resources Ukrainians have to track down and prosecute remaining ex-Soviet perpetrators. This would be partially solved if Ukraine’s parliament would ratify the ICC and therefore submit to the ICC’s jurisdiction. While Ukraine is a signatory to the ICC, despite international pressure, they have not yet ratified it. Third, Ukraine’s fragile economy depends almost entirely on Russia for cheap energy sources, and prosecuting Russian Soviet-sympathizing nationals may result in energy blockades like those that occurred in the early 2000s that caused economic havoc.

One might argue that Ukraine should seek alternative sources of energy, and that prosecution of the worst of Russian nationals should wait until Ukraine has 1) stabilized 2) is not dependent on Russia on fuel. Unfortunately, Ukraine’s current state of poverty is the factor that limits their ability to procure alternative energy sources. Nuclear power, a cheaper source of energy, has

---

173 Id.
176 Id.
been rejected by Ukraine since the Chernobyl disaster. This limits Ukraine to the cheapest, nearest source of fuel there is: and for the moment it appears to be Russia’s oil and gas reserves. Simply waiting for cheaper energy sources to emerge will undoubtedly unduly delay prosecution, especially given Ukraine’s Chernobyl disaster-bred aversion towards nuclear power: the only other energy source they can afford.

Because Ukraine is in this difficult situation, other nations should assist it and exert pressure upon President Yanukovych to reverse his current genocide denial. The collaboration of many nations in an international court setting perhaps will offset the cost of finding and prosecuting Holodomor perpetrators, but given the downward spiraling current economic global conditions, overall international resources support will likely decrease. Conversely, limited resources must be stretched to fit international trials of higher ranked war criminals whose crimes are more recent, and may pose a more immediate public threat. Therefore, symbolic Russian perpetrators in an international trial setting should be lower profile Russian Soviet sympathizers who do not hold any high ranking political office that would upset the delicate balance leading to Ukrainian economic recovery or lead to exhaustion of limited funds. Lower profile Russian Soviet sympathizers will likely be more numerous and cheaper to find and prosecute.

E. Barrier to Transitional Justice: Modern Anti-Semitic and Russian/Ukrainian Tensions

177 Id. A possible alternative source of energy for Ukraine is nuclear energy, because it’s cheap and reliable. See Gilbert G. Brown, Nuclear Power is Cheap and Reliable (April 23, 2012, 9:00 A.M.), http://www.eagletribune.com/opinion/x1876271217/Point-Nuclear-power-is-cheap-and-reliable. However, most Ukrainians are vehemently opposed to building new nuclear power plants, given the recent Chernobyl disaster. See BBC News, Gorbachev weighs Chernobyl Disaster (April 23, 2012, 9:00 A.M.), http://news.bbc.co.uk/2/hi/europe/4918940.stm.


180 See e.g., Warrant of Arrest Unsealed Against Five LRA Commanders (Oct. 5, 2005)(Press Release Memorandum on File with International Criminal Court, also available at http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%2000204/related%20cases/icc%2000204%200105/press%20releases/warrant%20of%20arrest%20unsealed%20against%20five%20lra%20commanders)
There remains in Ukraine two main sources of residual tension from the anti-Ukrainian Soviet policies that lasted up to the Soviet fall in 1992. The first is the tension between the Ukrainian Christians and the Ukrainian Jews. The second is between Soviet-sympathizing Russians and Ukrainian nationalists.\textsuperscript{181} Thus, any transitional justice solution must acknowledge these two tensions and ensure that transitional justice to select Soviet-sympathizing Russian Jews and subsequent punishment must not incite reprisal killings in an already fragile political and economic region.\textsuperscript{182}

The tension between Jewish Ukrainians and Christian Ukrainian nationalists began long before the Holodomor, in the form of brutal pogroms that Russian tsarists inflicted upon the Ukrainian Jews, starting in the early 18\textsuperscript{th} century.\textsuperscript{183} Beginning with Catherine the Great in 1791, Russian Jews who refused to convert to the Russian Orthodox Church were relegated to quarantined areas within the Russian empire, after various unsuccessful attempts by predecessors to expel them from Russia entirely.\textsuperscript{184} This concentration of Jews in what later became known as the Pale of Settlement (Ukraine, Belarus, Ukraine, Lithuania, and Poland) was a prime reason that Polish Jews were easy targets for the Nazis when they invaded Poland from 1939-1945.\textsuperscript{185} Christian Ukrainian nationalists, fed by anti-Semitic Russian royal propaganda, were either indifferent observers or puppet instigators of various pogroms by various tsarist regimes over a period spanning several centuries.\textsuperscript{186} When Stalin took power following the death of Lenin, the

\textsuperscript{181} See Zinchenko, supra note 38
\textsuperscript{182} See Mischenko, supra note 2.
\textsuperscript{184} Id.
\textsuperscript{185} See Diemut Majer “Non Germans” Under the Third Reich: The Judicial and Administrative System 188 (2003)
\textsuperscript{186} See decree of Tsarina Catherine III from 1764 abolishing the Hetman State in Ukraine (Circa Spring 1764). See also Jewish Virtual Library, Pogroms (April 21, 2012, 7:00 P.M.), http://www.jewishvirtuallibrary.org/jsource/judaica/ejudaica/ejudaica0002_0016_0_15895.html, in which historians from the Jewish Virtual Library list various pogroms lasting through Tsar Nicholas II’s death. Jews were constantly blamed for all major disasters of the Russian tsarist empire. Id.
long-oppressed and marginalized Russian Jewish population took advantage of their ability to achieve greater status within the Soviet social model. Though not all of the perpetrators of the Holodomor were Jewish, a recent 2002 domestic attempt to prosecute surviving Ukrainian Holodomor perpetrators failed, due to a prevailing number of Jewish names on the list, and fear of reprisal killings in a fragile economy.\footnote{See Mischenko, supra note 2.} Israel still has not officially recognized the Holodomor as of 2010 (though a minority of wise Jewish leaders, in attempt to build bridges, erected a Holodomor memorial in Jerusalem).\footnote{See Author Unknown, Ukraine’s Holodomor Exhibition Opening in Jerusalem, Russian News Network, September 13, 2007.} Anti-Semitism therefore in modern Ukraine and in certain Ukrainian communities outside Ukraine remains a major source of tension.\footnote{In 2009, a prominent Ukrainian mayor expressed his anti-Semitic feelings by quoting, “If I don’t like Jews or Israel, does that make me an anti-Semite? I do not think I am an anti-Semite.” See Associated Press, Ukraine Mayor Accused of Anti-Semitism, U.S.A. Today, September 3, 2009, available at http://www.usatoday.com/news/world/2009-09-03-mayor-ukraine_N.htm}

The second, and related transitional justice barrier, are tensions between Ukrainian nationalists and the Russian Soviet sympathizers, like President Yanukovych. Russia’s current official stance, despite evidence to the contrary, is that the deaths of the Holodomor were a result of a natural drought. Recent international efforts for Russia to officially recognize the Holodomor as genocide have failed, and subsequent attempts will likely not succeed in time for a timely prosecution of surviving genocide perpetrators.

These tensions can be overcome in effective prosecution if several steps were taken. First, the group of symbolic persecutors should be a mix of Russian and Ukrainian Soviet sympathizers, and not overwhelmingly Jewish. Thus, Ukrainian nationalists can still achieve transitional justice with minimum risk of political repercussions from Russia. Secondly, the international community should exert pressure on Russia to allow prosecution of Soviet sympathizing genocide perpetrators under the title of “mass murder” for the Holodomor itself, or “mass
“kidnapping” for the crimes of mass deportations that lasted until the 1950s. This would facilitate prosecution of Russian citizens without forcing Russian officials to formally acknowledge the genocide.

F. Barrier to Transitional Justice: General International Holodomor Obscurity

Given Ukraine’s limited resources and fragile economic state, which is exacerbated by dependency on Russian oil reserves, international support is likely needed to find, prosecute, and symbolically punish Russian ex-Soviets guilty of acts of genocide against Ukraine. However, such international collaboration will likely be frustrated by a lagging international awareness of the genocide’s existence, an ignorance created by a combination of factors: 1) Soviet journalist policies during the Holodomor and its aftermath 2) complicit American journalists and 3) dominating Allied “victor’s denial” attitudes that only recently the international community has begun to publicly come to terms with and revoked.

During the perpetration of the Holodomor, the Soviet government refused to publicly acknowledge the famine. To admit its existence would mean to acknowledge to their enemies that the collectivization policies had failed. Thus, all foreign food aid was denied access to Soviet Ukraine in order to save face. Famine reports were dismissed by the government as anti-Soviet propaganda. These reports were counterbalanced by Soviet propaganda denying the

---

190 See Svetlov, supra note 102
191 Id.
192 In the aftermath of the Holodomor, those who spoke out against Stalin’s earlier policies created targets for themselves as future purge or deportation victims. See Svetlov, supra note 102.
193 See Snyder, supra note 2 at 56
194 The United States, a world leader on foreign policy, is one of the few nations who officially recognize the Holodomor as genocide. See James E. Mace, The Politics of Famine: American Government and Press Response to the Ukrainian Famine 1932-1933 (1989).
195 See Mischenko, supra note 2. See also, The Holodomor: A Brief History (2012)
196 One notorious instance of propaganda was that of concerned French politician Edouard Herriot, who was invited by the Soviet government to visit Kiev and a neighboring province during the height of the famine in the summer of 1933. See Snyder, supra note 2 at 58. While visiting Soviet Ukraine, Herriot was given a carefully staged visit that gave the look of normalcy throughout the region. This visit was complete with a show of healthy looking local children of wealthier Ukrainians. Id. Playwright George Bernard Shaw was an admirer who was also privy to a
famine’s existence. The national census of 1937 showed the national population of Ukraine had diminished by a quarter during the Holodomor. Upon hearing the results of the census, Stalin ordered the census takers to be shot and the results of the census sealed.

Educational measures have been put in place so that the Holodomor is not forgotten. Many countries outside Ukraine, under pressure from Ukrainian immigrants from within, have begun to officially acknowledge the Holodomor as genocide, but many other countries, most notably Russia, have not. Current international criminal law educators should therefore incorporate the Holodomor into their lessons structure before it is too late to serve justice on behalf of the few survivors.

VII. TWO-PHASED IMPLEMENTATION FOR TRANSITIONAL JUSTICE

A. Implementation Phase I: Locate, Prosecute, and Convict a few Symbolic Ex-Soviets

These “symbolic perpetrators” should come from the following three classes of offenders: surviving lower level Soviet perpetrators who were adults at the time of the Holodomor, surviving adult upper level perpetrators of acts of genocide against Ukrainians post-Holodomor, and lower level ex-Soviets who took part in the post-Holodomor mass execution and mass deportation policies against Ukrainians that lasted well into the 1950s.

One might argue that finding and prosecuting lower level surviving perpetrators of the worst of the Holodomor atrocities defies international law prosecution norms, and thus should not be

---

197 See Harvest of Despair, supra note 53.
198 Id.
199 The Holodomor: A Brief History (2012).
200 See Mischenko, supra note 2.
201 In 2011, the United States opened an official Holodomor memorial in Washington D.C. to commemorate the victims. See Holodomor Museum, at http://tuca.us/holodomor-memorial-in-washington-dc/
202 See Svetlov, supra note 102.
implemented. After all, the Soviet’s Nazi contemporaries at Nuremberg were the highest level Holocaust perpetrators; lower level SS guards, the local Hitler Youth recruiters, were not prosecuted. One might also argue that it sets a terrible precedent to seek out and prosecute lower level perpetrators, due to a combination of limited resources available for international prosecutions and the oft-needed cooperation of lower-level perpetrators to effectively prosecute genocide architects.\textsuperscript{203}

However, the Holodomor is distinctive from the Holocaust because the majority of the surviving Holodomor victims were not free to speak out as witnesses until the lead perpetrators had died, due to oppressive and prevailing Soviet policies.\textsuperscript{204} Thus, there exist few other remedies to direct prosecution of lower level perpetrators for remaining survivors, who were among the most vulnerable and innocent: children. An emerging international norm arose just last year, when former Nazi prison guard John Demjanjuk, at 89 years old, was prosecuted and sentenced by the ICC for over 28,000 counts of accessory to murder for his mere presence as a guard at the infamous Nazi Sobibor camp.\textsuperscript{205} The ICC maintained this conviction despite the complete lack of any other concrete evidence that Demjanjuk committed any war crimes at the camp.\textsuperscript{206} Under this new international law norm, similar prosecutions could potentially be obtained against former Soviet Gulag camp guards, and would reduce prosecution costs.

One might also argue that these survivor adult perpetrators, should not be prosecuted because they no longer pose a public threat, due to their old age. However, this argument does not hold

\textsuperscript{204} Internet chat interview with J.P., Russian investment banker and international consultant (April 13, 2012).
\textsuperscript{205} Author Unknown, John Demjanjuk Guilty of Nazi Death Camp Murders \textit{BBC} (April 24, 2012, 3:45 P.M.). http://www.bbc.co.uk/news/world-europe-12321549
\textsuperscript{206} Id.
when confronted with emerging international justice norms, most notably Demjanjuk.\textsuperscript{207} There are two distinct motives behind prosecution. The first motive is retributive: one should be punished for past actions.\textsuperscript{208} Genocide prosecution under the Rome Statute has no statute of limitations for that very reason: to eliminate the possibility that one can go “scot free” for the worst of crimes against humanity.\textsuperscript{209} The second motive for prosecuting genocide perpetrators is consequentialist. Under the consequentialist theory,\textsuperscript{210} ex-Soviet Holodomor perpetrators should not go unpunished because effective prosecution may deter future genocide perpetrators.\textsuperscript{211}

\textbf{B. Implementation Phase II: Insert Holodomor Lessons in Holocaust Classrooms}

Implementing Holodomor lessons in Holocaust classrooms will prevent the prosecution of Soviet sympathizers, which will likely contain at least some perpetrators with Jewish backgrounds, from spiraling into a wave of increased tensions between the Jewish and Ukrainian communities. Implementing complementing Holodomor lessons into contemporary Holocaust lessons should ideally be done by current war crimes teachers and professors with Jewish or Russian backgrounds, to make a good faith effort to bridge the animosity existing between the two communities.\textsuperscript{212} Conversations with several older Ukrainians convinced me that if more teachers with Jewish backgrounds incorporated the Holodomor into their Holocaust curriculum, it will reduce tensions between the Jewish and Ukrainian communities, both in Ukraine and

\begin{itemize}
\item \textsuperscript{207} See, \textit{e.g.} generally, John L. Heineman: Hitler’s first foreign minister. Constantin Freiherr von Neurath, Diplomat and Statesman. (1979) Konstantin Freiherr von Neurath, who was 73 at the time of his conviction at Nuremberg. \textit{Id.}
\item \textsuperscript{208} Joan Petersilia and Kevin R. Reitz, The Oxford Handbook on Sentencing and Corrections 134 (2012).
\item \textsuperscript{209} Article 29 of the 1998 ICC Statute provides: “The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.” See William Schabas, An Introduction to the International Criminal Court 247 (2001).
\item \textsuperscript{210} See Joshua Dressler, Understanding Criminal Law 565 (5th ed. 2009); cf. Mitchell N. Berman, The Evidentiary Theory of Blackmail: Taking Motives Seriously, 65 U. Chi. L. Rev. 795, 839 (1998) (“The average thief, after all, steals not in order to impose a loss on his victim, but for the purpose of obtaining a gain for himself. Yet this conduct, too, appears blameworthy – even absent a law prohibiting it.”).
\item \textsuperscript{211} \textit{Id.}
\item \textsuperscript{212} See Ukrainian Jewish Encounter Initiative http://ujecontent.squarespace.com/about/, (last visited Apr. 24, 2012).
\end{itemize}
abroad. Only public, long-term, and good-faith efforts to build this cultural bridge will reduce the centuries-long cycles of violence and hatred that originally fueled both genocides.

\footnote{Id.}