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Senior Thesis Paper

*Class identity as a reason for recognizing condition of
genocide crime through actions of communist party in
20-30th in Soviet era*

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Abstract

Soviet Union Repressions of 20-30th - everyone knows what those represent, but few of us really thought about these repressions as of genocide. The aim of this research is to show that in USSR officials' actions and acts there is a genocidal context and intent.

First, this paper looks at genocide through the historical perspective, after what it reflects the events took place in Soviet Union during 1920-1930s. It further proceeds with defining genocide and proving the elements of it in regards to Soviet Union. Such critical and challenging aspects as genocidal actions against classes and intent to destroy such classes are discussed in deep details. This paper brings to the inference that class membership should also be included into the scope of Genocide Convention. Moreover, it coherently explains the existence of intent in minds of genocide actors in USSR.

Lastly, it provides conclusions and relevant suggestions. In the end, there is an explanation, who is going to be responsible in case of establishing tribunals against Soviet Union.

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Introduction

The topic about class identity repressions of 20-30th in the Soviet Union nowadays is a highly discussed and widespread theme throughout the world. Though, Soviet terror earlier was considered to be a subject that did not attract much historical researchers either in the West or in Russia. The major reasons were the lack of access to relevant documentation and the ideological and political delicacy of the topic, which in both post-War ideological camps was fastened by different kinds of restrictions in the accounts of the repressions. In the Soviet Union the terror was for a long period of time excluded from the official Soviet discourse. Moreover, until the late 1930s internal mass violence was ethically justified as a necessary and positive means of controlling human behavior in Soviet society.

In Soviet literary representations of the terror Dariusz Tolczyk has found “a convention that presented the chief institution of Soviet state terrorism, the concentration camp, as the locus of the re-education and redemption of reactionary social elements in a process leading to a more just and humane future society”.¹ Official silence was implemented in connection with the culmination of Stalin’s great terror in 1937.

Since that time a lot of historical and political changes were done to the society. Such touchy and secret questions as repressions of Soviet Union now are not the matter of restrictions. For the present moment a lot of political, legal and public opinions reflect the character and qualification of these events. But still not all of them are objective and impartial, because of different factors. Some of the works were done, when the information was still severely restricted, some were done by foreign authors, who do not fully understand the situation present in the USSR at that time, others did not disclose all the fact, what creates obstacles in evaluation of the work done. Therefore, having an access to the needed materials and having many other legal precedents at hand I have decided to research this topic, in order to demonstrate the objective situation and attach correct legal qualifications to it.

This work will be focused solely on 20-30th years of Soviet Era and will analyze the events took place in the scope of genocide crime. By the means of the combination of existent researches, analyzing the events took place, and looking at historical cases, this paper will obtain unique and useful implementation.

¹KLAS- GORAN KARLSSON: GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES 56 (2003) (Steven L. B. Jensen ed.).

In present work the analysis and comparison techniques will mainly be operated by. It will also include historical statements and interpretation methods as well as different techniques of International Legal Acts interpretation. Case Law method will be applied in the part of finding differences and similarities between Soviet Union repressions case and cases of legally accepted and recognized genocides. To develop the sequence and smooth transition between the ideas presented I used the synthesis method.

The sources present will be International Convention on the Prevention and Punishment of Genocide Crime, Statute of International Criminal Court, Report of the Preparatory Commission for the International Criminal Court, Chamber of Appeals of International Criminal Tribunal for Rwanda and Criminal Tribunal for the former Yugoslavia, Elements of Crime (Rome Statute Interpretation of Elements of contained Crimes) *Cambodia genocide case*, cases of *Prosecutor v. Jean-Paul Akayesu*, *Prosecutor v. Jelusic*, and *Prosecutor v. Tadic*, *Prosecutor v. Krajisnik*, *Prosecutor v. Kayishema*, *Prosecutor v. Mikaeli Muhimana*, historical information about Soviet Union repressions of 20-30th, statistical data about 20-30th repressions, and other sources.

While writing a research everyone encounters with certain impediments and difficulties. Problems accounted by me were of various essences. First of all, it was hard to review all the material exists on the discussed topic. Secondly, forming the objective opinion was not easy, as long as it was hard to identify whose thoughts are just interpretation and whose are biased and opinion reinforced. Moreover, no clear works stating and declaring the repressions of Soviet Union as a genocide crime subsists. Papers and books talking about Soviet Union Genocide do not justifiably defend their opinion. Therefore, I had to allot relevant and real facts and further impartially interpret it, supporting my ideas by accurately chosen cases. The other obstacle I came across with was to prove that killing people based on class identity should also be included into the definition of genocide. This problem will be fully discussed in second chapter.

In the first chapter I will talk about the origins of the genocide term occurrence. It will include the concept of need of rise of such crime definition and the development of it throughout the time. Moreover, this chapter will contain the historical background of the events took place in the Soviet Union during the repression of 20-30s, which prepares the reader for the analysis followed by.

In the second chapter I will discuss the *corpus delicti* (elements of genocide crime) concept and will pull down the definition of genocide into the elements of *corpus delicti* for the better understanding of its constituents. In each part of this discussion the blocks from Soviet Union events proving the existence of elements will be brought out. This will allow establishing the fact of genocide crime in Soviet Union if such. Moreover, the cases of already established genocides will be brought out in parts, where the ascertainment of facts is most problematic and challenging.

In the conclusion, I will summarize all the findings and proofs made throughout the work. Moreover, I need to mention that currently, no country in the world officially recognizes Soviet Union repressions as genocide. Since almost a century, active debates are going concerning these historical events. Some considers actions of Communist party as means to control people, others as inhumane treatment and third simply as a course of history. At the end of my thesis I have tried to give my own opinion on this discussed and disturbing topic, which will contain the relevant justification.

Chapter 1: Historical Background of genocide and Soviet Union Repressions of 20-30th

In this chapter the aspects about the origins and historical background of term genocide as well as the sequence of historical events took place in Soviet Union will be discussed. In the beginning we will talk about the need of establishment of new definition for a crime, the precedence of which already existed in the society. We will look at the attempts of international community to define the crime with unique and massive character and how they finally came to the right statement with the correct reasoning. At the end, the example of similar and unidentified case of genocide seen in the repressions in Soviet Union will be provided.

a) Origins of Genocide Crime

The term “genocide” did not exist until 1944. The need to propose the term, which stands for the violent crimes committed against groups with the intent to destroy the existence of the group, appeared after the cruel and massive actions of German Nazis. Hitler and his army had intent to destroy such nations as Gypsy, Jews, Russians, Polish, and others. By the time the war came to an end, there was no clear understanding of how to punish German’s Nazis and how to define actions committed by them. As Winston Churchill said on August, 1941 in his broadcast "We are in the presence of a crime without a name."²

All international community was thinking about ways of defining the crime that took place. Their attempts were focused on the development of humanitarian law during the 19th and early 20th Centuries. Various Hague treaties and the Geneva Conventions, for instance, made it an international crime to murder Prisoners of War (POWs), indiscriminately kill or target noncombatants, sink unarmed passenger ships, and the like.³ Though, nothing was effective.

Afterwards, “mass murder” was proposed as one of the ways. Though soon it has been determined that it does not connote the motivation of the crime, especially when the motivation is based upon racial, national or religious considerations. Further an attempt to destroy a nation and obliterate its cultural personality was called as “denationalization”. This qualification seemed to be inadequate as well, as far as it did not connote biological destruction. Moreover,

² *What is genocide* (Oct. 17, 2006), available at <http://www.ushmm.org/wlc/article.php?lang=en&ModuleId=10007043>

³ R. J. Rummel, "20th Century Democide" , English version is available at <http://www.hawaii.edu/powerkills/GENOCIDE.ENCY.HTM>

this term is mostly used for conveying or for defining an act of deprivation of citizenship. (Power, 4)⁴ The question about creating a new term called to define crime committed by Nazis became urgent and obvious.

There was a person, who throughout his life was striking to define the crime nowadays called genocide. It was Polish-Jewish lawyer named Raphael Lemkin. Journalist and human rights activist Samantha Power writes that Raphael Lemkin was troubled by the trial of Soghomon Tehlirian in Germany in 1921. Tehlirian was an Armenian survivor of the Young Turk-led massacres and deportations during World War I in the Ottoman Empire. He was on trial for the murder of Talaat Pasha, who was one of the leaders of the Young Turk party and executors of the genocide. Lemkin asked one of the major lawyer's professor of that time why the Armenians did not have Talaat arrested for the massacre. The professor said there was no law under which he could be arrested. "Consider the case of a farmer who owns a flock of chickens," he said. "He kills them and this is his business. If you interfere, you are trespassing."⁵ That was a clear logic of a person serving the laws, but not of a person striking for justice. "It is a crime for Tehlirian to kill a man, but it is not a crime for his oppressor to kill more than a million men?" Lemkin asked. "This is most inconsistent."⁵

During the 1920s Lemkin became a lawyer and in 1933, the same year that the Nazis came to power in Germany, Lemkin drafted a paper in order to present his ideas before an international criminal conference in Madrid. He drew the attention to both Hitler's ascent and to the Ottoman slaughter of the Armenians. To convince the society he pointed out: "If it happened once it would happen again. If it happened there it could happen here. If the international community ever hoped to prevent mass slaughter of the kind the Armenians had suffered the world's states would have to unite in a campaign to ban the practice."⁵ But his first try failed, as it was later determined due to the lack of a proper definition for all conditions and elements that were listed by him. It is important to mention that he first called genocide as "act of barbarity".

⁴ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, New Haven, CT: Yale University Press (2007), available at http://books.google.com/books?id=XR91bs70jukC&dq=Blood+and+Soil:+A+World+History+of+Genocide+and+Extermination+from+Sparta+to+Darfur&printsec=frontcover&source=bn&hl=en&ei=bRfgS_XiG8aaOJz3gZMI&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBIQ6AEwAw#v=onepage&q&f=false

⁵ Facing History and Ourselves. *The crime of Genocide* (March 30, 2008), available at <http://www.facinghistory.org/resources/facingtoday/the-crime-genocide>

Such kind of name was not sound for the public and Lemkin continued working on his life-time project.

At the end of the day, Lemkin proposed term “genocide” for describing the international crime committed by German Nazi leaders and the Ottoman slaughter of the Armenians. Genocide was composed by the means of uniting two words geno- which means race or tribe from the Greek and –cide which from the Latin stands for word killing. Literally the word “genocide” means race/tribe – killing.

Interpreting the very intention of the author genocide should stand for crimes longing to annihilate people of one race or people from one tribe. Going further, people who are to be destroyed should either have common nationality or race, i.e. they have to be somehow unified by blood, or they should be connected by their roots, such as origin, traditions, way of living, etc. Lemkin, though, understood “genocide” as "a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves."⁶ In his definition of genocide Lemkin did not include any other formations rather than national groups. The most probable reason for this is that Holocaust was the most striking and terrifying example of violent crime, specifically for which the term genocide was constructed. In 1945 the International Military Tribunal held in Nuremberg, Germany charged top Nazis with “crimes against humanity”. Even though, the term “genocide” was included in the indictment it has rather descriptive than legal meaning, because no legal acts or practice of accusing genocide existed.

Due to the burning desire of Lemkin to bring the justice and peace into society, he lobbied UN delegates nonstop. On December 11, 1946, the General Assembly unanimously passed a resolution defining genocide as "the denial of the right of existence of entire human groups" which is "contrary to moral law and the spirit and aims of the United Nations."⁵ The resolution was a reason for a committee to draft the treaty banning the genocide crime. Two years later in 1948, with Lemkin acting as a one-man lobby, the United Nations passed the

⁶ W.A. Schabas, *Genocide in International Law*, p. 213 (2000), available at http://books.google.com/books?id=pYptuRHDQPgC&pg=PA189&lpg=PA189&dq=W.A.+Schabas,+Genocide+in+International+Law&source=bl&ots=11FJgSEZFI&sig=PXT2SBgNr9kAhrf12vWxjSjkaLw&hl=en&ei=wBngSDzLseBOMLkgbYI&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBIQ6AEwAw#v=onepage&q&f=false

Convention on the Prevention and Punishment of the Crime of Genocide, which declares "genocide, whether committed in time of peace or in time of war, is a crime under international law which [the United Nations] undertakes to prevent and to punish." The UNCG came into force in 1951, and since then has been ratified by 133 states.⁷ For the purposes of identification of genocide it was clearly stated that this crime can take place either at the time of war or at the peaceful time.

Convention became first and major document codifying regulations on genocide crime. This convention establishes "genocide" as an international crime, which signatory nations "undertake to prevent and punish."⁸ Drafters of the convention have identified the genocide crime as an international crime according to several reasons. The first reason is that genocide purports to punish the wrongful act of the State, which will never initiate a persecution against itself. Secondly, that crime as in the cases with Nazis or Ottoman developments is usually directed against nations of other states and therefore in most cases have foreign element. Thus, it was intended to have an international nature.

b) Soviet Union Repressions of 20-30th

While active discussions about the way of defining the genocide crime took place in the international society, Soviet Union people were crept over with the fear of being repressed and killed by its own state authorities. Lemkin had no doubts about the nature of the Soviet communist regime, "the Soviet national unity is being created, not by any union of ideas and of cultures, but by the complete destruction of all cultures and of all ideas save one – the Soviet".⁹ Soviet Union story of repressions started after the February Revolution of 1917, when on December 7th a powerful punitive machine called Russian Extraordinary Commission (VChK) headed by Dzerzhinsky has been established. VChK became the institution, which took over the functions of surveillance, arrest, investigation, prosecution, trial, and execution. They had the main responsibility for the maintenance of internal order and the prosecution and destruction of enemies of the Communist regime. During the first Bolshevik years for the support of efforts of

⁷ Facing History and Ourselves. *The crime of Genocide* (March 30, 2008), available at <http://www.facinghistory.org/resources/facingtoday/the-crime-genocide>

⁸ *What is genocide* (Oct. 17, 2006), available at <http://www.ushmm.org/wlc/article.php?lang=en&ModuleId=10007043>

⁹ Klas- Goran Karlsson: *Genocide: Cases, Comparisons and Contemporary Debates*, p. 10 (2003) (Steven L. B. Jensen ed.).

the secret police in promoting “counter-revolutionary” tendencies such commodities as concentration camps and revolutionary tribunals were originated.

The Red terror was launched in January 1918, because within the leftist parliament there was a break up, in which the Bolshevik party failed to get a majority of the votes. In the following spring and summer, the harassment was directed not only towards the representatives and supporters of the old regime, but also towards those who did not directly support the new men of power. Priests, teachers, scholars and other professional groups, who were regarded as being too much in sympathy with the old tsarist regime, were under strict control and in serious trouble. In July the tsar and his family were murdered in Yekaterinburg. People carried this execution were local Bolsheviks acting on Lenin’s personal orders.¹⁰

In 1922, Dzerzhinsky said that now "it is necessary to look closely to the anti-Soviet tendencies and factions, to crush internal counter-revolution, and to disclose all the conspiracies bowed down landlords, capitalists and their hangers-on."¹¹ These words became the basis for the future politics determined. In June - August 1922, a trial was held over the Eser Party, it had enormous support among the peasantry. Moreover, the starvation erupted in the early 20's made it possible for the Party to deal with the Church. Lenin used this chance and started the expropriation of church property, reminiscent of an ordinary robbery, accompanied by arrests, trials, executions. In 1922 during Moscow and Petrograd church processes 21 clerics have been sentenced to death for "resistance" in surrendering church values. Russian Orthodox Church Patriarch Tikhon was arrested for twice being a "head of counter-revolution".¹²

According to the Report of the OGPU in 1924 the distribution of arrests in social composition was - the peasants, a considerable number of workers, government officials and intellectuals.

¹⁰ Brzezinski, Zbigniew, *The Permanent Purge. Politics in Soviet Totalitarianism*. Cambridge, MA, (1958), available at http://www.google.com/search?sourceid=navclient&ie=UTF-8&rlz=1T4SKPB_enUS290US290&q=Brzezinski%2c+Zbigniew+%281958%29%2c+The+Permanent+Purge.+Politics+in+Soviet+Totalitarianism.+Cambridge%2c+MA.

¹¹ *Political Repressions in USSR*, available at <http://www.sakharov-center.ru/museum/expositions/repressions-ussr/>

¹² Robert Conquest, , *The Great Terror, Stalin’s Purge of the 30s*, new edition A Reassessment. London 1990, (1968), available at <http://balticworlds.com/a-pathbreaker-robert-conquest-and-soviet-studies-during-the-cold-war/>

Intelligentsia was massacred without mercy they were arrested on the basis of the Russian Federation Constitution of 1918, were deprived of civil and voting rights and were exiled abroad. Strict censorship was present within the country.

A new escalation of the terror occurred in connection with a radically new phase in Soviet history: Stalin's revolution from above. From 1928 onwards the introduction of a centralized command economy, a strong emphasis on heavy industry and agrarian collectivization went closely together with a general disciplining and mobilization of Soviet society. Free migration was obstructed and geographical movement placed under political control. Family ties were encouraged. After a few years of so-called Cultural Revolution, a new Stalinist technocratic intelligentsia took over control of industries and a burgeoning bureaucracy.¹³

An important aspect of the revolution was the return of terror. This time the extent and ruthlessness of the terror was different and much greater than during the first Bolshevik years. The victims were called *byvshie liudi*, literally "humans of the past", in reality all individuals and groups who had or were considered to have had relations to the old society and its regime.

In the late 20's "Shakht case" and Promparty process marked the beginning of mass repression against the technical intelligentsia. Shaht case brought to justice engineers and technicians of Donetsk Basin, who were accused of deliberately wrecking, the explosion of mines, the criminal connections with the former owners of the mines of Donetsk, the purchase of unnecessary import of equipment, violation of safety rules and labor laws, etc. As a result, every seventh engineer of the country was locked out in the prison.

In 1927, the party has defined the direction for the creation of collective farms - *kolhozs*. Calls to voluntarily register in the farm did not have serious impact on the property owning farmers. The basic method of establishing collective farms was implementation of violence and threats. First, government considered it necessary to deprive the village of its economic elite - wealthy peasants (*kulaks*) and the wealthy middle peasants, who for most of the rural population were counterbalance to the Soviet faming propaganda.

¹³ Sheila Fitzpatrick, *Everyday Stalinism. Ordinary Life in Extraordinary Times: Soviet Russia in the 1930s*. Oxford, (1999), available at <http://www.ref.by/refs/33/40892/1.html>

Later on Stalin declared: "From the policy of restricting the exploiting tendencies of the kulaks, we came to a policy of eliminating the kulaks as a class."¹⁴ During 1930 - 1931 years about 2 million of farmers had been expelled to special settlements. Fear of dekulakization forced peasants to join collective farms bearing the restrictions posed on their freedom: the absence of passports, criminal penalties for failure to comply with the rules of workdays, work without days off and holidays, meager food supply (per workday were issued from 200 to 500 grams of grain).¹⁵

In 1932 – 1933 the outbreak of famine has engulfed even such "bread industries" as Ukraine, North Caucasus, Volga region, Kazakhstan, Western Siberia, south of the Central Black Earth region and the Urals. This famine took lives of more than 6 million people. Undoubtedly, "famine" was the result of governmental policy against all peasants, and not only the kulaks.¹⁶

In the early 30's extensive network of prisons, camps, transfers, and settlements was created for the maintenance of the exiles and prisoners. This network was later called "The Gulag Archipelago Solzhenitsyn". Its inception started with the Solovetsky monastery, which in 1923 was relocated into Solovki prison camp (SLON). SLON originally contained the priests and monks, soldiers and officers of the White Army, political opponents of the Bolsheviks, and the intelligentsia. The theoretical justification for mass arrests in the 30's was the Stalinist conception of intensifying the class struggle in the country as it moves towards socialism and the need in a short time and at the least cost industrialization of the country. The slogan spread at that time was: "Soviet power does not punish, it fixes!"¹⁷

Lastly, in the 20-30 years the representatives of the party elite fall under the attack of repressive machine. Former head of the Red Army Trotsky was the first, who has been eliminated from the political arena. Soviet Union power expelled him from the country. Later in 1940 he was killed overseas by one of the agents of the NKVD. Moreover, everyone somehow related to Trotsky were repressed.

¹⁴ *Political Repressions in USSR*, available at <http://www.sakharov-center.ru/museum/expositions/repressions-ussr/>

¹⁵ Danilov, Viktor et al (ed.), *Tragediya Sovetskoi derevni. Kollektivizatsiya i raskulachivanie. Dokumenty i materialy v 5 tomakh, 1927-1939*. Moscow, (1999-2001).

¹⁶ Robert Conquest, *The Harvest of Sorrow. Soviet Collectivization and the Terror-Famine*. London. (1986).

¹⁷ *Political Repressions in USSR*, available at <http://www.sakharov-center.ru/museum/expositions/repressions-ussr/>

In 1936-1938 Lenin's closest associates: Bukharin, Zinoviev, Kamenev, Pyatakov, Rykov - were shot. This event received a name "Great Terror". In 1933-1939 years from the party were excluded about 2 million people, of whom 1.2 million - were arrested. Those who had been brought to the 1936 - 1938 trials alive fully admitted their guilt in the terrible atrocities against the Party and people. Defendants in open processes had publicly confessed their crimes so that no one doubts that the enemy has many faces and can appear from anywhere.¹⁸

People lived in conditions of growing and well-organized mass hysteria and general suspicion. Continuous fight against "enemies of the people" had been extended through the meetings, newspapers and radio. After the sentencing of enemies of the people huge rallies in support of court decisions had been held.

Special caste in the Soviet Union was military forces - heroes of the Civil War, who were convinced in their untouchability. But a military coup in Spain, the leader of which was General Franco, has strengthened the suspicions of Stalin. Tukachevskii being a possible dictate leader had been killed as a result of repressions. From nearly 460 soldiers with the rank of divisional commander and higher almost 400 of them were covered by repressions, from them 350 people were killed (while the war killed 320). After the death of top leaders, people really of virtually connected with them also fall under repressions and therefore were arrested.¹⁹

By this time the mechanism of repressions has been evenly simplified. Arrests and executions of people were carried out by limits (i.e. order), approved by the Central Committee of the Party and Stalin himself. These limits were constantly increased on the initiative of local NKVD. In 1934, the NKVD formed a special meeting (CCA), which without a trial had the right to expel, exile, and send people to the camp for up to 5 years. By 1941 it could condemn people to up to 25 years and sentence them to death. During the so-called "Great Terror" period by the special order of Stalin Yagoda and Ezhov has approved such non-judicial bodies as the "troika" and "dvoika", which decided the fate of people according to the will of the state. According to the official data only during the period of 1937-1938 more than 1,5 million people has been

¹⁸ Robert Conquest, *The Great Terror, Stalin's Purge of the 30s*, new edition A Reassessment. London 1990. (1968)

¹⁹ Getty and Roberta T. Manning (eds.), *Stalinist Terror. New Perspectives*. Cambridge, p. 40-64.

arrested, 1.3 million were convicted of extrajudicial bodies, and about 700 thousand - were killed.²⁰

The very notion of "enemy of the people" become a part of everyday life, it had become indelibly stamped not only on the traitors, but also on the members of their families. Family members of all traitors of the Motherland (ChSIR) were subjected to physical and moral torture. According to the decision of the Politburo dated to 5 July 1937 the wives of "enemies of the people" had to be sent to camp for a period of not less than 5-8 years. Children of "enemies of the people" were sent to labor camps of NKVD colonies or to orphanages with strict regime.

The period of 20th - 30th years was one of the worst pages in the history of the USSR. A lot of political processes and repressions were held, historians will never be able to recover all the details of the terrible pictures of this era. These years cost the country millions of victims, who mainly were talented people, technicians, managers, scholars, writers and intellectuals. The government has sought to get rid of all free-thinking people. Through one process after another, state actually beheaded bodies of the country.²¹

Terror covered indiscriminately all regions, the entire republic. In the hit list were such nations as Russians, Jews, Ukrainians, Georgians and other representatives of large and small nations of the country. Particularly heavy consequences were mentioned in undeveloped areas. Big losses suffered not only the Soviet people, but also the representatives of foreign parties and organizations working in the USSR. Good faith experts, who helped the country in retrieving the economy, were sent to prisons and concentration camps and expelled in disgrace from the country.

Sensing the approaching calamity, some Soviet leaders fled the border. There was, though little in number, the red wave of Soviet Union emigration.

In the next chapter the events took place in Soviet Union will be confronted with the conception of genocide crime. Such issues as whether repressions of 20-30s in USSR are deemed to be crime and whether this is the genocide crime will attempt to be answered.

²⁰ Cohen, Stephen, *Rethinking the Soviet Experience. Politics and History since 1917*. Oxford, (1985), available at <http://www.fsmitha.com/review/CohenSF.htm>

²¹ Kuleshov, S., *Nashe Otechestvo. Opyt politicheskoi istorii*. Tom 1. Moscow. (1991).

Chapter 2: Class identity as a reason for recognizing genocide crime in Soviet Union repressions of 20-30th

This chapter will mainly be focused on the elements of genocide crime and the relevance of those to the Soviet Union case. First of all, the definition of genocide crime will be looked at and then it will be closely examined through the subdivision of the crime into segments the presence of which constitutes the *corpus delicti*. Inquiring and analyzing each component of genocide crime the facts took place in the Soviet Union in 20-30s will be provided in order to establish the occurrence of that crime during massive repressions. This chapter will also provide reader with comparison of crime against humanity with genocide. Throughout the text relevant cases of genocide will be brought out as a proof by the means of precedence law. At the end, the conclusion about the existence or absence of *corpus delicti* of genocide in Soviet Union repressions case will be stated.

a) Understanding the genocide crime through the Convention on the Prevention and Punishment of the Crime of Genocide

In order to prove the occurrence of any crime, it is necessary to subdivide it into specific elements. These elements are usually identified by the legislator when drafting and accepting the legal documents. The absence of at least of one element in the events of crime sustained will bring to the conclusion that no crime has been committed.

Therefore, for the establishment of genocide crime first it is necessary to define the elements of it and second to prove the existence of all elements in relevance to a particular case.

Definition of genocide can be found in number of international legal documents. The major convention on Genocide is Convention on Prevention and Punishment of the Crime of Genocide (Genocide Convention)²², also genocide crime concept is placed in Article 2 of the International Criminal Tribunal for Rwanda (ICTR)²³, Article 4 of the International Criminal

²² *Convention on the Prevention and Punishment of the Crime of Genocide*, adopted by the UN General Assembly in 1948, 78 U.N.T.S. 277 opened for signature on 8 December 1948 and entered into force on 12 January 1951.

²³ The International Criminal Tribunal created for the prosecution of persons responsible for the serious crimes and violations committed on the Rwandan territory as well as for the prosecution of Rwandan citizens responsible for genocide and analogical crimes committed in the neighboring states. Established between 1 January and 31 December 1994 by the Security Council resolution, which was adopted by a vote 13-1-1 by the Security Council at its 3453d

Tribunal for the Former Yugoslavia (ICTY) Statutes²⁴, as well as in Article 6 of the International Criminal Court (ICC) Statute²⁵. Moreover, this crime has also been incorporated into the local legislation of Kyrgyz Republic. Article 373 of criminal code of Kyrgyz Republic specifically talks about genocide crime. Analyzing these documents in part of genocide definition it is vivid that those are identical, which brings to the unified understanding of this crime.²⁶

According to the listed international documents *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;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.²⁷

i) Elements of Genocide Crime regarding the Soviet Union Repressions of 20-30th

Based on the definition, the imperative elements of the crime of genocide include:

1. The *actus reus*, which means the commission of a generally prohibited act. In the Convention these acts are indicated through a-e points;
2. The *victimised group*, which according to the definition expressed by the affiliation with the membership of a national, ethnic, racial or religious group;

meeting, on 8 November 1994. SC Res. 955 UNSCOR, 49th Year, 3453 meeting at 1 UN Doc. S/RES/955 (1994).

²⁴ The International Criminal Tribunal for the prosecution of persons responsible for serious crimes and violations committed on the former Yugoslavia territory since 1991. It was established by the UN Security Council resolution, which was adopted by unanimously by the Security Council at its 3217 meeting, on 25 May 1993.

²⁵ *ICC Statute*, called as *Rome Statute of the International Criminal Court* which was adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, UN Doc. A/CONF.183/9, (17 July 1998).

²⁶ Article 3 of *UNGC* says that “the following acts shall be punishable: (a) Genocide; (b) Conspiracy to commit genocide; (c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.”

3. The *mens rea* showed in intent “to destroy, in whole or in part” the victimized group. Each of these elements must be established beyond a reasonable doubt, it means that there should be no uncertainty in the established facts and constituents.²⁸

For proving the fact of genocide in case of Soviet Union repressions in 20-30th aforementioned imperative elements will be taken as basis. In the beginning the actus reus, then group victimized and at last the mens rea will be recognized and established.

(1) Actus Reus

Historian Ben Kiernan suggested to group acts listed in the genocide crime definition into two main categories: Physical and Biological Genocide. According to him “physical genocide” goes beyond simply killing people, it includes acts to place the group of people in such conditions, which are not favorable for life. “Biological genocide” is aimed to prevent the reproduction of people as group.²⁹

Considering the Soviet Union Repressions different types of methods were used for the suppression of citizens. Those were: sentencing, death penalty (shooting), maintenance in camps and prisons, exiles and deportations. From the context of genocide several of the methods listed can be implemented to Soviet Union case. It is quite obvious that genocide by killing has been committed, genocide by causing serious bodily or mental harm also took place and lastly genocide by deliberately inflicting conditions of life calculated to bring about physical destruction occurred. Therefore, on Kiernan theory only physical genocide has to be proved.

In order to prove the existence of each episode in Soviet Union Case, looking at the methods used during repressions separately will be more useful and effective for understanding. While, discussing every element, we will try to prove the presence of each component of corpus delicti in the case of Soviet Union repressions of 20-30s and we will see whether the events took place in USSR can be admitted as a crime of genocide.

²⁸ Otto Triffterer, *Genocide, its Particular Intent to Destroy in Whole or in Part a Group as Such*, Leiden Journal of International Law (2001), available at law.huji.ac.il/upload/ambos_reading4.pdf

²⁹ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, New Haven, CT: Yale University Press (2007), available at http://books.google.com/books?id=XR91bs70jukC&dq=Blood+and+Soil:+A+World+History+of+Genocide+and+Extermination+from+Sparta+to+Darfur&printsec=frontcover&source=bn&hl=en&ei=bRfgS_XiG8aaOJz3gZMI&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBIQ6AEwAw#v=onepage&q&f=false

The Elements of Crime³⁰ based upon the Rome Statute, Article 6 (a, b, and c) extracts elements of genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting conditions of life calculated to bring about its physical destruction.

Article 6 (a) talks about genocide by killing and it includes four elements to prove the occurrence of such genocide.

Genocide by killing: Elements

1. *The perpetrator killed³¹ one or more persons.*
2. *Such person or persons belonged to a particular national, ethnical, racial or religious group.*
3. *The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.*
4. *The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.*

Then Article 6 (b) proceeds with revelation of elements of genocide by causing serious bodily or mental harm.

Genocide by causing serious bodily or mental harm: Elements

1. *The perpetrator caused serious bodily or mental harm to one or more persons.³²*
2. *Such person or persons belonged to a particular national, ethnical, racial or religious group.*
3. *The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.*
4. *The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.*

³⁰ This document explains the structure of the elements of the crimes of genocide, crimes against humanity and war crimes and follows the structure of the corresponding provisions of articles 6, 7 and 8 of the Rome Statute. Some paragraphs of those articles of the Rome Statute list multiple crimes. In those instances, the elements of crimes appear in separate paragraphs which correspond to each of those crimes to facilitate the identification of the respective elements.

³¹ The term 'killed' is interchangeable with the term 'caused death'.

³² This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

And finally Article 6 (c) describes the elements of genocide by deliberately inflicting conditions of life calculated to bring about physical destruction.

Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction: Elements

1. *The perpetrator inflicted certain conditions of life upon one or more persons.*
2. *Such person or persons belonged to a particular national, ethnical, racial or religious group.*
3. *The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.*
4. *The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part³³.*
5. *The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.*

From the delimitation and division of these elements it is seen that these types of genocides are proven by the inclusion of all necessary and common elements of genocide. Thus, the actus reus goes together with intent and victimized group and according to well known postulates cannot exist without two other elements. Still in this part only two relevant to actus reus establishment issues will be argued upon. These issues are: the murder, the cause of bodily or mental harm, and the imposition of certain condition of life upon one or more persons; and the occurrence of conduct in the context of a manifest pattern of similar conduct or the occurrence of conduct that could itself effect such destruction.

Even though the most frequent cases of genocide are about the murder of indelible group members, the Article 2 of United Nation Convention on Genocide also includes acts stated in its (b) to (e) sections, which state that genocide may also involve the intent to destroy a group by means other than killing one or more of its members. Rummel in his work extends the meaning of the genocide crime definition by the means of extracting the interpretation done by Report of the Preparatory Commission for the International Criminal Court (PCICC).

³³ The term 'conditions of life' may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

* Thus, in Act (b) "serious bodily or mental harm" may include acts of torture, rape, sexual slavery, apartheid, or other inhuman or degrading treatment. (PCICC, ft. 3) These inhumane acts, among others, were explicitly included in the ICC Statute in genocide criminal law.

* In Act (c) "conditions of life" may include "deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes." (PCICC ft. 4)

* The term "forcibly" in Act (e), "is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power; or taking advantage of a coercive environment." (PCICC ft. 5).

* Finally, Rummel noted that there are many other crimes that do not fall under the definition of the crime of genocide, but these are still subject to prosecution by the ICC. Under Article 7 such are systematic murder, extermination of civilians, enslavement, torture, rape, forced pregnancy, political persecution, and forced disappearances and those are to be prosecuted as crimes against humanity. (5)

Therefore, when looking at each component of certain genocidal actions separately, the inferences made by Rummel should be taken into account.

1.1 The murder of one or more persons:

There is no unified statistic that exists on the repressions of USSR, also there is no specific one done for 20-30th. Below the statistic on the most murderous and terrible period of 1937-1938 as well as general statistics are introduced. It should be mentioned, that the following up data reflects not only deaths from murdering, but also from inflicting damages and from placing into unfavorable conditions.

In 1937–38 the data on deaths of repressions range from 950,000 to 1.2 million, i.e. about a million. Most of these deaths were killings of NKVD, but also a significant number were deaths in detention centers (both deliberate and occasional).³⁴

³⁴ Getty, J. Arch and Oleg Naumov, *The Road to Terror. Stalin and the Self-Destruction of the Bolsheviks, 1932-1939.* New Haven (1999), available at <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=121191>

This estimate amounted to a million is not a clear estimation and in fact presents much higher numbers. For instance, it excludes those arrested in 1937–38 and who were still under investigation on 31 December 1938. It also excludes people who were deported (mainly almost 200,000 Soviet Koreans). It also excludes those who had severely suffered from the repressions but were not factually repressed. Such category includes those fired from their jobs and families of arrested people who were not arrested in persona but suffered the grief of relative loss as well as discrimination and material losses.³⁵

The information on general number of repressions' suggests that about 6 million people were sentenced on political charges. The number of the rest of repressed and sentenced amounts to about 12 million. (From this number about 3.5 million died while imprisoned, from shooting, famine, or tortures). It can also be increased substantially by including the peasants who were deported 'only' within their own region, for instance only Kazakhs who fled from Kazakhstan in 1931–33 constituted about 1 million. Moreover, add also the victims of war, famine and disease.³⁶

According to various data and sources throughout the 27 years of the Gulag's existence (1930–56) the number of people who were sentenced to detention in prisons, colonies and camps estimated at 17–18 million. This figure excludes the deportees, prisoners of war and internees, those who stood in the post-war filtration camps, and those who performed forced labor at their normal place of work.

To make a conclusion, generally during the years of repressions about 35-40 million people suffered and almost 15-20 million of them died as a result of these events.³⁷ Therefore, Soviet Union officials definitely killed more than one person; oppositely the number of victims is so terrifying that there is no doubt that on this point the genocide element completely present in Soviet Union Repressions of 20-30th.

1.2 The cause of serious bodily or mental harm to one or more persons:

³⁵ Michael Ellman, *Soviet Repression Statistics: Some Comments*. Europe-Asia Studies, Vol. 54, No. 7, (2002), available at www.artukraine.com/famineart/SovietCrimes.pdf

³⁶ S. Wheatcroft, 'The Scale and Nature of German and Soviet Repression and Mass Killings, 1930–45', Europe-Asia Studies, (8, December 1996), available at <http://www.jstor.org/pss/152781>

³⁷ *Ib.ed.* 35

While being in camps, prisons, and in mental hospitals those repressed were inflicted serious bodily and mental harm. People were tortured and were forced to reveal the necessary information, they were deprived of sufficient and healthy food, were compelled to work on harsh jobs without any mercy. For not obeying the orders were either beaten or deprived of food.

In mental hospitals doctors on the order of Soviet ruling authority were stuffing healthy people with pills influencing mind. After such cure a lot of people died or these people forever lost themselves.

Women were raped and sexually harassed by prison officers and it never considered a felony. All of these actions in total brought to the death of many people or to the non-reconstruction of them as actors of society.³⁸

1.3 The infliction of certain conditions of life upon one or more persons:

In camps and prisons the living conditions were as bad as many people could not survive such tortures. The cells were so overloaded that sometimes people died because of the lack of air. There was no differentiation as to children, women and men. All got equal treatment and equally inhumane works. Children were not given a sufficient amount of food and they had to work in unsuitable for their constitution jobs and tasks.

The living rooms, dining rooms, rest rooms and other commodities were very dirty so that people catch up with bunch of serious illnesses. The doctors were not allowed to be present or sometimes doctors themselves refused to enter the facilities not to get sick. From these illnesses died a lot of people, including the inspectors.

Camps and prisons were also full of real criminals, who behaved as they wanted and killed innocent inmates, raped women and perpetrated attacks with impunity.³⁹

So, the general living conditions of prisons and camps were aimed at annihilating people rather than punishing them. Repressed persons were mainly used as a free man power and Soviet Union officials did not care about them as citizens. The temporary replenishment of lines of imprisoned did not create any worries for losing economic preference of free labor, therefore there was no need on humane maintenance of repressed.

³⁸ During 1930-1956 around 17-19 million were concentrated in GULAG only, around 1 million died as result of torturing

³⁹ J.A. Getty, G.T. Rittersporn & V.N. Zemskov, 'Victims of the Soviet Penal System in the Pre-war Years: A First Approach on the Basis of Archival Evidence', *American Historical Review*, (4, October 1993), available at <http://www.jstor.org/pss/2166597>

2. The occurrence of conduct in the context of a manifest pattern of similar conduct or the occurrence of conduct that could itself effect such destruction:

All of the methods used by Soviet Union officials to carry out the repressions included into the killing (sentencing to death, deaths as a result of torture, famine losses, conditions in prison resulted in deaths, so on), causing serious bodily or mental harms (tortures, rapes, mental houses confinement, etc.) and inflicting condition calculated to bring about the physical destruction (camps and prisons, which conditions were not suitable for living – insanitariness, hard work, insufficient food, degrading treatment, children and women abuse, etc.) constitute and amount to the conduct that brings to the destruction of society groups.

Listed ways of treating the imprisoned and camp inmates are not directly stated in Genocide Article, but flow from its context. The methods used in separate would not calculate to genocide, but together they merge into killing, cause of serious mental and physical damages and infliction of conditions that prone to bring to the destruction.

Therefore, actus reus completely present in Soviet Union officials' acts. It means that the first element of genocide crime had been established. Then it is necessary to proceed with other elements.

(a) Who commits genocide?

Looking at the definition of genocide one can determine that the genocide crime perpetrators are not literally identified in the article. But keeping in mind that genocide had been established to denote the crime committed by Hitler against Jews, Polish, Russians and others and the crime committed by Turkish people against Armenians and taking into consideration that this crime was identified as international we might assume that the subjects of genocide crime has to be the state or its authorities.

Though, different theorists come to the consensus that not only the state can be the feasant of genocide crime. For instance, Rummel indicates that the perpetrator should not necessarily be a state's government or its military force. It can be an international organization, terrorist or other entities and persons. He notes that regardless of under what authority genocide is committed, it is individuals that will be prosecuted by the ICC for the genocide crime. This notion is stated in the ICC's article 27: *"This Statute shall apply equally to all persons without distinction based on official capacity. In particular, official capacity as head of state or government, a member of a government or parliament, an elected representative or a*

government official shall in no case exempt a person from criminal responsibility under this statute, nor shall it, in and of itself, constitute a ground for reduction of sentence." Consequently, "genocide is generally considered one of the worst moral crimes a government (meaning any ruling authority, including that of a guerrilla group, a quasi state, a Soviet, a terrorist organization, or an occupation authority) can commit against its citizens or those it controls."⁴⁰

Looking at the last interpretation, it is not necessarily that one state commits the genocide against the citizens of another country, it can be the case, when the state is acting against its own citizens and such type of genocide is the most morally depreciated. In the history there are already numerous examples of such crimes, among those Cambodia, China, Germany, ect.

Therefore, taking everything into account it is essential to search for the subject in Soviet Union events. On the start of repressions and revolution Lenin was on the top of ruling authority and by the time the great terror was flamed up Stalin occupied the seat of the head of the Party. According to his orders and instructions all the elements and organs of the state were acting against citizens in the worse violent manners. In the Soviet Union the main organ managing the flow of repressions was Russian Extraordinary Commission (VChK), which was created on December 7th of 1917. This was a state creature, which also was subordinated in its actions to Communist Party of Soviet Union – the principal formation of ruling authority. NKVD was the other tool of governmental manipulation for lives taking. Also in 1935th such organs as Dvoika and Troika were created. These were responsible for handling "quick trails" of political respondents. Most of the time those accused were repressed without a mark. Therefore, the actor or subject of genocide in Soviet Union was the state government with the head in names of Lenin first and then Stalin. Such actors are acceptable under the sense of concerned crime and thus the necessary sub-element presents as well.

(2) The victimized group

The definition of genocide provided in the convention specifically lists the objects, which can be deemed as victims of genocide crime. Those are groups of people united by the national, ethnical, racial or religious characteristics. It is not clear whether drafters of the convention had intent to create closed and exhaustive list rather than that which will allow including correction if

⁴⁰ Barry Gewen, *The Everyman of Genocide*, N.Y. TIMES, (reviewing David Cesarani, *Becoming Eichmann*), (May 14, 2006) <http://query.nytimes.com/gst/fullpage.html?res=9501E2D91E3FF937A25756C0A9609C8B63&sec=&spon=&pagewanted=all>

there is a need and general similarity of the wrongful act under that definition. While new definitions are codified for the actions first committed in the history logically there should be a space for new emerging elements of it. Theorists and researchers cannot predict the history, but can leave for judges and parties cells in the law to protect rights of people if necessary.

From the literal interpretation it follows that genocide can be focused only on the destruction of people unified in *national, ethnical, racial or religious* groups. These listed groups are the most common in our societies, though they are also the largest. To make conclusions, drafters kept in mind that genocide on its nature is a massive crime and should touch upon the rights of large associations. But does it mean that we have a right to incorporate other big associations to the definition of genocide in case of the commission of a similar with it crime? Probably that is the greatest question that we encounter when dealing with genocide concept.

(a) *'Born in' theory*

Rummel says that the limitation of genocide to only national, ethnical, racial or religious groups aims at affiliating one with the group he was born in. He calls these groups as indelible groups. Rummel though clearly states that “the crime of genocide does not apply to the intent to destroy political, ideological, economic, military, professional, or other groups.”⁴¹ Thus, people who were massively killed because of their affiliation with the groups not included in the definition of genocide will not be considered as victims of it. The reasoning of such an exclusion authors sees in the nature of that membership, which according to him has a discretionary character and does not have a clear point like indelible groups do.

Rummel listing such groups as political, ideological, economic, military and professional did not mention class identity groups and we need to analyze whether such group is suitable under his logic or not. As long as person does not born with class affiliation, this category is automatically excluded from the genocide scope on the opinion of Rummel.

- *Are we born with religion?*

Rummel suggests that genocide article lists groups which are indelible and people are born in such groups, then what about the religion. Religion is acquired by person either on the will of his parents or throughout his life and can be changed at any time. Then there is still a

⁴¹ R. J. Rummel: *Genocide*, English version is available at <http://www.hawaii.edu/powerkills/GENOCIDE.ENCY.HTM>

space for other groups to be included. Otherwise, on such a line religion should be excluded from the scope of genocide.

Theoretically, all of the groups listed above can be unified by class, because people joined by their ideas and thoughts as in the case with political, ideological, economic and by their types of activities and occupied positions as in the case of military and professional units are assumed to be one or another class members. Though, the same logic can be implemented to the groups listed in the article about genocide, saying that the national, religious, ethnical and racial groups are also classes within our society. Consequently, class is a division within the society according to the certain characteristics, i.e. it can be as well as nationality so profession or social status. Moreover, the same person can at the same time belong to race, nationality, religious, ethnical, professional, political and other groups.

Furthermore, looking at this interpretation from the other angel, we can identify that if class category is not materially included in the article connoting the definition of genocide, group of people which would be killed by the state would not be suitable under that article only because they were unified not by national and religious links, but by the professional or class identification bonds. Such kind of inference is strange and most likely was not intended by the drafters of the Convention of the Prevention and Punishment of Genocide Crime.

(b) Comparison of Genocide with Crimes against humanity

Number of researchers and scientists suggest that instead of prosecuting the genocide one can always prove the commitment of crimes against humanity. That is why genocide includes only certain groups, but not others. To examine why genocide, but not crime against humanity we need to proceed with the comparison of these two crimes.⁴²

According to the Article 7 of the Rome Statute of International Criminal Court *crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:*

- a) Murder;*
- b) Extermination;*
- c) Enslavement;*

⁴² I do not compare genocide with war crimes, because events took place in Soviet Union in 20-30th were happening during peaceful time. Moreover, genocide has a lot of commonalities with crimes against humanity and it is considered in international society that those usually go together; therefore this work presents only the comparison with crimes against humanity.

- d) *Deportation or forcible transfer of population;*
- e) *Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- f) *Torture;*
- g) *Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- h) *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court*
- i) *Enforced disappearance of persons;*
- j) *The crime of apartheid;*
- k) *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.*

So, the literal differences between crimes against humanity and genocide are vivid:

* First of all, Crimes against humanity require the acts be systematic and such as to constitute the widespread attack against a civilian population. While, Genocide requires that those specifically defined in the article acts be committed against a racial, religious, national or ethnic group and be done with the specific intent to destroy the group in whole or in part “as such.” The genocide is already a crime when committed only against few persons and there should not be a proof of widespread or systematic campaign against civilians⁴³, though the Rome Statute in its Elements of Crime Appendix now requires that “the conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁴⁴

* Secondly, the scope of genocide lists as objects of crime only those people grouped by racial, religious, national or ethnic interests, while crimes against humanity can be committed against any civilian population.

⁴³ *Prosecutor v. Jelusic*, Case No. IT-95-10-A, Judgment (July 5, 2001), available at <http://www.unhcr.org/refworld/docid/4147fcad4.html> [accessed 4 April 2010]

⁴⁴ *Elements of Crime*, art. 6, available at www.icc-cpi.int/NR/ronlyres/.../Element_of_Crimes_English.pdf

* Also articles defining genocide and crimes against humanity list different methods of committing those crimes. Genocide has only five and crimes against humanity present wider list including ten methods.

Previous information answers the question on how to define whether the genocide or crimes against humanity is at hand. However, if some of the elements of genocide are absent or disputed there is always a chance to prove that crimes against humanity occurred (as long as most of the times the genocide has massive or systematic character and includes all methods listed in crimes against humanity article), but most of the time it is not a right decision.

The genocide crime on its conception foresees the responsibility for murdering the exact group of people, which usually becomes the qualified factor. Crimes against humanity are formulated for chaotic killing of civilians and that is why such a killing requires having massive or systematic character for establishment. Therefore, genocide crime has to be applied to the acts purported to kill people somehow grouped.

Crimes against humanity are on its meaning included into the scope of genocide. For example, the murder of an individual can constitute the act of killing members of the group and naturally leads to the commission of genocide.⁴⁵ Inhuman or degrading treatment, torture,⁴⁶ rape and sexual violence⁴⁷ can constitute the serious bodily or mental harm, which is included into the genocide definition. Therefore, the genocide is a wider crime, but the main thing here to be

⁴⁵ ICTR, Trial Chamber, *Akayesu Case*, Judgement, paras. 6.3.1.274-277.; ICTR, Trial Chamber, *Kayishema and Ruzindana Case*, Judgement, paras. 101-104.; ICTY, *Krstic Case*, Judgement, available at <http://www.unhcr.org/refworld/docid/48abd5760.html> [accessed 4 April 2010]

⁴⁶ ICTR, Trial Chamber, *Akayesu Case*, Judgment, para. 6.3.1.283.; ICTY, Trial Chamber, *Krstic Case*, Judgement, available at <http://www.unhcr.org/refworld/docid/414810d94.html> [accessed 4 April 2010]

⁴⁷ Earlier ICTR considered rape and sexual violence as acts which are included into the meaning of Genocide and which therefore establish this crime. Following is the quotation *Akayesu Case* which was judged by ICTR: "... rape and sexual violence ... constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such ... the acts of rape and sexual violence ... were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated, and raped several times. ... These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of Tutsi group as a whole". (ICTR, Trial Chamber, *Akayesu Case*, Judgement, paras. 7.8.214-215).

proved is the intent of the party to destroy a particular group of people rather than any civilian population.

As long as class identity constitutes the specific group within the society, it is necessary to lay it down under the genocide, rather than crime against humanity.

(c) Political Genocide

There are concurring to Rummel opinions, which suggest that the list provided in the Convention on the Prevention and Punishment of Genocide crime is not exclusive. According to the historian Ben Kiernan, even though the Convention presents only certain elements of the genocide crime, there are acts that are called genocide but are not included in the Convention. Those are called as “cultural genocide” and “political genocide”. “Cultural genocide” is defined as an effort to destroy the culture of a group or impose a different culture on the group. “Political genocide” efforts to destroy members of a political group.⁴⁸

From this opinion it is seen that such class as a political formation is included into the genocide crime concept. Therefore, we might draw the parallel between political and all other existent classes and say that class affiliation is also inscribed into the definition of genocide.

(d) Stability Criterion

Tough, legal sources suggest that Genocide Convention of 1948 takes as basis for characterization of victimized groups the criterion of stability. However, during the drafting procedures some States wanted to include into the convention the concept of “groups determined for political reasons”.

Nevertheless, such an initiative was persistently rejected by the Soviet Union. USSR reasoned their rejection by the incompatibility with the stability principle adopted for determination of protected groups⁴⁹. Though, the real reason was the fear of being punished for the measures taken against society. The International Criminal Tribunal for Rwanda supported the principle of stability in the Akayesu judgment:

⁴⁸ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, New Haven, CT: Yale University Press (2007), available at http://books.google.com/books?id=XR91bs70jukC&dq=Blood+and+Soil:+A+World+History+of+Genocide+and+Extermination+from+Sparta+to+Darfur&printsec=frontcover&source=bn&hl=en&ei=bRfgS_XiG8aaOJz3gZMI&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBIQ6AEwAw#v=onepage&q&f=false

⁴⁹ Protected group mean the same as Victimized group

“it appears that the crime of genocide was allegedly perceived as targeting only “stable” groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more “mobile” groups which one joins through individual voluntary commitment.”⁵⁰

This approach is not as sufficient and valid as it seems to be for the first sight. Since, it is impossible to establish the affiliation of a person with a particular group without the establishment of subjective side (internal element). Such difficulty was also stated in *Akayesu decision*, and later in the *Jelusic judgment*⁵¹. These decisions noted that the membership of a group inevitably implies the expressed will of each element of the group. It means that every person when affiliating himself with particular group membership should state a will to belong to this group.

Thereby, it does not mean that one can change his nationality, ethnicity or race, but it means that if person does not want to belong to this group then he should not be considered as one affiliated with it, i.e. such groups are no less of mobilization. Therefore, the stability test still should not withdraw the inclusion of other groups into genocide definition pattern.

Soviet Union was not the first case, where the genocide was committed by the state against its citizens and against groups united in classes. One of the most similar cases to the present one is Cambodian case. Facts are similar and therefore it is useful to look how international observers qualify these actions as genocidal. First of all, the historical background and comparison of Cambodian Genocide with Soviet Union facts will be presented, next some other cases will be provided and last in intent section it will be shown how intent is attempted to be proven in Cambodian case.

(e) Cambodian case

* Historical background and similarity with Soviet Union case

Traditionally in Cambodia political powers of Vietnamese minority and the Buddhist Khimer majority faced a lot of controversies. In 1953, when Cambodia gained the independence,

⁵⁰ ICTR, 2 September 1998, case No. ICTR-96-4-T, *The Prosecutor v. Jean Paul Akayesu*, judgment, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&skip=0&query=prosecutor+v.+Akayesu>

⁵¹ ICTY, 14 December 1999, Case No. IT-95-10-T, *The Prosecutor v. Goran Jelusic*, para. 70, Judgment handed down by the International Criminal Tribunal for the former Yugoslavia, available at: <http://www.unhcr.org/refworld/docid/4147fe474.html> [accessed 1 April 2010]

Prince Norodom Sihanouk took charge of the state. In 1970 the revolution led by General Lon Nol temporarily dispelled the government, which attempted to suppress the Communist and Vietnamese presence. There was a small Communist group called Khmer Rouge, which gradually grew in its popularity and in 1975 decided to take over, proclaiming the Republic of Democratic Kampuchea.⁵²

Cambodia was ruled by the Khmer Rouge party between 1975 and 1979. The head of the party was the Czar Saloth who was popularly known as Pol Pot. The rules imposed under his regime were strict and terrifying. According to his theory every citizens of Cambodia were supposed to be slaves, who had to obey the government's orders. People who did not follow his directions or those who opposed his regime were brutally tortured and killed.

In asserting its new power, the Party began a campaign of cleansing from 1975 to 1978. The main idea of Pol Pot regime was to create a new civilization. Therefore, any dynamics towards the development and the rise of market economy were suppressed on its roots. Those who were educated, i.e. scholars, philosophers and teachers were killed the discontinuance of the enlightenment spreading. All the schools were closed and children were barred from any kind of studying. Moreover, all of these kids were forcibly parted from their families and had to work for the industries and factories of the Khmer Rouge government. All the city dwellers and capitalist were also put to death. In addition, government also separated these people's children from their parents and taught them to involve in torture activities with the help of animals.⁵³

Very similar situation we might remember in Soviet Union case. All intelligent and educated people were repressed. Their families were either sent to correctional camps or were drastically limited in their civic rights, for example children could not enter the universities, women were not accepted to work, etc. The state later issued a policy of denying by relatives from the person who betrayed the USSR. Actions of Khmer Rouge party were very similar to Soviet Union undertakings. Moreover, it is seen here that Pol Pot subjected his repressions not

⁵² Cherne, Leo. "*The terror in Cambodia*." Wall Street Journal (May 10, 1978), available at http://books.google.com/books?id=EH00v6lNzb4C&pg=PA347&lpg=PA347&dq=Cherne,+Leo.+%22The+terror+in+Cambodia.%22&source=bl&ots=__kqVaaE1l&sig=wp6zs6aTkKXp0zIcDl1Iv8xC10Y&hl=en&ei=X1bgS7G_PMWhOP7-gfMI&sa=X&oi=book_result&ct=result&resnum=1&ved=0CAYQ6AEwAA#v=onepage&q=Cherne%20Leo.%20%22The%20terror%20in%20Cambodia.%22&f=false

⁵³ Hawk, David. "*The killing of Cambodia*." New Republic, (15 November 1982): 17-21, available at <http://www.springerlink.com/content/pm340mu16647v812/>

against groups of people indicated in the scope of United Nations genocide definition, but against definite class of society. Therefore, it is possible to state that class identity is presumably included into the meaning of genocide stated in the Convention on the Prevention and Punishment of Genocide Crime.

Apart from these, the hospitals and private owned companies were destroyed and were stopped from any further individual growth. Doctors and engineers were cruelly killed and all the proofs of their existence were erased from the face of earth. In Soviet Union repressions against technical intelligentsia and against doctors also were in force and gained great scale. In there was a Case of Doctors, where. It is necessary to mention that attack against doctors and engineers is also attach against class members.

Moreover, Religion in Cambodia was declared illegal and the preachers who disobeyed the rules were announced as traitors of the homeland. The monks were murdered without any hesitation. As we remember in USSR the wave of repressions against Church was initiated in 1922. All the property of Church was mercilessly expropriated and those Monks and preachers, who disobeyed the orders, were killed or sentenced to prison.

All others who had opposed the ruling of Khmer Rouge party were captured and tortured in the prison. The list of oppressed included leaders from opposition parties, rebels within the country, non-communist groups and people who simply disobeyed the rules imposed by the government. In 20-30th of Soviet Era the political leaders were also oppressed and were either sent to prison or killed. By the 1940 in prison there were nearly 454, 4 thousand of inmates sentenced for political matters.⁵⁴

The prison in Cambodia, where repressed people were sent to was called Tuol Sleng. It used to be a school that was shut down by the government and properly reequipped for keeping traitors of the government. Each classroom was divided into dozen of cells, therefore the space for prisoners was so small that they hardly had any place to even lie down let alone move or roam around the place. The prisons and camps in Soviet Union used for capturing “traitors” were also created in such a way that conditions there were not suitable for life.⁵⁵

⁵⁴Rogovin, *Statistics of victims of mass repressions*, available at <http://trst.narod.ru/rogovin/t5/pii.htm>.

⁵⁵Jackson, Karl D. *"Introduction, The Khmer Rouge in Context."* In *Cambodia 1975-1978: Rendezvous With Death*, [edited] by Karl D. Jackson. Princeton, New Jersey: Princeton University Press, (1989), available at

The inmates of the Kmer Rouge prison received countless tortures and difficulties. They were shut down in their respective cells and were shackled to the iron bars in the cells or to the window bars. Prisoners were not allowed to speak with each other and laughing or smiling was considered to be an offense. Every inmate when arrived was forcibly interrogated by the guards, who asked from them detailed information about their life, contacts and family. After that all the family members and people somehow connected with inmate were brought to prison as well.

Since the prisoners were not given access to any kind of medical facilities, most of the prisoners died due to internal illness, which headily spread among the inmates. Others were either tortured or killed for fun by the Khmer Rouge guards. It is estimated that about 18000 people were imprisoned in the small school of Tuol Sleng and almost all of them were killed in the four year period.

In Soviet Union people were also tortured in the prison. From the period of January 1934 till 31 December 19 in camps nearly 962,1 thousand people died. In 1937-1938 the number of deaths amounted to 5,5-5,7 %, in 1939 - 3,29 % counting from the annual number of imprisoned. In rough numbers the amount of died people in 1937 was 25,4 thousand, in 1938 – 90,5 thousand, in 1939 – 50,5 thousand, and in 1940 – 46, 7 thousand.⁵⁶

Adding to the all above, during that time in Cambodia all the news agencies were prohibited to inform the external society about terror that took place in Cambodia. In Soviet Union throughout the repressions period all the mass media was censored and external worlds was not aware about situation in there.

It is believed that almost 1.5 million people were massacred within the four year period of Khmer Rouge rule. Though some sources still claim the count should have possibly crossed the 2 million mark.

The Vietnamese invasion aimed at opposing the rule of Pol Pot brought to an end the Khmer Rouge rule. The war which continued for a lot of years ended in January, 1979 after

http://books.google.com/books?id=h27D3EYGwzgC&pg=PA3&lpg=PA3&dq=Jackson,+Carl+D.+%22Introduction,+The+Khmer+Rouge+in+Context.%22&source=bl&ots=VdjW41Kk3F&sig=e7mL6o17KrCaLO-FNmt1RW3R-Wg&hl=en&ei=5VfgS770OI6AOJDquJgI&sa=X&oi=book_result&ct=result&resnum=1&ved=0CAYQ6AEwAA#v=onepage&q&f=false

⁵⁶ ROGOVIN, Statistics of victims of mass repressions, available at <http://trst.narod.ru/rogovin/t5/pii.htm>.

Phnom Peh, the capital of Cambodia was captured. Only after the fall of the Khmer Rouge Empire the world got to know about terrific events took place in Cambodia.

International observers firstly were hesitant to call the Khmer Rouge's actions genocide. As long as the intent of the perpetrators was generally political and class based, the case does not fit in the common United Nations definition of genocide. Only in the past few years international organizations as well as the UN, have begun to acknowledge the crimes. The new Cambodian government is preparing to summon a war crimes tribunal. International observers, who believe that the Cambodia's government court cannot credibly try the Khmer Rouge perpetrators, have asked the United Nations to serve as a mediator.⁵⁷

As it has been analyzed, the Soviet Union case is almost identical to the case of Cambodian genocide. In Cambodian case the objects of crime were people from different classes, such as political, intelligentsia, doctors and others, and notwithstanding the fact that class identity is not literally included into the common definition of genocide, this crime was acknowledged and admitted as genocide. In addition, the Cambodian government also committed genocide against its people, which also was the case in Soviet Union. Therefore, Soviet Union case leaning against the already existent precedent had to be proclaimed and prosecuted as genocide.

Thus, the major difficulty in bringing those responsible for events took place in Cambodia during the Democratic Kampuchea period (1975-1979) and in characterizing the crimes as acts of genocide were the limits of a definition put by the principle of stability.

For example the French legislation presents more satisfactory and broader definition of genocide rather than that in the 1948 Convention and the Rome Statute. This definition includes wider range of the protected groups, such as groups based on political, economic, professional, social or even sexual criteria.

Article 211-1 of the new French Criminal Code provides that:

“Genocide is committing or causing to be committed, in the execution of a concerted plan tending to lead to the total or partial destruction of a national, ethnic, racial or religious group, or a group determined on the basis of any other arbitrary criterion, any of the following acts against members of the group:

⁵⁷ "The genocide in Cambodia, 1975-79." Bulletin of Concerned Asian Scholars 22 (No. 2, 1990): 35-40.

- *voluntary homicide;*
- *causing serious bodily or mental harm;*
- *inflicting conditions of life likely to bring about the destruction of the group in whole or in part;*
- *imposing measures intended to prevent births;*
- *enforced transfer of children.”*

Here in this article of French law all groups “determined on the basis of any other arbitrary criterion” can be deemed as a victimized groups in the scope of genocide.

According to this definition, there is no doubt that actions committed by Soviet Union would constitute genocide, because Communist Party actions were directed against different classes within the society and brought to the drastically destruction on them. Still, such a conclusion does not bring to the statement that Soviet Union action should be judged on the basis of French law, but suggests that some countries have even incorporated the possibility to prosecute genocide against other groups as well, except for those directly indicated. Therefore, it is a practice of parties of international community and it also should be clearly observed.

- Murder of unarmed and helpless people

According to some sources, the definition of genocide is divided into two types.

* First, the definition of genocide can be determined as the intention to murder people because of their group membership.

*And second definition is identified as any intentional government murder of unarmed and helpless people for whatever reason.

These are not official definitions, but those follow from the nature of genocide crime and are used by researchers and theorists, who are looking into the essence of genocide phenomena in order to come to certain conclusions and drawings. Therefore, on my opinion the class identity is logically and by implication is included into the scope of genocide crime definition. It means that extermination of any large groups within society can on their nature be prosecuted under genocide indictment.

- Victimized Group on the example of Soviet Union Repressions of 20-30th

One of the greatest examples of oppressions done by the state authorities against people united by the class identity occurred during the repressions of 20-30s in Soviet Union. By the severe actions of USSR rulers people from different classes were repressed and killed.

From June to August of 1922 the trial under the Eser Party was held. Then the same year 21 priests were sentenced to death. In the end of the 20s the trial called “Shaht case” was held under the industrial party and technical intelligentsia. The same time the attack against the peasants was started by the creating in kolhozs the committees of poverty (combeds). First of all, the authorities wanted to eliminate from kolhozs the class of prosperous peasants (kulaks). From 1930 to 1931 nearly two million peasants were evicted to the special colonies. The starvation, which became the result of Soviet Union politics, brought to the death of more than 6 million people among who were not only the representatives of kulaks, but the whole class of peasants. In 30s the victims of repressions became the members of military forces. During these years even the party elites were repressed. Even wives and children of those subjected to the repressions were sent to special camps, where the conditions of life were so bad that caused the deaths of half of these people.

These historical examples of USSR repressions show that the victims of these events became different classes of people, such as intelligentsia, party, kulaks, peasants, and relatives of these representatives. As it has been argued before the class identity should also be included into the scope of genocide crime. Therefore, according to these evidences the conclusion about presence of the first mandatory element of genocide crime in the case of Soviet Union repressions is clearly identified.

(3) Mens Rea

The Article 30 of the Rome Statute of International Criminal Court defines mental element (mens rea).

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.

(a) In relation to conduct, that person means to engage in the conduct;

(b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.

3. For the purposes of this article, ‘knowledge’ means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. ‘Know’ and ‘knowingly’ shall be construed accordingly.

Flowing from this article the main and common for all genocides element to prove is the intent to destroy. The rest of the article's content can be categorized into three other groups, which are conduct, consequences, and circumstances.

(a) Intent to destroy

According to some of the authors not all violence targeting racial, ethnic or religious groups can be considered as genocides. In other words, when killing people for racial, ethnic and religious affiliations is limited to a smaller group it can be described or identified as "genocidal massacres." This term is also not covered by the Convention. The major difference of "genocide" and "genocidal massacre" is not about quantity of people being abused rather it is an intent directed to the group. In "genocidal massacre" the intent is not to destroy the group, but to scare people by the means of their partial annihilation. For example, state or non-state actors can act violently against ethnic, racial or religious groups in order to strike fear into the hearts of members of the larger group in other locations. Genocidal massacres are illegal under international law, but are defined as extermination or crime against humanity rather than simple genocide.

Therefore, we can identify "intent to destroy" as one of the most important elements to be present for proving the existence of genocide. This difference is basic in delimitating the border between extermination and genocide.

According to the criminal code of Kyrgyz Republic the intent can be direct and indirect. Section 2 of article 23 defines the crime as committed with direct intent, when the person realized the social danger of his actions (non-actions), predicted its socially dangerous consequences and wished such consequences to emerge. While section 3 of the same article defines the crime as committed with indirect intent, when person realized the social danger of his actions (non-actions), predicted the possibility of occurrence of socially dangerous consequences, did not wish, but knowingly admitted such consequences.

The understanding of intent in the international community is not much different from the concept used in the legislation of Kyrgyz Republic. According to the legal theory, intent can take one of three forms:

- *dolus directus (direct intent)*, where the consequences of an action were both foreseen and desired by the perpetrator;

- *dolus indirectus (indirect intent)*, where accessory consequences in addition to those directly planned by the commissioner of an act were foreseen by the perpetrator as a certain result, although the perpetrator did not specifically wanted these accessory consequences, he still committed the act with knowledge of them; and

- *dolus eventualis*, where a perpetrator foresees consequences other than those directly wanted as a possibility, but nevertheless proceeds with a criminal act.⁵⁸

In regards to genocide a lot of sources suggest that it has to possess the *dolus specialis*, i.e. the specific intent, because the perpetrator chooses victims based on their group affiliation and he specifically desired to exterminate them only. The trial chambers of the ICTY and ICTR also seem to prefer *dolus specialis* rather than other types of intents, because their judgments on genocide crimes tend to contain the term “special intent”.

- *Dolus specialis = Dolus Directus*

Furthermore, some scholars said that *dolus specialis* refers to and repeats the *dolus directus*. Both of these concepts require a perpetrator specifically desire to bring the consequences foreseen in genocide article.

i) *ICC Knowledge-based intent standard*

In spite of this, another turn of opinion exists about the components of genocidal intent. This turn is flown from the International Criminal Court's (ICC) attempts at elaborating the concept of intent. In ICC statutes, intent is defined as a “person means to cause [the] consequence or is aware that it will occur in the ordinary course of events.” This definition shows that genocidal intent includes both *dolus directus* and *dolus indirectus*, but not *dolus eventualis*. This alternative approach is called as a “knowledge-based intent standard” and it presents a broader definition of intent because more than one type of mental state can satisfy its requirements.

A knowledge-based approach to the intent determination was not applied in practice. As to the regards of genocide, knowledge-based doctrine was even rejected by some tribunals. In *Prosecutor v. Akayesu*⁵⁹, the ICTR Trial Chamber held that a perpetrator is reprehensible for

⁵⁸ *Actus non facit reum, nisi mens sit rea: An Investigation into the Treatment of Mens Rea in the Quest to Hold Individuals Accountable for Genocide*, available at http://www.unt.edu/honors/eaglefeather/2006_Issue/jung4.shtml

⁵⁹ Judgment, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2 September 1998 and Sentencing Judgment, *The Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, 2

genocide “when he commits a [prohibited act] with the clear intent to destroy, in whole or in part, a particular group.” Paying attention to the mere wording of the ICTR reasoning, such as “clear intent to destroy” strongly indicates a purpose to destroy a group, and consequently, only *dolus directus* can be respectively implemented. Simply indicating the knowledge of destructive consequences is not enough to constitute the genocidal intent.

Accordingly, in *Prosecutor v. Jelisic*⁶⁰, the ICTY Trial Chamber decided that the defendant “could not be found guilty of genocide if he himself did not share the goal of destroying in part or in whole a group even if he knew that he was contributing to or thought his acts might be contributing to the partial or total destruction of a group.” Such a judgment also leads to the conclusion that special (direct) intent should be demonstrated.

And lastly, in the ICTY’s *Prosecutor v. Krstic*⁶¹ case, the Trial Chamber specifically adopted the purposeful standard (i.e., *dolus directus*) for genocidal liability.

Therefore, most of the courts and scholars, interpret the intent in genocide as *dolus directus* rather than *dolus indirectus*. It happens because other intent modes present very ambiguous and vague definitions. The Crime of Genocide is such a severe and all-embracing crime that it requires the form of intent to be as specific as possible. Otherwise, *mens rea* becomes too broad and it can bring to situations, where genocide cannot be clearly distinguished from other international crimes.

So, the specific intent⁶², the key part of the Genocide Convention, requires perpetrators specifically intend to destroy a group in whole or in part, i.e. the consequences of acts are both foreseen and desired. According to the well known postulates of international law premeditation for genocide lays in:

October 1998, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&skip=0&query=prosecutor+v.+Akayesu> [accessed 1 May 2010]

⁶⁰ *Prosecutor v. Goran Jelisic* (Trial Judgement), IT-95-10-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 14 December 1999, available at: <http://www.unhcr.org/refworld/docid/4147fe474.html> [accessed 1 April 2010]

⁶¹ *Prosecutor v. Radislav Krstic* (Appeal Judgement), IT-98-33-A, International Criminal Tribunal for the former Yugoslavia (ICTY), 19 April 2004, available at: <http://www.unhcr.org/refworld/docid/414810384.html> [accessed 1 April 2010]

⁶² Throughout my work I might use specific intent and direct intent as interchangeable definitions, because on my opinion these terms define identical acts. I am in accordant with theory of equation of these intents.

- *a genocidal motive for the act;*
- *expressed purpose to execute the act;*
- *knowledge of certain results of the act;*
- *awareness of probable or likely outcomes of the act.*

Such postulates are identical to those stated in the Criminal Code of Kyrgyz Republic cited above. To remind, the mere negligence or even a general knowledge of a likely outcome of an act is not enough to be genocide under the Convention. Following, drafters have included the need to have a *specific intent*. It means that the wrongdoer committed the act is precise to bring the whole or partial destruction of the group. Flowing from this, genocide requires the perpetrator's conscious desire.

ii) Intent and Motivation

We should keep in mind that intent is not the same as motivation. As it was earlier stated the Convention on the Prevention and Punishment of the Genocide Crime does not require a specific motive to qualify the crime as genocide.

In 1998 ICTR (International Criminal Tribunal for Rwanda) in its judgment provided criteria that “the perpetrator clearly seeks to produce the act charged.”⁶³ It means that the motive of the perpetrator is not important and should not be taken into account when judging. For instance, executors of genocide might seek to destroy a group in whole or in part because they wanted to gain political power or because they would benefit themselves economically, or simply because they wanted to terrify the population of specific region. Nothing of the listed above is matter. What does matter is that the perpetrator carried out the act specifically as a way to destroy the group. There is no difference whether group of people is killed because members of it are hated, useless or they are to be a tool of terrifying people it should be considered genocide.

iii) Proving the intent

⁶³ Ben Kiernan, *Blood and Soil: A World History of Genocide and Extermination from Sparta to Darfur*, New Haven, CT: Yale University Press (2007), available at http://books.google.com/books?id=XR91bs70jukC&dq=Blood+and+Soil:+A+World+History+of+Genocide+and+Extermination+from+Sparta+to+Darfur&printsec=frontcover&source=bn&hl=en&ei=bRfgS_XiG8aaOJz3gZMI&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBIQ6AEwAw#v=onepage&q&f=false

Getting to the next and the hardest problem testing the crime to be genocide is the difficulties connected with proving the intent. It is impossible to get into the mental state of the perpetrator, but the intent can be inferred from the actions of him. - *Specific intent and will to destroy*

The specific intent should be expressed by will to “destroy”. In the Convention on the Prevention and Punishment of the Genocide Crime the “intent to destroy” includes: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. In other words, only these methods of annihilation can be accounted to the genocide, what already was mention when the actus reus element of genocide was discussed.

- *Criteria for finding out the intent*

“The International Criminal Tribunal for Former Yugoslavia (ICTY) Appeals Chamber ruled that a number of different facts can serve as evidence of the intent to destroy the group, including: *the number of victims selected only on account of their membership in the targeted group; the general context, the commission of other culpable acts systematically directed toward the targeted group; the scale of the atrocities, the repetition of destructive and discriminatory acts.*”

The International Criminal Tribunal for Rwanda on January 2010 has also developed some criterion, which answers the question on how to define the existence of genocidal intent. On the basis of review of applicable case law four key factors were identified: *(1) statements indicating genocidal intent; (2) the scale of the atrocities committed; (2) systematic targeting of the protected group; and (4) evidence suggesting that commission of the actus reas was consciously planned.*⁶⁴

Courts suggest that finding out the answers to the listed issues will identify the presence or absence of the intent. Analyzing and accounting these aspects though is always discretionary.

⁶⁴ Park Y. Ryan, *Proving Genocidal Intent: International Precedent and ECCC Case 002*. DC-Cam Legal Associate. Harvard Law School. (2010), available at http://www.dccam.org/Tribunal/Analysis/pdf/Proving_Genocidal_Intent-Ryan_Park.pdf

Moreover, according to the Report of the Preparatory Commission for the International Criminal Court (PCICC), the ICC may infer the intent from "conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction," (Article 6a) including "the initial acts in an emerging pattern" (Article 6 Introduction)⁶⁵

While considering the case of Soviet Union, the scale suggested by the ICTY Appeals Chamber and by ICTR will be used, which showed the way of identifying the intent in the action of the perpetrator. In particular the attention will be drawn to *the statements indicating genocidal intent, to the systematic character of the repressions, to the context of the events and methods used, to the number of victims selected for the crime commission* (it is not necessary to prove the number of people suffered for the establishment of genocide, but it is helpful when proving the intent), and *other factors* that might point out to the vivid intention. The factor concerning the scale of atrocities will be pointed out not separately, but throughout the general line of proving the intent.

- *Statements indicating the genocidal intent*

One of the means of finding out the existence of intent is examination of a defendant's written and oral statements that demonstrate the intent to destroy purported groups. As one of examples of such statement the case of *Akayesu* can be brought out. There the Tribunal admitted that the accused proclaimed a policy and stated that "if a Hutu woman were impregnated by a Tutsi man, the Hutu woman had to be found in order 'for the pregnancy to be aborted'."⁶⁶ The same can be found in *Kayishema*, where the ICTR found that the accused had "encourage[ed] the extermination of the Tutsis".⁶⁷ Such actions were declared as genocidal intent and thus led to the guilty decision. In another example, in *Muhimana* the ICTR established as evidence that the accused had stated "that he was going to hold a meeting to encourage the Hutu population to go out and kill Tutsi".⁶⁸ The court

⁶⁵*The crime of Genocide* (March 30, 2008), available at <http://www.facinghistory.org/resources/facingtoday/the-crime-genocide>

⁶⁶ ICTR, Trial Chamber, *Akayesu Case*, Judgement, paras. 6.3.1.274-277.; ICTR, Trial Chamber, *Kayishema* and *Ruzindana Case*, Judgement, paras. 101-104.; ICTY, *Kristic Case*, Judgement, available at <http://www.unhcr.org/refworld/docid/48abd5760.html> [accessed 4 April 2010]

⁶⁷ *Prosecutor v. Kayishema*, ICTR-95-1-T, Judgment, available at available at: <http://www.unhcr.org/refworld/docid/48abd5760.html> [accessed 4 April 2010]

⁶⁸ *Prosecutor v. Mikaeli Muhimana*, Case No ICTR-95-1B-T, Judgment, available at <http://www.unhcr.org/refworld/docid/48b5677a2.html> [accessed 4 April 2010]

further combining this evidence with the fact that the massacre of Tutsi followed right after such meeting, found the existence of genocidal intent.

It is necessary to keep in mind that statements made should not only state genocidal intent, but also have to be really intended by defendant to put such statements into reality. For example, it is not valid if somebody concludes that “I specifically intend to destroy kulaks”. One also has to establish that the speaker meant what he proclaimed. Accordingly, the ICTY Trial Chamber noted in *Kragisnik* that “[w]hen reviewing speeches and statements ... in search of evidence of genocidal intent, utterances must be understood in their proper context.”⁶⁹ Thus, courts when determine the meaning of statements and intent of it in itself have to examine the content and context of it.

Therefore, when court looks at evidences proving the intent it does not weight the genocidal statement criterion in separate, rather it examines it in combination with other factors.

During the Soviet Union Repressions ruling authorities were expressly proclaiming genocidal statements. Lenin in regards to church acolyte declared that "The greater the number of representatives of the reactionary clergy and reactionary bourgeoisie could be shot – it is for better"⁷⁰ Later Trotckiy stated: "Until we have a lack of bread, the farmer would have to give the Soviet economy tax in kind in the form of bread under the fear of ruthless violence."⁷¹ The other terrifying announcement was made by Stalin, who declared that "the policy of restricting the exploiting tendencies of the kulaks, we came to a policy of eliminating the kulaks as a class."⁷²

These statements are not simple words, but those contain real sense and genocidal context and content. It can be inferred from the fact that repressions were on going and never mercy anyone. Therefore, it is evident that the content and context of expressions used by Soviet officials were those showing the intent to destroy different classes of society.

- *Systematic character of the repressions*

Genocidal intent to destroy a group may also be inferred from “the perpetration of other culpable acts systematically directed against the same group.”⁷³ For example, in *Akayesu* and other Rwandan defendants’ cases, the ICTR found that Tutsis were systematically targeted and there were

⁶⁹ *Prosecutor v. Krajisnik*, Case No. IT-00-39-T, Judgment, available at <http://www.unhcr.org/refworld/docid/48ad29642.html> [accessed 4 May 2010]

⁷⁰ *Political Repressions in USSR*, available at <http://www.sakharov-center.ru/museum/expositions/repressions-ussr/>

⁷¹ *Ib. ed.* 69

⁷² *Ib. ed.* 69

⁷³ *Jelusic*, IT-95-10-A, Judgment, available at [://www.unhcr.org/refworld/docid/4147fcad4.html](http://www.unhcr.org/refworld/docid/4147fcad4.html) [accessed 4 April 2010]

such measures implemented in their response that their lives were always in danger. The following basis were deemed as systematic targeting by ICTR: First, the setting up of roadblocks, at which “soldiers, troops of the Presidential Guard and/or militiamen ... systematic[ally] check[ed] identity cards indicating the ethnic group of their holders”.⁷⁴ Second, the distribution of “execution lists”. Which mostly included the names of Tutsis. Third, “a propaganda campaign conducted before and during the tragedy” via the audio, visual and print media which involved the widespread dissemination of messages “overtly call[ing] for the killing of Tutsi” as a group.⁷⁵

Back to USSR case, despite the episodes indicated before in the section discussing the objective side of Soviet Union authority actions, such cases as Shaht case, the case of Promparty, case of labor peasant party, “Union Bureau” case, the case of Academy of Science, the case of Siberan Brigade, repressions against foreign technical specialists and other cases took place. This plenty of undertakings show the commonly admitted character of systematic undertakings of Stalin attempts.

Moreover, as it was judged in Rwandan accused’ case to Soviet Union can be implemented the same basis. The methods of control used by USSR officials to reveal those who are to be repressed were terrifying. It was everywhere, at work, rest and even at people’s own homes. It was not a time, when one could entrust to their friends, family and co-workers, because last mentioned would not hesitate to hand them over to officials. The slogans, on catching and exterminating the “enemy of nation” were proclaimed on a great scale. Therefore, such defamatory actions can constitute systematic attacks.

- Methods used

This section aims at identifying the atrocities used by Soviet Union Communist party. The new terror process initiated by Stalin government was the great purge, the chistka, in which the Communist party was trying to eliminate themselves from old guard. The first Bolshevik generation of politicians, civil servants and military officers disappeared almost in its entirety. The culmination of the Great Terror arose in 1936-1938. It was inferred from the Moscow show trials, where main political competitors to Stalin, such as Grigorii Zinoviev, Lev Kamenev and

⁷⁴ Park Y. Ryan, *Proving Genocidal Intent: International Precedent and ECCC Case 002*. DC-Cam Legal Associate. Harvard Law School. (2010), available at http://www.dccam.org/Tribunal/Analysis/pdf/Proving_Genocidal_Intent-Ryan_Park.pdf

⁷⁵ *Akayesu*, ICTR-96-4-T, Judgment, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&skip=0&query=prosecutor+v.+Akayesu> [accessed 1 April 2010]

Nikolai Bukharin, together with Genrikh Yagoda, were executed after having incriminated with demolition activities, contacts with foreign intelligence agencies and Trotskyism. In the show trials, the accused admitted to being guilty of everything they were charged with, most probably after torture and threats against their families.⁷⁶

Victims of these trials became around 70 top party and state officials. However, these facts are only a sluggish demonstration of the terror that stretched out throughout the whole Soviet society. Millions of Soviet citizens at regional and local levels, party and state officials as well as individuals with no public positions, were murdered by the Stalinist terror machinery. No Soviet republics, no Soviet ethnic groups were reserved. Some professional groups were decimated.

During these actions not only perpetrators, but their entire families were destroyed. Wives of stigmatized individuals were fired from their jobs or were forced to proceed with divorce, and children were tempted to be involved into testimony against their parents. Entire villages and towns bore the stamp of the terror for generations. No one was had mercy on, everyone got the same ominous treatment. Authorities were not looking at the degree or at all the guiltiness of people, did not count on their age and gender, did not care who was right and who was wrong, they just erased everyone who was somehow connected or thought to be connected with unwanted activities.”⁷⁷

During the Stalin regime everyone who was at least on half of the step behind or before the development of the state were considered to be the “Vrag Naroda” – enemy of nation, and were got rid of. Such methods and attempts directly suggest the hardship of atrocities imposed. It shows that nothing was matter for USSR authorities, but the stability of their ruling. Everything hindering them from power was annihilated.

- Number of victims selected

⁷⁶ Tolczyk, Dariusz, *See No Evil. Literary Cover-Ups and Discoveries of the Soviet Camp Experience*. New Haven. (1999), available at http://books.google.com/books?id=yRFaq5IHcwYC&dq=Tolczyk,+Dariusz,+See+No+Evil.+Literary+Cover-Ups+and+Discoveries+of+the+Soviet+Camp+Experience.&source=bl&ots=8p4O3VaQlj&sig=YyYJDAz1b2kFJN0m9Tz_Y7-6F0M&hl=en&ei=zlngS5GmK4SoOPPzoMQI&sa=X&oi=book_result&ct=result&resnum=1&ved=0CAYQ6AEwAA

⁷⁷ *Ib.* ed. 76

The numbers of those killed during the repressions are stunning as well. Further the statistics about victims of some episodes of repressions will be provided.

From November 1927 till the end of the January 1928, i.e. during only two and a half months 2 288 people were excluded from the party for the belongingness to the “left opposition”. The other 970 oppositionists were excluded until November 15 of 1927.⁷⁸

According to the inquiry of Department on special settlers of GULAG during the dekulakization process from 1930 to 1931 the number of people sent to the special territories amounted to 381 026 families common quantity of 1 803 392 persons. From 1932 to 1940 to special settlements arrived 489 822 ousts (kulaks) more.⁷⁹

Here is the detailed statistics on the repressions of minorities and foreigners will be provided. On March 9th of 1936 Political Bureau of Central Committee established the measures protecting the USSR from penetration of spy, terrorist and diversionary elements. In accordance with these measures the entrance of political immigrants to the country was complicated and the commission for purge of international organizations on the territory of USSR was established.

On June 25, 1937 Yezhov have signed and introduced to force the order № 00439, according to which local NKVD organs within 5 days had to arrest all German nationals as well as political immigrants, who works or earlier worked in the military factories and factories having the defense departments, and those who worked in railway transport. In the order it was also stated that NKVD has to obtain from these nationals and immigrants all available information about Germany. On these cases 30 608 people were condemned, among those 24 858 were sentenced to be shot.

On August 11th of 1937 Yezhov signed another order by which commanded on August 20 to start wide operation directed to the entire liquidation of local organizations of Polish military forces. As result of such campaign 103 489 were condemned, among those 84 471 were sentenced to be shot.

On August 17, 1937 – the order about realization of Rumania operation in reliance to the immigrants and deserters from Rumania to Moldavia and Ukraine was proclaimed. 8 292 people were condemned, among those 5 439 were sentenced to be shot.

⁷⁸ Isupov, *Demograficheskie katastrofy*, available at <http://trst.narod.ru/rogovin/t5/pii.htm>

⁷⁹ Ib. ed. 78

11 December of 1937 – direction of NKVD about the operation against Greeks was declared. 12 557 persons were condemned, among those 10 545 were sentenced to be shot.

On November 30, 1937 another direction of NKVD about the commitment of operation against the deserters from Latvia and activists of Lettish clubs and societies was issued. As a result of this direct 21 300 people were condemned, among those 16 575 were sentenced to be shot.

On December 14th of 1937 the directive of NKVD about the expansion of repressions by the Lettish line on Estonians, Lithuanians, Finns, and Bulgarians was issued. On the Estonian line 9 735 people were condemned, among those 7 998 were sentenced to be shot, on the Finn line 11 066 people were condemned, among those 9 078 were sentenced to be shot

On January 29th of 1938 direction about Iran operation came into force. 13 297 people were condemned, among those 2 046 were sentenced to be shot. On February 1st of 1938 another direction of NKVD about national operation against Bulgarians and Macedonians was declared. The same orders were done against Afghans. The Political Bureau purged the industry and military from nationalities not present on the territory of the USSR.

Generally, in the course of repressions against minorities and foreigners nearly 211 901 persons were condemned among those nearly 161 322 were sentenced to be shot.

The total number of people repressed and killed during the events of 20-30s in the Soviet Union is not the well established, as it has been earlier indicated. But the statistics for certain periods is available.

According to the data of Vorontsov during the period from 1930 to 1939 2,8 million people were condemned. In the course of ten years 724,2 thousand of condemned were sentenced to be shot.

Commission on the establishment of causes of mass repressions against members and candidates of Central Committee under Pospelov represents the data, according to which only during 1937-1938 1 548 366 people were arrested in charge of anti-soviet activities, from those 681 692 were shot.⁸⁰

The repute of death-rate from famine and repressions can be judged on the demographic losses, which only during the period from 1926 to 1940 constituted 9 million people (6 million of which directly from the famine).

⁸⁰ Isupov, Demograficheskie katastrofy, available at <http://trst.narod.ru/rogovin/t5/pii.htm>

- *Other factors to establish, when proving the intent*

* Society provocation

The state, which is purporting or is committing a genocide, can create certain conditions for involving the society into their atrocities. For example, in *Kayishema*, the ICTR found that defendants distributed machetes (knives for cutting sugar-cane) among Hutu civilian population.⁸¹ It also had been established that such distributing took place in Kibuye Province, where the genocide was generally planned and later occurred. During the trial and investigation it was proved that a lot of Tutsis were killed with machetes in Rwanda. In this manner, the Tribunal implicitly found that that the distribution of machetes in Rwanda and Kibuye Province supported an inference of his individual genocidal intent. The mere possession of machetes does not suggest the fact of genocide, but the way it was used and distributed link to the genocidal intent of the perpetrator.

During repressions of 20-30th such statements were everywhere, and every person was in the fear of these repressions, because no one knew who is going to be the next victim of Soviet State rulers. In the society, people were cheating on each other, were exposing those objecting to the regime, because feared to fall upon the machine of repressions. Those objected were called as enemies of the nation and were hated, even if they were not repressed. The cases, where family members hang in to authorities their relatives were very frequent.

(b) Conduct

The conduct requirement is mandatory and basic and should be expressed in some socially dangerous acts (action or inaction). In the article about genocide crime the conduct is expressed in the massive extermination of groups of people by the means of killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group. This conduct requirement is directly connected with actus reus.

Therefore, the establishment of conduct includes the facts and discussions brought out in the actus reus proof. These were: the killing, causing of serious bodily and mental harm and

⁸¹Prosecutor v. Kayishema, ICTR-95-1-T, Judgment, available at <http://www.unhcr.org/refworld/docid/48abd5760.html> [accessed 4 April 2010]

creation of conditions calculated to bring about physical extermination on the example of Soviet Union Repressions of 20-30th.

(c) Consequences

The socially dangerous consequences are seen in the actions undertaken “to destroy, in whole or in part” the members of identified groups. It is not enough to fear people and to send them to different place of residence, unless the conditions in this residency are so bad as to bring to the death or infliction of serious harm to members.

The causal relationship between the act and the consequences, i.e. the link between the annihilation of a part or a whole group of people and actions brought to such incident also has to be established.

- Consequences of Soviet Union Repressions of 20-30th

From 1929, “the year of the great transformation” agricultural collectivization was carried out in the agrarian regions especially in Russia, Belarus, Ukraine and Kazakhstan. The same radical transformation of the countryside was carried out in Baltic and western Ukrainian areas after World War II. The important objectives were to break up traditional “muzhik” life and to prevent peasants from “hiding” and not submitting the grain to the authorities carried out by the means of creating the collective farm as an instrument of control.

Collectivization made a “dekulakization” process working. Richer peasants, who objected the policies of depriving them from their properties and to the disruption of communal agrarian life were forcibly transferred to new labor settlements in other parts of the Soviet Union or were purged. Scholars have shown that the members of the kulak category were often arbitrarily chosen, and that local officials often took the opportunity to use the state-declared dekulakization to enrich themselves or settle accounts with local enemies. They have also demonstrated that not even the children of the kulaks were spared, but died in large numbers on the transports to or in the new settlements that were often extremely unfit to sustain life.

To harbor hundreds of thousands of kulak inmates and their families, a system of labor camps was developed in the early 1930s, mainly in arctic and Siberian parts of the Union where demand for manpower was large but supply was scarce. The main administration of this archipelago of camps was called GULAG. When the influx of kulaks decreased during the 1930s, the more and more differentiated camps were filled with other deported groups, criminals as well as innocent victims of the Stalinist regime’s hunt for enemies of the people.

Actions of Stalin apparatus introduced the socially dangerous acts, when sent richer peasants and their families to the territories unfit for the normal and healthy life. The implementation of such orders brought to the highly dangerous consequences for the society. Part of people died on the way to the identified exiles, others could not carry out the conditions of scanty life and last were tortured and harassed by the life acquired. Among the victims were children and women, who were most prone not to bear the conditions and stresses provided by the state authorities. Therefore, the conditions created by the state were such as to aim the annihilation of people sent there rather than simple correction of them. The lack of normal and sufficient food, the compulsion for work, unsanitary rooms and lack of medical control usually cause the death of people subjected to such conditions. Therefore, Stalin understood that his actions are going to bring to the extermination of these people and consequently that was his purpose.⁸²

Moreover, during the early 1930s terror against the peasants was not only practiced in the GULAG camps. Robert Conquest has described the “terror-famine” that was inflicted on the newly collectivized peasants in Ukraine and the northern Caucasian region in the years 1932-1933. By setting impossibly high plan quotas, removing every other source of food and preventing aid from the outside, Stalin aimed at quelling peasant unrest and destroying what he perceived as a still existing and dangerous Ukrainian nationalism. Millions of peasants died from starvation. These actions were also directed towards extermination.

Looking at these examples of Soviet Union history we easily find the objective side of the genocide crime. Actions done were undeniably socially dangerous, which afterwards brought to extreme dangerous consequences and there is a strong link between those actions and results. Moreover, the method used by Soviet authorities which was “deliberate infliction on the group conditions of life calculated to bring about its physical destruction in whole or in part”, “killing members of group” and “causing serious physical and mental damages” are evident and is indicated in the scope of Genocide Convention. In the criminal code of Kyrgyz Republic it is even stated that one of the method of extermination might be the “forceful transference of people to places not anticipated for the living of humans”, which is precisely the situation occurred in

⁸² A. Kokurin & N. Petrov, ‘*GULAG: Struktura i Kadry*’, *Svobodnaya Mysl*’.

Soviet Union. To have a complete and proved case of genocide we need to analyze the last element of *corpus delicti*, i.e. subjective side.

(d) Circumstances

In the sense of *mens rea* requirement, the circumstances mean the all of the above mentioned requirement need to be established. In case if one of the elements and components absent, then no genocide can be sustained.

Consequently, after the establishment of each element of genocide in case of Soviet Union Repression of 20-30th it is vivid to state that it was genocide.

Conclusion

The Soviet Union repressions of 20-30th are not widely perceived as the Crime of Genocide. Though, in my work I have tried to qualify it as such by proving the existence of each element of genocide crime and by adding precedence decisions relevant and similar to USSR case.

The most difficult and challenging elements to prove were the victimized group which is determined by class membership, the “intent to destroy”, and that the genocide was committed by the state against its own people.

Genocide as a term did not exist until 1944, before the person, who devoted all his life to genocide study, Raphael Lemkin did not propose it. Later, in 1948 General Assembly accepted the Convention of the Prevention and Punishment of the Crime of Genocide, which for the first time defined genocide and attempted to bring to justice those liable under it. But not all of the committed genocides were condemned, including Soviet Union Repressions case.

To prove the occurrence of genocide crime in USSR, the elements of it were separately looked at and relevant evidences of it were brought. It has been indicated that genocide consists of the following elements: actus reus, victimized group, and mens rea.

Actus reus was established as methods used by Soviet Union officials to exterminate certain groups (classes of society) and was shown in killing, causing serious bodily or mental harm, and inflicting conditions calculated to bring about its physical destruction of such groups.

Then in victimized group element the problem of incorporating the class membership into the definition of genocide has been furnished. As a conclusion it has been stated that even though class identity is not literally included into the common understanding of genocide crime, it is still can be used a basis for prosecuting genocide. In proving this statement such cases as *Prosecutor v. Jelisic*, *Prosecutor v. Akayesu*, and *Cambodian case* were used.

In the last mens rea qualification the stress was added to the intent element demonstration. When testing the presence of such element the scales proposed by International Criminal Tribunal for former Yugoslavia Appeals Chamber and by International Criminal Tribunal for Rwanda were used as basis. It was stated that intent can be proven, when following aspects are in place: *statements indicating genocidal intent, systematic character of the repressions, specific context of the events and methods used, the great number of victims selected for the crime commission as well as other factors (society provocation).*

. All of these components are vivid and displace that genocidal intent was detected in actions of Communist Party.

During the Repressions Communist party members have expressly proclaimed different statements containing genocidal intent. These repressions were bearing a systematic character, because a lot of classes were attacked and relevant methods were used to make the repressions going. The number of victims suffered as a result of actions of Soviet Union is very big and amounts approximately to 35-40 million, almost 15-20 million of them died.⁸³ Also USSR government involved the instrument of society aiding in apprehending targeted classes. People were inspired that if they do not expose others who somehow suspicious, they will be themselves repressed. On the fear of such outcome, nation was acting as agents of Soviet Union atrocities. In this part the *Kayishema case* was used. This clearly represents and finished the picture of USSR genocidal intent.

Therefore, at the end it can easily be inferred that Soviet Union was seized with Genocide Crimes during 20-30th. Though, in the international society there still were no serious attempts to bring this crime to justice.

- *Why no one brought or attempted to bring USSR to Justice and who is going to be responsible nowadays?*

According to the *article 4* of the Convention on the Prevention and Punishment of the Crime of Genocide “persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.”

In case of genocide that took place in Soviet Union actors were rulers and public officials, therefore they have to be liable. As it is known that there is no statute of limitations for trying genocide, then it is never late to punish perpetrators. But the problem in trying Soviet Union repressions violators is that all of them are dead. As in many cases of genocide, the states were responsible for actions of even their previous rulers and officials. Thus, if Soviet Union still has existed it would bear the punishment of genocidal actions of USSR rulers. But USSR collapsed in 1991.

⁸³ This date represents the victims of the whole period of repressions (approximately from 1920 to 1950)

Then it is necessary to look who was the successor of USSR after the collapse. According to the series of contracts concluded between former USSR countries, it was agreed that Russian Federation will be the successor of international obligations. Consequently, the genocide of Soviet Union has to be accounted for by Russia.

Article 6 of Genocide Convention says that “persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.”

Though, Genocide Convention exists since 1948, but the jurisdiction over the cases of genocide did not exist until the creation of International Court of Justice. In 1998, 120 countries voted to adopt the treaty establishing the ICC. With its Statute signed by 139 states and ratified by 76, the ICC formally came into existence on July 1, 2002 at The Hague, in the Netherlands. It is a permanent court, independent of the United Nations. The ICC has automatic jurisdiction over the nationals of State Parties, and over nationals of countries that are not parties to the Statute "if either the state of the territory where the crime was committed or the state of nationality of the accused consents."

Domestic courts can also have a jurisdiction over genocide if carried out in good faith. We should note that domestic criminal law of over 70 states, with some modifications of the definition, make genocide a domestic crime. The prosecution of genocide in domestic courts is becoming more frequent. Therefore, although the scope of the ICC is far reaching, it still has limited jurisdiction. “Clear cases of genocide may go untried and unpunished, as it did under the Genocide Convention of 1948 for Saddam Hussein's systematic destruction of the Iraqi Kurd minority in 1988, during which he used poison gas on them.”⁸⁴ Thus, the nationals of states that are not parties to the Statute and who committed genocide on the territory of states that are also not parties to the Statute may go unpunished.⁸⁵

⁸⁴ W.A. Schabas, *Genocide in International Law*, p. 213 (2000), 243 et seq, available at <http://books.google.com/books?id=pYptuRHDQPgC&pg=PA189&lpg=PA189&dq=W.A.+Schabas,+Genocide+in+International+Law&source=bl&ots=11FJgSEZFI&sig=PXT2SBgNr9kAhrf12vWxjSjkaLw&hl=en&ei=wBngS>

⁸⁵ Also one of the problems I see in it is the determination of what legal act to implement in order to identify the existence of the jurisdiction over the case. What if the victimized party is from the state which has ratified the UNCG, but did not ratify the ICC? Would the ICC still be responsible for trying the case? As to my opinion, they logically should, because the definition of genocide

Russia is a party to Genocide Convention, which was ratified by it on May 3, 1954, as well genocide is incorporated into the Russian Federation domestic law. Therefore, it is possible to make Russia liable for genocide in appearance of Repressions took part during 20-30th.

Taking everything into account, the future recommendations from my side it that it is necessary to set a tribunal for finding out whether USSR committed genocide and then lay down liabilities. In conclusion, want to add my sight wish that this work will somehow be helpful for determining and qualifying actions of Communist Party.

embodied in the Statute of ICC directly comes from the UNCG convention, which is considered to be the major document regulating the relationships occurring in the case of genocide. Rummel though indicates that only states may be parties to the UNCG and a tribunal may hold trials for the crime of genocide (Article 6) in the state in which genocide was committed, "or by such international penal tribunal as may have jurisdiction with respect to those contracting parties which have accepted its jurisdiction." Only parties to the UNCG may initiate cases of genocide under the UNCG. As can be understood from this, those states which have ratified both UNCG and ICC can delegate the right to hold the trial to ICC. Parties that did not join the ICC, but have ratified UNCG still have a right to prosecute genocide by the means of local tribunals. In other words, the United Nations has resorted the right to set up ad hoc Tribunals for dealing with the cases of genocide and war. So far only two are in existence, one the International Criminal Tribunal for Rwanda (ICTR) for the Rwandan genocide of 1994. The second tribunal is The International Criminal Tribunal for the former Yugoslavia (ICTY), which was established in 1993 with regard to serious violations of humanitarian law. Genocide is also included to the crimes it has authority to persecute.

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