

## **Convention on the Prevention and Punishment of the Crime of Genocide,**

**Article II:** [...] genocide means acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

In accordance with Article II, the acts committed by the Russian troops are:

- killing members of the group;
  - causing serious bodily or mental harm to members of the group;
  - forcibly transferring children of the group to another group
- \* these will be elaborated further in the genocidal intent evidence.

Additionally, the UN Commentary on Genocide Convention regards causing the death of members of a group or injuring their health or physical integrity by, among others, groups massacres or individual executions. In particular, case of Sabra and Shatila. The UN GA characterized the massacre of Palestinians perpetrated there by Christian fualangist troops as an act of genocide in its resolution 37/123 D of 16.12.82

### **Special Genocidal Intent/ *Dolus Specialis*. No need to be the sole reason of atrocities committed.**

Although, the primary reason for Russian invasion was stated as a demilitarization and government change in Kyiv, not explicitly mentioning the genocidal intent towards Ukrainians, it does not preclude the liability to arise if this intent arose in the course of war action or the government rhetoric was subsequently changed. Similarly, it does not preclude the liability to arise if the intent arose in the mind of Russian soldiers on the battlefield however tolerated by the government, as we have witnessed from the media. (liability is proved by the case law below)

Although, the atrocities like in Bucha or Mariupol have not yet resulted on a major All-Ukrainian scale, covering only concrete regions and cities, what matters is the intent of perpetrator established, not the actual victims quantitative result (liability is proved by the the case law below)

- 1) Prosecutor v. Krstić, ICTY: by his conduct, the perpetrator must have intended to contribute to the destruction, in whole or in part, of a protected group.
- 2) Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana, ICTR: there is no requirement that an intent to destroy a group be the sole or primary purpose of the perpetrator. The AC ICTR rejected the accused's suggestion that the Trial Chamber had erred when finding that refugees were targeted 'solely' for their Tutsi ethnicity because the definition of genocide does not contain such a requirement and it was therefore immaterial whether the refugees were targeted solely on the basis of their ethnicity or whether they were targeted for their ethnicity in addition to other reasons.
- 3) Prosecutor v. Zoran Vuković, ICTY: no minimum threshold of victims is required to establish genocidal intention.

### **Evidence of genocidal intent and relevant acts committed in Ukraine.**

#### Intent On the State Level:

1) Russian state-owned propaganda outlet RIA, weblink: "Что Россия должна сделать с Украиной", 03.04.2022 (Web Archive), published the new programmatic article with the title 'What Russia must do with Ukraine'. The article reveals a detailed plan for a genocide, starting from full elimination of Ukrainian state.

Some extracts, translated:

- The Nazis who took up arms should be destroyed to the maximum on the battlefield. There should be no significant differences between the Armed Forces of Ukraine and the so-called national battalions, as well as the territorial defense that joined these two types of military formations. War criminals and active Nazis should be exemplarily and exponentially punished. There must be a total lustration.
- Denazification means de-Ukrainiansation. Ukrainians are an artificial anti-Russian construct. They should no longer have a national identity.
- Ukraine's political elite must be eliminated as it cannot be re-educated. Ordinary Ukrainians must experience all the horrors of war and absorb the experience as a historical lesson and atonement for their guilt.
- The liberated and denazified territory of the Ukrainian state should no longer be called Ukraine. Denazification should last at least one generation — 25 years.

2) Dmitri Medvedev, Former President of the RF: 'Deep Ukrainianism, fueled by anti-Russian poison and all-consuming lie about its identity, is one big fake. There has never been such a thing in history. And now it's gone.'

Acts On the every-day war level:

- According to the reports, Russian forces killed all males aged 18-60 in the city of Bucha: 'All men who were young and healthy were shot'. In the Prosecutor v. Krstić, ICTY the evidence provided the mass murder of the adult men in the group, which amounted to the genocidal intent.
- Additionally, numerous occasions of rapes occurred, inflicting grave injuries as result of which victims subsequently died. After the commission, the bodies were attempted to be buried and left on the street. In the series of Trials on Rwanda Genocide, the ICTR established rape as a genocidal act, if committed with a specific intent, directed on the protected group. Raping in the present case clearly illustrates the specific intent, as the crime concerns solely Ukrainian women and harshly affects the birth rate (seen in conjunction with mass killings of all males) Moreover, witnesses from a city in Chernihiv region have told that when Russian soldiers see a woman is wearing a wedding ring, she either gets beaten, raped or killed.
- The 33-year-old Natalia from Brovary told The Times, that the 20-year-old Russian military broke into her home, raped her and shot her husband, saying: 'I shot your husband because he was a nazi'. He was accompanied by the commander, who introduced himself as Mikhail Romanov.
- Phone calls intercepted by the Security Service of Ukraine between Russian soldier and his comrades in Russia: when asking if they feel sorry for the children dying in this war, the soldier replied: 'no, I don't feel sorry, because they are Ukrainians'.
- In Gostomel, a swastika was systematically burned on the bodies of raped women. As reported by the Mariupol city council, after the widespread international publicity of the Bucha massacre, the top leadership of Russia ordered to destroy any evidence of the crimes of their army by means of building mobile crematoriums in Mariupol.
- According to the Ukrainian Foreign Ministry report, Russian forces have illegally removed 2,389 Ukrainian children from Donetsk and Luhansk oblasts to Russia as to Mar, 22. This act similarly falls under the scope of genocidal acts, envisaged in Article II of the Convention.

**Genocidal policy/ plan is NOT required.**

- 1) The Convention does not provide for such an element and the case law of the ICJ reflects the view that no such element of policy has developed outside the Convention. The presence of a policy underlying the commission of acts of genocide thus appears to be a possible, rather than a necessary, basis of attribution of such acts to a state.
- 2) Prosecutor v. Krstić, ICTY: genocide had been committed at Srebrenica in July 1995, but there was no generalized campaign or programme of genocide during the conflict as a whole. Further it was confirmed by the ICJ in the Bosnian Genocide Case.

Although not obligatory to prove, in the present case the state-owned Russian media articles, politicians' comments published could be an asset in proving the genocidal policy, or at least a specific intent behind the Russian-Ukrainian war.