INTERNATIONAL COMMISSION OF INQUIRY INTO THE 1932-33 FAMINE IN UKRAINE

THE FINAL REPORT

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Commission in Session (Brussels, May 1988).
From left: Prof. Joe Verhoeven - Vice President (Belgium), Prof. Ricardo Levene (hijo) (Argentina), Prof. Covey T. Oliver (U.S.A.), Prof. Jacob W.F. Sundberg - President (Sweden), Prof. G.I.A.D. Draper (United Kingdom), Prof. Georges Levasseur (France), and Prof. John P. Humphrey (Canada).

- **International Commission of Inquiry into the 1932 - 33 Famine in Ukraine**
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  Toronto, Ont. M9C 2Y3, Canada

- President of the Commission: Prof. Jacob W.F. Sundberg,
  Uggleviksgatan 9, S-114 27 Stockholm, Sweden

- Petitioner: World Congress of Free Ukrainians,
  2118 - A Bloor St. West, Toronto, Ont., M6S 1M8, Canada

- General Counsel: Prof. Ian A. Hunter, Faculty of Law,
  University of Western Ontario, London, Ont. N6A 3K7, Canada

INTRODUCTORY CHAPTER

This is a summary prepared in the President's office and does not bind the Commission as such.

The International Commission of Inquiry into the 1932-33 Famine in Ukraine has now delivered its Final Report.

The existence of the Commission is due to the initiative of the World Congress of Free Ukrainians, members of which approached a number of jurists and legal scholars all over the world, asking them to participate in an inquiry into the famine said to have taken place in Ukraine 1932-1933. The Commission was constituted on February 14, 1988, with the following seven prominent international jurists as member-commissioners:

> Prof. Colonel G.I.A.D. Draper, formerly British prosecutor at the Nuremberg Trials (deceased in 1989); Prof. John P. Humphrey, Canada, formerly Director of the United Nations Division of Human Rights; Prof. George Levasseur, France, formerly member of the Commission for the Revision of the French Penal Code; Prof. Ricardo Levene (h), Argentina, formerly President of the Court of Appeals; Prof. Covey T. Oliver, U.S.A., former Assistant Secretary of State and Ambassador; Prof. Jacob W.F. Sundberg, Sweden, appointed President of the Commission of Inquiry; and Prof. Joe Verhoeven, Belgium, appointed Vice President.

The Commission of Inquiry has been established as an entirely independent, non-governmental, self-generated body. Being free to set its own Terms of Reference, the Commission took as a point of departure the draft Statute for Commissions of Inquiry, proposed to the International Law Association at its 60th Conference, and the Rules of Procedure of the European Commission on Human Rights. Under the Terms of Reference, adopted on February 14, 1988, the Commission was to inquire and report upon: (1) the existence and extent of the famine; (2) the cause or causes of such famine; (3) the effect it had on Ukraine and its people; and (4) the recommendations as to responsibility for the famine.

In order to maintain the integrity of the Commission as an independent body, the Commissioners agreed to serve without remuneration. A Trust Fund was established on

the basis of voluntary donations, collected worldwide, out of which the Commission's expenses, including travel disbursements, were paid.

In order to bring balance to the hearings and add to the integrity of the Commission, the position of General Counsel was created, giving the proceedings adversary rather than inquisitorial character. Prof. Ian A. Hunter, Ontario, Canada, was retained as General Counsel. For the same purpose, by letter of February 13, 1988, the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, Mr. Nicolai Ryzhkov was invited to contribute by appropriate officers, individuals and groups in the USSR, to the proceedings of the Commission; however, the invitation was not heeded except to the extent that the USSR Embassy in Ottawa contributed a few letters with references to present scholarship in the USSR.

In 1988, the Commission held two five-day evidence-taking sessions, one hearing in Brussels and the other in New York. A closing deliberating session was held in London in 1989.

In his opening statement, the counsel for the Petitioner - the World Congress of Free Ukrainians - Mr. John Sopinka, Q.C., submitted the contention that in 1932-1933 between 5 and 10 million Ukrainians were starved to death as a result of a brutal enforcement of excessive grain-procurement quotas by the Soviet Government, Mr. Sopinka asking the Commission to find: (1) that the famine was deliberately caused as an instrument of state policy; (2) that the famine was an act of genocide; and (3) that Stalin, Molotov, Kaganovich, Postyshev and others were responsible.

The Commission examined evidence on the population deficit reflected in the Soviet population censuses, taken before and after the famine years.

Population in millions	Census 1926	Census 1939	Increase Decrease	
Total USSR	147,028	170,557	+ 23,529	+16.0
Russians	77,791	99,591	+ 21,800	+28.0
Byelorussians	4,739	5,275	+ 536	+11.2
Ukrainians	31,195	28,111	- 3,084	- 9.9

This evidence is to the effect that Ukraine lost over 3 million of the existing population, plus another 3 million minimum lost natural population growth; at the same time, and living under the same conditions, Ukraine's neighbours were able to increase their populations: Russians +28% and Byelorussians +11.2%.

Furthermore, the Commission received and examined i.a. the following evidence:

- Diplomatic reports, documentary publications and some 40 Soviet decrees from the time of the famine showing how the famine was technically administered;

- a number of experts on Soviet affairs under Stalin, testifying before the Commission; among them, Prof. R. Conquest, Prof. W. Kosyk, Dr. J.E. Mace, Dr. L.Y. Luciuk, Prof. Y. Slavutych, Prof. N.L. Chirovsky, and Prof. L.A. Kosinski;

- the accounts of 12 surviving witnesses from Europe, Canada and the United States, who were able to personally testify before the Commission.

After a thorough evaluation of the voluminous evidence collected, the Commission has arrived at its conclusions and has now published its findings in its Final Report.

The Final Report includes one majority opinion and a number of separate statements by various members. It is a fundamental difference of opinion as to matters of procedure, affecting the very character of the proceedings before the Commission, that spills over into the evaluation of the evidence; one major point being what extra weight is to be accorded evidence as to which there is agreement between the Petitioner and the General Counsel.

The Commission is unanimous in finding the existence of a famine situation in Ukraine between approximately August-September, 1932, and July, 1933. As to the number of famine victims, the Commission agreed that it was unable to choose between one or other figure, given by experts in different estimates. However, the Commission arrived at the conclusion that the number of victims in Ukraine was at least 4.5 million. To this figure must be added the famine victims outside Ukraine, generally estimated at 3 million, out of which 1 million

respectively for Kazakhstan, Lower Volga and North Caucasus. The Commission concluded that in total the 1932-33 famine would therefore seem to have claimed at least 7.5 million victims.

As causes of the famine, the Commission majority has identified (a) the grain procurements;
(b) collectivization, (c) dekulakization; and
(d) denationalization, and advances the following reasoning:

The Commission majority finds beyond doubt that the immediate cause of the 1932-33 famine lay in the grain procurements imposed upon Ukraine from 1930 onwards. It finds it also indisputable that the dreadful effects of the excessive grain procurements were considerably aggravated by the Soviet authorities trying to carry out the forced collectivization of agriculture, to eliminate the kulaks and to snuff out those centrifugal Ukrainian tendencies which threatened the unity of the Soviet Union. The ensuing disorders magnified the catastrophic consequences of a shortfall of cereals out of all proportions. The famine was certainly man-made in the sense that its immediate origin lies in human behaviour. No decisive evidence of a necessary connection between grain procurements, collectivization, dekulakization, and denationalization was put to the Commission. Nonetheless, it is very likely that these policies, pursued at the same time, were part of the same plan. The Commission believes that, in all probability, the grain procurements, collectivization, dekulakization and denationalization pursued a common, if not exclusive, goal and may not be radically disassociated when analyzing the causes of the famine.

Likewise, the Commission majority found it beyond doubt that the Ukraine was severely hit by famine in 1932-1933 and that the Ukrainian and Soviet authorities were aware of the dire food shortages of the population. Moreover, it found it indisputable also that, although they were aware of the dramatic conditions in Ukraine, the Soviet authorities refrained from sending any relief until summer 1933.

The Commission majority observed that the Soviet authorities adopted various legal measures which amplified the disastrous effects of the famine. It concluded that, while these measures may have been

justified for reasons unconnected with the intent of aggravating the famine, they produced undeniably very bad effects on the population. This indirect effect may not have been intentional but it could not have been overlooked, a fact found to increase the responsibility of those who let the famine break out and spread.

However, the Commission majority found itself unable, with the information now at its disposal, to affirm the existence of a preconceived plan to organize a famine in the Ukraine in order to ensure the success of Moscow's policies. The Commission majority believes that the Soviet authorities, without actively wanting the famine, most likely took advantage of it once it occurred to force the peasants to accept policies which they strongly opposed.

In conclusion, the Commission majority does not believe that the 1932-1933 famine was systematically organized to crush the Ukrainian nation once and for all; nonetheless it is of the opinion that the Soviet authorities used the famine voluntarily, when it happened, to crown their new policy of denationalization.

In his dissenting opinion, the President, Prof. Sundberg, followed a different line of reasoning. In his opinion, following the paper trail, you arrive at a number of manifest, non-controvertible causes which certainly have contributed to the famine and which allow placing responsibility squarely on the shoulders of particular individuals, but which have not been the only causes. However, their effect is today beyond possible quantification. The responsibility for other manifest and immediate causes of the famine tends to fade away by being spread among innumerable individuals belonging to the general system. As to causes of a more socio-philosophical character which certainly were causal to the famine, they also come into the category of justification and defences, when responsibility is in issue. Summing up, Prof. Sundberg finds it manifest that applying all these various legal sanctions, evidenced by the paper trail, in a territory hit by famine, must have contributed to the famine in a major way.

The Commission majority proceeds by finding that responsibility for the famine almost certainly lies with the authorities of the Soviet Union. The Commission majority has no doubt as to this responsibility; it

suffices that the famine occurred and grew worse as the normal outcome of the measures adopted by the authorities.

These authorities, as identified by the Commission majority, are specifically all those who, at the various organized echelons of Soviet society, carried out those measures that for 10 months occasioned a dire shortage of foodstuffs in Ukraine. However, whatever the role of these local authorities in the enforcement of particular policies, to the Commission majority it appears obvious that the prime responsibility rests with the central powers.

Attempting to find which persons should bear the brunt of the responsibility for the famine in Ukraine, the Commission majority found itself generally unable to verify allegations referring to particular officials; except that all available materials - testimonies, documents, studies - attribute key responsibility to J. Stalin. So, it is he who first and foremost bears responsibility for the Ukraine famine of 1932-1933. The Commission majority finds it reasonable to maintain that this responsibility must be shared by the other members of the Politburo, although the precise role that these other members played cannot easily be determined. Although here making reservations concerning L. Kaganovich and B. Molotov, the Commission majority is unwilling to go further because it is difficult to determine their precise responsibility for the famine on the sole basis of the information brought before the Commission. As for the Ukraine, to the Commission majority, the figures occupying the key positions inside the party and the administration do not seem to have played any really active part in the planning and carrying-out of the measures that triggered off and accompanied the famine, a probable exception being, however, the case of Pavel Postyshev.

In his dissenting opinion, the President, Prof. Sundberg, again followed a different line of reasoning. In his opinion, the evidence shows that the famine situation was well-known in Moscow from the bottom to the top. Very little or nothing was done to provide some relief to the starving masses. On the contrary, a great deal was done to deny the famine, to make it invisible to visitors, and to prevent relief being brought.

Prof. Sundberg then turns to the intent of those who gave the orders and masterminded the machinery, arguing that the denials could not obliterate the accounts of the famine that occasionally did appear in the Western press. But the man in the street was put in the position of not knowing, of not having anybody on whom he could rely. And this was the intended result. The logic of the position that there was no famine precluded cooperation with international relief efforts to relieve the famine. Therefore, these denials add a considerable consistency to the intent to destroy. The same applies to the passport decrees, in the opinion of Prof. Sundberg. The investment in the denials, in addition to the highly centralized system of government, concentrating planning to a few, makes him find it unavoidable to see these decrees as also being part of the invisibility plan; consequently, the effects described were the effects intended.

Prof. Sundberg also discusses Petitioner's suggestion that Postyshev's dual mandate included to create the famine and destroy Ukrainian nationalism, two intents the implementation of which was linked. In Prof. Sundberg's opinion, the significance of the Postyshev decrees has to be seen in the light of the nationalities policy generally in the Soviet Union. In his opinion, therefore, the Postyshev decrees should be seen together: they clearly link the famine and the reversal in nationality policy, and the latter element takes preponderance so that the grain procurement is incidental to the reversal in nationality policy.

On the basis of this reasoning, Prof. Sundberg has no difficulty in finding the Soviet Government responsible in a general sense for the famine and the suffering it inflicted upon its victims. In his opinion, the evidence about the missing relief is such that it precludes any speculation that the famine should have been an accidental result of something other than directly intended. The famine, the President concludes, was covered by intent.

The President, Prof. Sundberg, then turns to the paper trail, which he finds easier to handle because it identifies a whole set of Politburo members as being directly and individually responsible for the severity of the famine. Prof. Sundberg notes that the evidence

before the Commission does not allow pointing out other individuals.

In the opinion of Prof. Sundberg, industrialization, collectivization and suppression of nationalism were all, essentially, different sides of the one and same problem created by the particular philosophy of the Party State. He thus finds the issue to be a matter of aims within aims. On the basis of this reasoning, Prof. Sundberg arrives at the conclusion that the statutory intent includes an intent to kill, and that this intent covers also major groups of people. On the basis of the same reasoning, Prof. Sundberg is inclined to dismiss all objections to the effect that the individuals in question may have been unaware of the conditions that resulted from the grain requisitions; in particular, the massive mortality. He find that the lethal intent was directed at the Ukrainian nation as such - as it was directed at other nations as such within the big multi-nation empire that was the USSR - because this targeting was an aim within the overriding aim of establishing a new world of Socialism/Communism.

Turning next to the matter of individual responsibility, Prof. Sundberg agrees with the majority that the most direct responsibility must be borne by Stalin himself. Prof. Sundberg adds thereto the group of officials around Stalin who were not under substantial personal threat in the carrying-out of the policies which produced the famine. But the only surviving one who fits into this category is Lazar Kaganovich.

In a final section, Prof. Sundberg addresses the matter of justification. He notes that the doctrine of justification has a place among the anticipated defences. This doctrine has room for considerations of the broadest possible kind. The fact that considerations of this kind permeate the policial culture in the Party State must, in Prof. Sundberg's view, not be overlooked. He adds that allowing the individuals here held responsible to have their guilt assessed according to their own political culture may entail surprises. In fact, insisting upon the responsibility of the individual Communist leaders is likely to mean disregarding completely the philosophical canons of Communist society.

The Petitioner invited the Commission to find that the famine was an act of genocide. This invitation resulted

in the Commission splitting into a number of separate opinions.

The Commission majority - Professors Verhoeven, Humphrey and Levene - deems it plausible that the constituent elements of genocide were in existence at the time of the famine although the Genocide Convention was not created until 1948. The illegality of what was called genocide in the Convention thus pre-existed the Convention. The Commission majority also wishes to underscore that the policies which were applied to the Ukrainian people and led to the famine of 1932-33 disregard the precepts of basic morality which are binding on Soviet as on all authorities, and that the Soviet authorities must in consequence be vigorously condemned.

Prof. Oliver does not feel convinced that the Petitioner has made a technical, legal case for genocide under the facts, but finds that the Petitioner did not come to grips with two issues fundamental to the legal crime of genocide: criminal intent to destroy Ukrainian ethnicity -nationality, and an exclusively Ukrainian scope of injury through central Soviet operations, union-wide.

Prof. Levasseur concurs partly with the statements in the majority opinion, but thinks that a qualification of the facts found should establish crimes against humanity and not genocide. He is not sure that the Genocide Convention has a declarative character so that it could be applied to facts which took place nearly 20 years before. He thinks that crime against humanity was recognized in international law before the Ukraine famine, and to him the declarative character of this crime seems much more decisively established.

Prof. Sundberg states that his findings are such as to coincide with what is called genocide in the Genocide Convention. He observes, however, that under the Terms of Reference the purpose of the inquiry is to establish whether there is a case against one or more individuals as a result of the findings. He cannot find that there is a case against the individuals pointed out because they are all dead (except Kaganovich), because it is up to the Soviet Union to prosecute according to the Genocide Convention, and because a Soviet prosecution would have to take the general defences into account. When the famine occurred, all powers showed by their conduct that nothing criminal under international law was

at issue. Consequently, applying today the law of genocide to the famine would be a retroactive application, nullified as a matter of general defences.

MEMBER OF THE COMMISSION

PROFESSOR, COLONEL G.I.A.D. DRAPER (deceased May, 1989)

UNITED KINGDOM OF GREAT BRITAIN & NORTHERN IRELAND

Professional Appointments and Activities: Aged twenty-one, started law practice in London in 1936-1941. Joined the Irish Guards in 1941 and served in the U.K. and North Africa as officer in that regiment until 1944. In that year, seconded to the Military Dept. of the Office of the J.A.G., and prosecuted before courts-martial in Belgium and Germany until 1946. In that year, became the senior War Crimes Prosecutor before the Military Courts in British Occupied Germany. Continued thus until 1950, with some attachments at Nuremberg with the IMT and "Subsequent Proceedings" until 1950; became a legal advisor on military law and the law of war in the War Office (Ministry of Defense) until 1956.

In 1956, appointed Lecturer in Law at the University of London, and combined this work with practice as a barrister (Inner Temple) in the fields of Constitutional and International Law. During this period, represented the U.K. at International Red Cross Conferences at Delhi (1957), Vienna (1965), Istanbul (1969) and Teheran (1973), and acted as a civilian consultant to the ICRC, Geneva, and at the U.S. Naval War College, Newport, Rhode Island, until 1966.

Academic Career: After a private education, entered the University of London and read Law, being Law Prizeman in 1933, and obtained LL.B. (Hons) in 1935. Qualified as a solicitor in 1936. Obtained LL.M degree at that university in 1938. In 1956, appointed to King's College and taught Constitutional and International Law and Legal History. Appointed a Reader in Law in 1953 at the University of Sussex; appointed first Professor of Law there in 1976. Visiting Professor at the University of Cairo (International Law) in 1965; taught at the Staff Colleges in the U.S.A., Australia, South Africa, Japan, Austria, and the German Federal Republic during that period. Made a Titular Professor of Law at the San Remo Institute of Humanitarian Law in 1970; in the Hague Academy of International Law in 1965 and 1980; and at Strasburg Human Rights Institute in 1974.

International Assignments: Advisor to H.M.G. and Secretary of Government delegation at Diplomatic Conference on Geneva Protocols from 1971-1977. From 1956 to 1988, practiced in International Law matters and broadcast on International Law questions and War Criminality.

Education & Publications: Awarded a NATO Fellowship in 1957 for book on NATO and Jurisdiction over Civilians (Sijthoff, Leyden). Joint author with the late Judge Lauterpacht, of the Government Manual on the Law of War on Land (1958, H.M.S.O.O.). Authored a book, "Red Cross Convention" (Stevens and Oceans Publications, 1958). Wrote 64 articles, mainly on matters of International Law, including "War Criminality" (Israel Yearbook of Human Rights, Vol. VI, 1976), "Status of Combatants and Guerilla Warfare", (1971) British Yearbook of International Law and a number of articles on the history of the doctrine of the "Just War".

Membership & Awards: Member of Editorial Board of British Year Book of International Law, 1980-1988; Member of Society of International Law of War and Military Law, 1967-1988; Member of the Royal Institute of International Affairs, 1980-1988; Awarded O.B.E. "for services to international law," 1965. Honorary member of the Faculty of the J.A.G. (Army) School, Charlottesville, Virginia, U.S.A.

MEMBER OF THE COMMISSION
PROFESSOR JOHN PETERS HUMPHREY
CANADA

Professional Appointments and Activities: In 1929 called to Montreal Bar; practiced law with Wainwright, Elder and McDougall (1930-1936).

Academic Career: McGill University (Montreal): since 1936, lecturer in Roman Law, Secretary of the Faculty of Law (1937-1946); and from 1946, Gale Professor and Dean of Law Faculty. Since 1966, Professor of Law and Political Science. Visiting Professor: University of Toronto (1971-1972), University of Western Ontario (1981-1982).

International Assignments: Director, Division of Human Rights, U.N. Secretariat (1946-1966). Executive Secretary, U.N. Conference on Freedom of Information (Geneva, 1951). Participated at U.N. Conferences: On Refugees and Stateless Persons (Geneva, 1951); On Status of Stateless Persons (1954); and U.N. Slavery Conference (1956). Principal Secretary, U.N. Mission to South Vietnam (1963). Rapporteur, U.N. Seminar on Human Rights (1967). Rapporteur, Colloquium on Human Rights in Foreign Policy Formulations (Paris, 1984 and Rome, 1985). Member, Advisory Board, Urban Morgan Institute for Human Rights, University of Cincinnati. Vice President, UNESCO Conference on Human Rights Teaching (Malta, 1987).

Education and Publications: Mr. Allison University and McGill University: B.A. (1927); B.C.L. (1929); Ph.D. (1945). MacDonald Trav. Scholar in Law, University of Paris (1929-1930). Dr. hon. causa, University of Algiers (1944); Dr. of Soc. Sc. (Ottawa, 1966); LL.D. St. Thomas (1971); LL.D. Dalhousie (1975); LL.D. McGill (1976); D.C.L. Mt. Allison (1977); D. Litt. Accadia (1980); D.C.L. St. Mary's (1984). Author of "The Inter-American System: A Canadian View" (1942); "Human Rights and the United Nations, A Great Adventure" (Transnational Publications, New York, 1983); and many articles on international, political and legal subjects.

Memberships and Awards: President, Canadian Commission, International Year for Human Rights (1968). Member and Vice President, International Commission of Jurists. Hon. Member, Canadian Council of International Law. Member, International Law Association. Member, Canadian Institute of International Affairs. National Chairman, U.N. Association in Canada (1968-1970). Member, U.N. Subcommission on the Prevention of Discrimination and the Protection of Minorities (1966-1971), and Chairman (1970). Past President, Amnesty International (Canada). President Emeritus, Canadian Foundation for Human Rights, and many others.
Awards: International Cooperation Year Citation (1965). World Jewish Congress Citation (1966). World Legal Scholar Award (1973). Officer, Order of Canada (1974). Officer, National Order of Quebec (1985).

MEMBER OF THE COMMISSION
PROFESSOR GEORGES P. LEVASSEUR

Professional Appointments and Activities: Admitted to the Bar and practiced law in France from 1928-1936. Appointed Secretary General, Department of Economy in Rhone-Alpes (1944-1946) and Inspector General of National Economy (1946-1948). Member of the Commission for the Revision of the Penal Code in France (1981-1986).

Academic Career: Lecturer, Faculty of Law, University of Lille (1934-1936). Professor of Law, University of Hanoi (1936-1938). Professor of Law, University of Grenoble (1938-1949). Founder and Director of Criminal Science Institute (1941-1949). Professor of Law, University of Lille (1949-1955). Founder and Director of the Institute of Criminology in Lille (1953-1955). University of Paris: Professor of Law (1955-1970) and Professor of Law, Economy and Social Services (1970-1977). President, Agregation Jury for Private Law and Criminal Sciences (1971). Visiting Professor: University of Cairo (1960); of Alexandria (1960-1975); of Ottawa (1961-1962); of Montreal (1963-1980); University of La Reunion (1978); International Faculty of Comparative Law (1954, 1956 and 1973) and others.

International Assignments: Took part at the International Law Conferences held in: Belgium (Brussels, Gand, Liege, Louvain); Italy (Rome, Milano, Bellagio, Syracuse, Messina); England (London, Glasgow); Spain (Madrid, Barcelona, Avila); Switzerland (Geneva, Neuchatel); Turkey (Istanbul); Hungary; Yugoslavia; Algeria; Tunisia; Lebanon; Syria; Iraq; as well as in: Vietnam, Cambodia and Canada (Ottawa, Montreal, Quebec City and Sherbrooke).

Education and Publications: Faculty of Law, University of Paris: Licencier of Law (1927) and Doctor of Law (1931). Special Diploma, Institute of Criminology in Paris (1932); LL.D. h.c., University of Ottawa; Agrege of Private Law and Criminal Sciences (1935). Author of many reference works of law published in French, such as: "Determination of Domicile under International Private Law" (Paris 1931); "Legal Situation of Chinese People in Indochina after Nankin Accords" (Hanoi 1939); "The Applied Penal Law" (Paris 1968); "General Penal Law (12th Ed., Paris 1985); "Penal Law Procedure" (13th Ed., Paris 1987), and many other monographs and articles on International Law and related subjects.

Memberships and Awards: Prix Dupin aine (1932); Medaille de Vermeil de l'Academie de Legislation de Toulouse; Chevalier de la Legion d'Honneur; Officier de l'Ordre du Merite; Officier des Palmes Academiques; Medaille Penitentiaire; Grand Officier de l'Ordre du Merite (Argentine); Chevalier de l'Ordre du Merite (Cote d'Ivoire).

MEMBER OF THE COMMISSION
PROFESSOR RICARDO LEVENE (HIJO)
ARGENTINA

Professional Appointments and Activities: Member of the Bar in Argentina (1937). President of the National Court of Appeals (1975) and Member-Judge of the Supreme Court of Argentina (1976). Member of the Law Codification Commission of Argentina (1953-1970).

Academic Career: Since 1937, Professor of Penal Law and Criminology, as well as of Comparative Criminal Law at the Universities of Buenos Aires and La Plata. Founder and Director of the Institute of Penal Law and the Center of Criminology at the University of Buenos Aires. Lectured as Visiting Professor at various universities in Latin America, North America and Europe, including the Max Planck Institute in West Germany and the Kennedy School of Government at Harvard University in the U.S.

International Assignments: At the invitation of West Germany, as an expert in Comparative Criminal Law, took part in the Commission for the Reform of Penal Code (1937-1975). Served at various conferences and congresses sponsored by the United Nations, including the International Conference on the Prevention of Crime and the Treatment of Offenders.

Education and Publications: Doctor of Law degree from the University of Buenos Aires. Founder and Director of Argentina's Journal of Penal Law. Author of some 500 books, research papers and articles of law and legal matters published in Argentina and other countries.

Membership and Awards: Member: Argentinian Society of Criminology; International Association of Criminology; International Association of Criminal Law; and many others.

MEMBER OF THE COMMISSION
PROFESSOR COVEY T. OLIVER
UNITED STATES OF AMERICA

Academic Career: Assistant and Associate Professor of Law, University of Texas, 1936-1948 (on leave 1941-1948). W.P. Johnson Professor of Law, University of California Berkeley (1949-1956) and Director, University of California Institute of International Studies, (1954-1956); Hubbell Professor of International Law, University of Pennsylvania (1956 to emeritus since 1979). Tsanoff Professor of Public Affairs, Rice University [(1971-1981) - now emeritus]. Visiting Professor at University of Sao Paulo, Brazil (1963 - Fulbright grant), and at the law schools of Drake, Houston, St. Mary's Southern Methodist, San Diego and American Universities.

International Assignments: Civil Service, Foreign Service (Reserve), Department of State (1942-1949), ending at highest civil service level; U.S. Member, Interamerican Juridical Committee, Organization of American States, (1963-1966). Ambassador to Colombia (1964-1966), Assistant Secretary of State for Interamerican Affairs, and U.S. Coordinator, Alliance for Progress (1967-1969). U.S. Executive Director, World Bank Group (January-November, 1969). Conference postings at Paris Peace Conference (1945-1946); United Nations Law of the Sea III (New York, 1976); Berlin Reparations Meetings, (1945-1946); Vienna, Austrian State Treaty Negotiations (1947). Carnegie Endowment Lecturer, Hague Academy of International Law (1955, 1973).

Education and Publications: University of Texas, B.A. (1933); J.D. (1936); both summa cum laude; Columbia University, LL.M. (1953), Jur. Sci. Dr. (1954); Southern Methodist University, LL.D. (honoris cause, 1974). Subjects: Federal Taxation, Public International Law, International Economic Law (Trade, Investment and Finance), European Community Law, Admiralty and Maritime Law, Private International Law, United States Law of Foreign Affairs, Legal Variables in Business Decisionmaking.
Publications: Various monographs in edited volumes, legal articles and reviews; co-author "Restatement of the Foreign Relations Law of the United States" (1965); "The International Legal System and Documentary Supplement" (1973, 1981 and 1988 editions). Sometime editor, "Judicial Decisions, the American Journal of International Law".

Memberships and Awards: The American Law Institute (since 1965); Council on Foreign Relations (since 1969); The American Society of International Law (President 1982-1984); Board of Editors, The American Journal of International Law (1950); American Academy of Political Science (one-time member of the board of directors); Foreign Service Ass'n. of the United States; the Franklin Inn Club (Philadelphia); Diplomatic and Consular Officers (DACOR, Washington); Fulbright Research Grant, (1962) Brazil; Annual Book Award (with co-authors), American Society of International Law, 1966.

VICE PRESIDENT OF THE COMMISSION
PROFESSOR JO VERHOEVEN
BELGIUM

Academic Career: Since 1975, Professor of Law, Catholic University of Louvain, lecturing on Public International Law and the Law of European Community. Visiting Professor of University Faculties, St. Louis, Brussels. National University of Rwanda (1978); Institute of High International Studies, (Paris 1979); University of Ouagadougou (Burkina Faso, 1982-1983); Catholic University of Lisbonne (1984-1986); University of Maine (1985-1986); Academie de Droit International (The Hague, 1985). The University of Paris-2 (1987).

Education and Publications: University of Louvain: Doctor of Law (1965) and Agrege de l'Enseignement Superieur (1975). Diploma from the International Academy of Comparative Law. Author of monographs, such as: "The International Recognition in the Contemporary Practice" (Paris, 1975, in French); "Nullities in the Law of Nations" (Paris, 1981, in French); "Private International Law Relations in Case of Non-recognition of a State, a Government or a situation", [Hague Academy of International, Vol. 192 (1985-III, in French)]. Many articles on International Law and related subjects published in Belgian and international journals: Revue Belge de Droit International, Revue Generale de Droit International Public, Netherlands Yearbook of International Law, Journal de Droit International (Clunet), Revue de Droit Contemporain, Journal des Tribunaux, Revue Critique de Jurisprudence Belge, Cahiers de Droit Europeen and others.

Memberships and Awards: Associate Member of the "Institut de Droit International"; Member of the Scientific Board, Editing Committee of "La Revue Belge de Droit International", and Member of other Law Associations.
Awards: Prix Charles De Trooz, Prix de la Foundation E. Maheim and Prix Henri Rolin.

PRESIDENT OF THE COMMISSION
PROFESSOR JACOB W.F. SUNDBERG
SWEDEN

Professional Appointments and Activities: After service in the Navy, appointed to the Swedish judiciary (1954-1963), with a brief service on the Bench of the Svea Court of Appeals, Stockholm.

Academic Career: Since 1963, Professor of Law at the University of Stockholm. Visiting Professor: New York University, Roman and Comparative Law (1968); Fletcher School of Law and Diplomacy (1982). Holder of the Brennan Chair, Akron University School of Law (1986). Lecturer in International Law at the Military Academy in Stockholm (1979). 1977, courses in Family Law and Comparative Law at the University of Sydney. Since 1972, teaching Aviation Law at the Institute of Public and International Law in Stockholm. Lecturer of the University in Abo (Turku), Finland. Presented courses in Aviation Law in Beirut (1974), Reykjavik (1978) and Luxemburg (1980).

International Assignments: Rapporteur General of the International Association of Penal Law on "Unlawful Seizure of Aircraft" (Budapest, 1974), and of the International Academy of Comparative Law on "Chartering Aircraft" (Budapest, 1978). Invited Participator of the U.N. Congresses on the Prevention of Crime and the Treatment of Offenders (Geneva, 1975, and Caracas, 1980). Sweden's Correspondent to Documentation Center for Human Rights, Council of Europe (1982-1984).

Education and Publications: Universitie - Uppsala Juris candidate (LL.M) New York University Law School, and Doctor of Law degree, University of Stockholm (1961). Author of many legal works, including: "Air Charter - a Study in Legal Development" (Stockholm, 1961); "On the Liability for Vice in Leased Goods" (1966, in Swedish); "The Changing Family Law" (1969); "From the Edda to Ekeloef - On Sources of Law in the Nordic Region" (1978). Published many articles in Swedish and foreign legal periodicals, including a major study on high-tax society, published in 1977 in Swedish, English and German. Since 1985, publisher of an annual report on "Human Rights in Sweden", and editor of other publications in that field.

Membership and Awards: Member of the Royal Naval Society (1967). Companion of the Royal Aeronautical Society (London, 1969). Citation for Outstanding Contribution, The American Society of Criminology (1975). Member of the Finnish Society of Sciences and Letters (Helsinki, 1983).

INTERNATIONAL COMMISSION OF INQUIRY

INTO THE

1932-1933 FAMINE IN UKRAINE

F I N A L R E P O R T

INTERNATIONAL COMMISSION OF INQUIRY INTO THE 1932-1933 FAMINE IN UKRAINE

F I N A L R E P O R T
(Certification)

PART I	- History of the Commission of Inquiry	- 5 pgs
	- Terms of Reference	- 1 pg
	- Rules of Procedure	- 3 pgs
	- Documentary Evidence Exhibits	- 4 pgs
PART II	- Majority Opinion of the Commission (including index page)	- 61 pgs
	- Separate Statements by:	
	Professor Georges Levasseur	- 5 pgs
	Professor Covey T. Oliver	- 2 pgs
PART III	- President's Separate Opinion, concurring and dissenting (including three index pages)	- 88 pgs
PART IV	- Separate Statement by Professor Ricardo Levene (hijo) (general comments)	- 21 pgs

I hereby certify that this is the complete printed record of the Final Report of the International Commission of Inquiry into the 1932-1933 Famine in Ukraine.

Dated at Stockholm, Sweden, this 10th day of March, 1990.

Jacob W.F. Sundberg,
President of the
International Commission of Inquiry
into the 1932-1933 Famine in Ukraine

(Exhibit D)

INTERNATIONAL COMMISSION OF INQUIRY INTO THE 1932-22 FAMINE IN UKRAINE

TERMS OF REFERENCE

WHEREAS there is contention as to the evidence that there was a deliberately-planned famine in the Ukraine in 1932-22;

this has resulted in the establishment of the present Commission as an entirely non-governmental body which is based as to structure upon the draft Statute for Commissions of Inquiry, reported favourably to the International Law Association at its 60th Conference held at Montreal, Canada, August 29 - September 4, 1982;

with the purpose of inquiring into and reporting on the 1932-32 famine in Ukraine and without restricting the generality of the foregoing to inquire and report upon:

(1) the existence and extent of the famine
(2) the cause or causes of such famine
(3) the effect it had on Ukraine and its people
(4) the recommendations as to reponsibility for the famine

oOo

(Exhibit E)

INTERNATIONAL COMMISSION OF INQUIRY INTO THE 1932-33 FAMINE IN UKRAINE

RULES OF PROCEDURE

Rule 1

1. The official language of the Commission shall be English.
2. The President may authorize a member to speak in another language.
3. The President may permit the use of a language other than English, either in hearings or documents. Any such document shall be submitted in an original and at least two copies.
4. The Clerk is authorized to employ a language other than English in correspondence.

Rule 2

1. Persons, non-governmental organizations, or groups of individuals, or States, may appear and present complaints on their own behalf or through a representative.
2. Any such person or body may appoint and be represented, in proceedings before the Commission, by a lawyer or any other person, unless the Commission at any stage decides otherwise.
3. Any such person or representative shall appear in person before the Commission:
   (a) to present the complaint in an oral hearing fixed by the Commission;
   (b) for any other purpose, if invited by the Commission.
4. In the other provisions of these Rules the term "person" shall where appropriate include representative.

Rule 3

1. The Commission may take any action which it considers necessary for the proper performance of its duties.
2. The Commission may delegate one or more of its members to take any such action in its name, and in particular to hear witnesses or experts, to

RULES OF PROCEDURE (Continued)

examine documents or to visit any locality. Such member or members shall duly report to the Commission.

3. In case of urgency, when the Commission is not in session, the President may take any necessary action on behalf of the Commission. As soon as the Commission is again in session, the President shall report to it on any action which he has taken under this paragraph.

Rule 4

1. Hearings before the Commission shall be open, unless the Commission decides otherwise.
2. If the complainant is a non-governmental organization or group of individuals or State, the Commission shall ensure that those appearing are entitled to represent it.
3. When it considers it in the interest of the proper conduct of a hearing, the Commission may limit the duration and the number of appearances.

Rule 5

After establishing the identity of the witnesses or experts, the President shall request them to take the following affirmation:

(a) for witnesses: "I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."
(b) for experts: "I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief."

Rule 6

1. The relevant Counsel shall conduct the examination of any person heard and any member of the Commission may put questions.
2. A party may, at the discretion of the President, also put questions to any person heard.

Rule 7

The Clerk shall be responsible for the production of verbatim records of hearings before the Commission.

RULES OF PROCEDURE (Continued)

Rule 8

1. The expenses incurred by any person who is heard by the Commission as a witness at the request of Counsel shall be borne by the Commission.
2. Where the Commission decides to obtain expert opinions, the costs, as agreed by the President, shall be borne by the Commission.

Rule 9

The Commission, or where it is not in session, the President, may indicate any interim measure, the adoption of which seems desirable in the interest of the proper conduct of the proceedings before it.

Rule 10

1. The Commission shall publish its findings and conclusions, including dissenting opinions.
2. The Report will be a public document available on request to any person or persons, upon payment of the reasonable cost of reproduction.

Rule 11

1. Any Rule may be amended upon motion made after notice when such motion is carried at a session of the Commission by a majority of all the members of the Commission.
2. Any Rule may be suspended upon motion made without notice, provided that this decision is taken unanimously. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which such suspension has been sought.

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DOCUMENTARY EVIDENCE EXHIBITS RECEIVED BY THE INTERNATIONAL COMMISSION OF INQUIRY INTO THE 1932-1933 FAMINE IN UKRAINE

Exhibit No.	Description	Total Pages
P - 1	Letter No. 957 of June 4, 1931 from A.W. Kliefoth to the Secretary of State of the U.S.A.	1
P - 2	Map: Geography of the 1932-33 Famine	1
P - 3	Compilation: Soviet Decrees	103
P - 4	Compilation: Newspaper Accounts	19
P - 5	Compilation: Soviet Admissions and Denials	103
P - 6	Compilation: Historical Accounts	165
P - 6A	"Human Life in Russia" by Ewald Ammende, Chapter I: Causes of Famine in Russia	14
P - 7	Second Interim Report of Meetings and Hearings of the U.S. Commission on The Ukraine Famine	142
P - 8	Malcolm Muggeridge: Three articles in Manchester Guardian; Interview by Bohdan Nahajlo; Excerpt from "Malcolm Muggeridge: A Life", by Ian Hunter	23
P - 9	Compilation: Eyewitness Accounts	11
P - 10	Robert Conquest: Curriculum Vitae	2
P - 11	"Harvest of Sorrow", book by Robert Conquest	411
P - 12	Book of Documents, re: Robert Conquest	126
P - 13	Reserved for Documents to be submitted by Robert Conquest: Received Feb. 6, 1990 4-page reprint from Sovetskoe Gosudarstvo i Pravo, No-2/1988, p. 199 on population deficit	4

... continued

Documentary Evidence Exhibits (continued)

Exhibit No.	Description	Total Pages
G - 14	First Interim Report of Meetings and Hearings of the U.S. Commission on the Ukraine Famine	172
P - 15	Dr. James Mace: Curriculum Vitae	3
P - 16	Draft: Final Report of U.S. Commission on the Ukraine Famine, Executive Summary	24
P - 16B	Ibid., Glossary of Terms	4
P - 16C	Ibid, Persons Prominently mentioned in the text	2
P - 17	Book of Documents re: Dr. James Mace	100
P - 18	Book of Articles by Dr. James Mace	73
P - 19	Excerpt from "Literaturna Ukraina" of February 18, 1988	6
G - 20	Excerpt from "Khruschev Remembers", Little-Brown, 1970, p. 737	11
P - 21	Lubomyr Luciuk: Curriculum Vitae	1
P - 22	Book: "The Foreign Office and the Famine", Limestone Press	493
P - 23	Article: S. Maksudov, "The Geography of the Soviet Famine of 1933"	4
P - 24	Excerpt from the "Historical Atlas of Ukraine"	2
P - 25	Excerpts from the Foreign Office	10
P - 26	Foreign Office document No. 371	1
P - 27	Jurko Semenko - Affidavit	7

... continued

Documentary Evidence Exhibits (continued)

Exhibit No.	Description	Total Pages
P - 28	Oleksa Skaba - Affidavit	2
P - 29	Irena Saplywa - Affidavit	5
P - 30	Book: "Human Life in Russia", by Dr. Ewald Ammende	319
P - 31	Book: "Execution by Hunger", by Myron Dolot	231
P - 32	Book: "The Third World War", by Paul Hlushanytsia	117
P - 33	Book: "The Ukrainian Holocaust of 1933", by Wasyl Hryshko	165
P - 34	Book: "Witness", by Pavlo Makohon, in Ukrainian	
P - 35	Book: "The 9-th Circle", by Oleksa Woropay	90
P - 36	Book: "Black Deeds of the Kremlin"; 2 Vol., by Dobrus, ed. S.O. Pidhainy	I - 545 II - 712
P - 37	Book: "Famine in Ukraine 1932-1933", Ed. by R. Serbyn and B. Krawchenko	192
P - 38	Map and Gazetteer of Ukraine by V. Kubijovyc	30
P - 39	Compilation: Eyewitness Accounts	79
P - 40	Compilation: International Press Reports	400
P - 41	Compilation: Documentary Evidence	347

... continued

Documentary Evidence Exhibits (continued)

Exhibit No.	Description	Total Pages
P - 42	Compilation: The 1932-33 Original Photographs from Kharkov, Ukraine	50
P - 43	German Book: "Hart auf Hart", by A. Wienerberger	248
P - 44	Professor N.L. Chirovsky: Curriculum Vitae	2
P - 45	Reprint: The Crops and Grain Deliveries during the Critical Years	1
P - 46	Professor L.A. Kosinski: Curriculum Vitae	20
P - 47	Reprint: Ukrainians in USSR, Population Deficit estimated by J.E. Mace, 1984	10
P - 48	Final Congressional Report of the U.S. Commission on the Ukraine Famine	523
P - 49	Reserved for article: "Soviet Attempts to Confront the Famine of 1932-33", by James E. Mace (6-2-1990)	15
P - 50	The Soviet Documentary Evidence, received in London, Nov. 15, 1989 (Compilation)	118
P - 51	Soviet Constitution, submitted in London, Nov. 14, 1989	
P - 52	Book: "Let History Judge", by Roy Medvedev,Columbia University Press, New York 1989	

I hereby certify the foregoing to be a complete list of the Documentary Evidence Exhibits entered in the International Commission of Inquiry into the 1932-33 Famine in Ukraine

Stephen M. Werbowyj,
Documentation Officer

I. THE HISTORY OF THE INTERNATIONAL COMMISSION OF INQUIRY AND ITS MANDATE

1. Initiative and Early History

The existence of the Commission is due to the initiative in 1986 of the World Congress of Free Ukrainians who approached a number of jurists and legal scholars all over the world, asking them to participate in an inquiry into the famine alleged to have taken place in Ukraine 1932-1933. Those who agreed to participate were:

Colonel Gerald I.A.D. Draper, Professor of Law at the University of Sussex, United Kingdom, formerly Prosecutor at the Nuremberg Trial;
Professor John P. Humphrey, McGill University, Canada, formerly Director of the United Nations Division of Human Rights (1946-1966);
Professor Georges Levasseur, University of Paris, formerly member of the Commission for the Revision of the French Penal Code (1981-1986);
Professor Ricardo Levene (h), University of Buenos Aires, Argentina, formerly President of the Court of Appeals;
Professor Covey T. Oliver, University of Pennsylvania, United States, formerly U.S. Ambassador to Colombia;
Professor Jacob W.F. Sundberg, University of Stockholm, Sweden; and
Professor Joe Verhoeven, Catholic University of Louvain, Belgium.

An Organization Meeting took place in Toronto, Canada, on February 12-14, 1988, among the members of the Commission. Ricardo Levene (h), the only member absent, due to travel difficulties, was informed by the Acting President in the advance of the proceedings and consented to their results.

2. Organization and Safeguarding of the Integrity of the Commission

At the Organization Meeting, it was considered imperative to have the Petitioner - the World Congress of Free Ukrainians - separated completely from the Commission so that the Commission would have independent funding based on a world-wide collection among Ukrainians in the diaspora, and independent administration.

On February 14, 1988, the Commission was constituted, declaring itself an independent and self-generating body, free to set its own Terms of Reference. These Terms of Reference were adopted by the Commission the same day, reading as follows:

> "Whereas there is contention as to the evidence that there was a deliberately-planned famine in the Ukraine in 1932-33, this has resulted in the establishment of the present Commission as an entirely non-governmental body which is based as to structure upon the draft statute for Commissions of Inquiry, reported favourably to the International Law Association at its 60th Conference held at Montreal, Canada, August 29-September 4, 1982, with the purpose of inquiring into and reporting on the 1932-33 famine in Ukraine and without restricting the generality of the foregoing to inquire and report upon:
>
> (1) the existence and extent of the famine;
> (2) the cause or causes of such famine;
> (3) the effect it had on Ukraine and its people; and
> (4) the recommendations as to responsibility for the famine."

Taking as a point of departure the draft statute for Commissions of Inquiry proposed to the International Law Association at its 60th Conference (see Report of the Sixtieth Conference, pp 424-445, explanatory report pp 445-454), and the Rules of Procedure of the European Commission on Human Rights as amended May 15, 1980, the Commission adopted its Rules of Procedure on February 14, 1988.

By decision on February 14, 1988, the Commission resolved that the Acting President, Professor Jacob Sundberg, be appointed President; and Professor Joe Verhoeven be appointed Vice President of the Commission.

3. The Trust Fund

On February 14, 1988, it was resolved to establish a trust fund for the Commission and to create a Finance Committee to administer the fund. This trust fund was to be set up and operated subject to Canadian law. In its final form, the Finance Committee consisted of Jacob Sundberg, Chairman; Ian Hunter; and Dennis Stephen Morris, barrister and solicitor in Toronto. Mr. Morris'

law firm agreed to serve as the trustee for the Commission, with Mr. Sundberg and Mr. Hunter as additional signing officers of the trust fund.

The Commissioners receive no fees, but receive a per diem for each meeting day, fixed equivalent to that received by the judges of the Iran-U.S. Claims Tribunal (1981), and paid out of the trust fund.

4. The General Counsel

In order to bring balance to the hearings and add to the integrity of the Commission, the position of General Counsel was created on the pattern of the ILA draft statute mentioned above. The General Counsel was intended to counterbalance the presence of the Petitioner and its Counsel, thereby giving the proceedings adversarial rather than inquisitorial character. The General Counsel is thus to some extent an opposing party as well as an amicus curiae and, as a result, very much an officer sui generis. He is supposed to present to the Commission, with complete impartiality and independence, his reasoned submissions. He is to be heard prior to the Commission giving a ruling on any dispute about, or objection to, the proceedings before the Commission.

Professor Ian A. Hunter, University of Western Ontario, London, Ontario, was retained as General Counsel by decision of the Commission on February 14, 1988, at the same time as his duties were fixed as set out above.

5. Participation of Representatives of the Soviet Union

In order to safeguard the integrity of the Commission, it was also considered imperative that the Soviet Union be given opportunity to assist at the hearings. By letter of February 13, 1988, the Acting President of the Commission extended an invitation to the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, Mr. Nicolai Ryzhkov, to contribute by appropriate officers, individuals and groups in the USSR to the proceedings of the Commission; also requested, in the interest of historical accuracy, was access on behalf of the Commission to certain archives and public records within the Soviet Union. The First Secretary of the USSR Embassy in Canada, Mr. Yuri Bogayevsky, having received a copy of this letter, kindly offered his comments by letters of March 1, 1988 and January 23, 1989.

The Commission has moreover received a letter of October 14, 1988, signed by Boris Babij (Member, Academy of Sciences, Ukrainian SSR), Ivan Kuras (Member correspondent, Academy of Sciences, Ukrainian SSR), Stanislav Kulchytsky, [Ph.D., (History)], and Volodymyr Denisov [Ph.D., (Jurisprudence)]. This letter suggests that the Commission should have predetermined its findings, but also invites "an honest dialogue, an open discussion, and objective and comprehensive analysis". In reply, the President of the Commission, on November 1, 1988, read a public statement rebutting the suggestion in the letter. Furthermore, since media had tended to identify press releases of the Petitioner, i.e. the World Congress, with press releases from the Commission itself, Petitioner was asked to rectify this impression, and did so in a press release that was printed in the New York City Tribune of November 8, 1988.

6. Death of Commission Member, Colonel G.I.A.D. Draper

During the winter of 1988, Colonel Draper had a number of health accidents restricting his working ability and, on July 3, 1989, he passed away.

7. Operations of the Commission

The Commission has convened two hearing sessions; the first was held in Brussels, May 23-27, 1988, at the Europa Hotel; and the second took place in New York, New York, October 31-November 4, 1988, at the United Nations Plaza Hotel. At both sessions, evidence was taken and submissions by the parties - the Petitioner and the General Counsel - were heard. A special evidence-taking session took place on June 27, 1988, at Robertsbridge, Sussex, England, in the presence of Colonel Draper representing the Commission. At this session, testimony was given by Mr. Malcolm Muggeridge.

The Commission has held deliberating sessions after each hearing, with one final deliberating session in London, United Kingdom, November 15-18, 1989, at the Kensington Hilton Hotel.

8. Final Results of the Operations of the Commission

The Commission has resolved that the ultimate result of its operations should be published in the following form:

(a) a printed record of all of the hearings

and documents, with an index, for later use world-wide by scholars and other interested parties;

(b) a printed Final Report, setting out the opinion of the Commission and possible dissenting and/or concurring opinions of the Commission members.

The Commission has resolved that the Final Report should be created in two originals, one to be presented to the United Nations Secretary-General and one to be presented to the President of the Parliamentary Assembly of the Council of Europe.

MAJORITY OPINION
INDEX

II THE EVIDENCE

1. As stated in its Terms of Reference, the first aim of the International Commission of Inquiry into the 1932-33 Famine in Ukraine is to establish the existence of a famine in Ukraine in 1932-33, the extent and causes of this famine and its effects on the Ukrainian people.

The Commission wants to stress that it is a "Commission of Inquiry", not a court, even though it has been asked to formulate recommendations "as to responsibility for the famine". This being so, the Commission cannot be considered bound by the rules of proof which are normally applicable to national and international judicial procedures. In consequence, it behoves the Commission to answer the questions raised in its Terms of Reference by drawing inspiration from international inquiry practices and by taking into account all the distinctive elements of the mission with which it is charged. It does not follow that the Commission enjoys in this instance that absolute discretion which would allow it to formulate, in the matter of evidence, any rule which it approved. However autonomous and unique it may be, the Commission cannot completely disregard the general principles which, in every procedure, govern the search for truth and its establishment. This is not and has never been the intention of its members. Importantly, while the Commission recognizes that it is bound to respect the general principles to be deducted from converging national and international practices where evidence is concerned, it cannot be bound on this point by any particular rule which, in any state or organization, contains a specific formulation of these general principles.

2. Four special remarks need to be formulated in this connection:

(a) It is generally accepted that the person who takes advantage of a fact or a situation has the responsibility of establishing its existence actori incumbit probatio. The principle is not absolute and must be adapted to fit the nature and specific objectives of the authority before which this fact or situation is contested.

Since it is not a tribunal and still less a

repressive one, the Commission may not in this case reject the conclusions which are brought to its attention by the Petitioner, on the sole grounds that they do not seem to be fully justified from the viewpoint of the usual requirements. Without denying that the burden of proof usually falls to the Petitioner, it maintains that all the interested parties must collaborate in the search for truth, so that every aspect of these particularly tragic events may be brought to light as quickly as possible. In the absence of such cooperation, it may be that certain facts cannot be fully proved. However, the Commission does not believe that this one circumstance is enough to prevent it from presenting its conclusions on any evidence it deems to be highly probable, if not always irrefutably established, in view of persistent uncertainties.

The unusual importance of such cooperation in this instance must be emphasized, given the nature of the charges necessarily formulated against the USSR. One cannot but remark that, despite the appeals addressed to them, the Ukrainian and Soviet authorities have not yet agreed to help the Commission to establish the full facts of the 1932-33 famine. This is something which the Commission deeply regrets. It stresses that, in view of the gravity of the accusations brought against the persons governing the USSR at that time, its present leaders have an outstanding duty to ensure that the truth, however cruel, be clearly established. It is perhaps understandable that today's leaders should refuse to appear before judges who have no proper right to judge them. We repeat that this is certainly not the role of the Commission which, at the request of the World Congress of Free Ukrainians, has been given one task: that of verifying whether a famine situation existed in Ukraine in 1932-33 and whether it presents the characteristics attributed to it by the applicant.

b) In accordance with the general principles usually applicable, the Commission has the right to determine the admissibility of the means of proof which are submitted to it.

The Commission has no intention of rejecting any form of proof, although the weight of each will obviously vary. The simplest course would undoubtedly have been to launch an inquiry on the spot, including a detailed analysis of Ukrainian and Soviet archives. It was impossible to carry out this type of inquiry; the failure

of the Ukrainian and Soviet authorities sufficed to make it not feasible.

Since any enquiry in situ is ruled out, at least for the moment, the Commission first consulted documentary material in order to establish the contested facts. This material is largely composed of the books and studies which have been written on the events of 1932-33 in the last twenty years and were officially submitted to the Commission by the applicant. In some cases, their authors were heard by the Commission during its meetings in Brussels and New York, thus enabling the members to more easily verify the credibility of these sources.

To these works of a scientific nature must be added various press articles as well as the reports or, more extensively, the correspondence of several diplomatic missions accredited to Moscow at the time, or of some of the consulates established in Ukraine. Strictly speaking, these documents may not actually prove the facts which they simply evoke from different angles. However, the Commission believed there was no reason to ignore this material which can be of great interest, especially when it corroborates the existence of facts for which prima facie evidence from other sources may have been provided.

To complement this documentary material, and at the request of the applicant, the Commission proceeded to examine many witnesses. These are mostly persons who survived the 1932-33 famine and subsequently left the Soviet Union. Here it must be clearly stated that these persons, often advanced in age, could not be expected to have very precise memories of events which took place more than half a century ago. But this, in itself, is not a reason for lending no credence to their testimony. The Commission, which respects the suffering of these witnesses, does not doubt their sincerity. That being said, the Commission felt that it could not accept, from their testimonies, what corresponded to mere opinions, either on the likelihood or unlikelihood of facts of which the witnesses had no direct knowledge; or on the validity of their explanations for a situation so complex that it was surely beyond the grasp of children or adolescents, in 1932-33.

Accounts of the events in Ukraine published in the Western press at the time can also be considered as evidence (although of a different kind) which helps to

establish the truth about the 1932-33 famine in Ukraine. These press articles must obviously be accepted with caution, considering the very difficult conditions which journalists then faced in the exercise of their profession. There was obviously no way of testing these sources. However, the Commission believes that this is not sufficient ground for dismissing the evidence of reports published by these journalists on facts or situations which they personally witnessed during their stays in Ukraine. The fact that these reports may be contradictory at times does not justify their rejection out of hand. Malcolm Muggeridge, who in 1933 published very full and quite detailed articles on the situation in Ukraine, deserves special mention in this connection. This witness was questioned first during an interview with Bohdan Nahaylo on March 1, 1983, and then by the Commission itself in the person of Professor Colonel Draper at Robertsbridge (England) on June 27, 1988.

In its search for truth, the Commission also relied on facts which may be considered widely-held public knowledge. Widely reported in the press and brought to the attention of world opinion, these facts no longer require specific evidence. They concern, in particular, the functioning of the Soviet system and Stalin's personality at the time of the Ukraine famine. It goes without saying that the Commission observed the greatest caution before retaining this material because the coherence and consistency of the regular commentaries on the subject call for rigorous verification.

(c) In virtue of general principles, it falls to the Commission to assess freely the authority of the various forms of proof which are submitted to its attention.

The Commission feels there is no need to describe the general criteria which governed its assessments. With due respect for the elementary conditions of an impartial, objective search for truth, it is in relation to all the circumstances of the case in point that the authority of the elements of proof provided was verified every time.

In this instance, there is no justification for lending special credence to certain elements of proof rather than to others. Nevertheless, the Commission wishes to stress the great weight it attributes to the declarations and other accounts emanating from the authorities themselves inside the Soviet Union. At the

time, these authorities never commented on the existence of any particular problems in Ukraine; on many occasions, they went so far as to categorically deny the existence of famine conditions. This is no longer true today. Political and scientific commentators apparently no longer dispute the fact that famine struck the Ukraine in 1932-33. The Commission cannot avoid giving considerable probatory weight to this "acknowledgment". This may be likened to an "admission" deserving of special authority, even though the Commission is in no way a tribunal and the procedure applied is in no way repressive. This "admission", of great importance in itself, is without doubt decisive when it corroborates facts whose existence or likely occurrence have been reasonably established by other means.

Currently within the Soviet Union there are admissions and denials. We have felt that greater weight should be given to admissions than to disavowals. The disavowals are more credible when the facts are not negated, but we feel free to disagree. Nevertheless, even though they may be less obstinate in denying the evidence now than in the past, the Ukrainian and Soviet authorities are still so involved in the matter that, by virtue of general principles, the special weight which must be accorded their declarations must be limited to aspects normally unfavourable to Soviet interests and arguments.

(d) This affair is particularly complicated because it deals with a situation which took place fifty years ago; many points remain obscure despite the fact that studies and analyses on the subject are becoming more and more numerous at the present time. After all, the Commission was set up because of these uncertainties.

This problem is all the more acute because, apart from language requirements, the archives of the Soviet Union on the years of the contested famine - supposing they were kept up to date - are still largely unknown. It is obvious that without an in-depth study of these archives, a categorical conclusion can never be reached, not as to the existence of the famine, but at least as to its causes and to responsibility-sharing. However important they may be, the archives kept in Western countries will never fill the gap to a significant extent. This is why, on several points, the Commission was forced to fall back on probabilities whose validity, however reasonable it may appear today, cannot be

entirely proven from all angles. This also explains why, at a time when profound changes are taking place in the Soviet Union, the Commission had to give special attention to the studies, declarations or other analyses now appearing in the Soviet Union on the subject of the 1932-33 famine and on Ukraine in general. Of course, the precise weight which these new elements deserve is still unclear. However, the Commission believes they cannot be ignored. Consequently, it refused to declare them de plano inadmissible, on the sole grounds that they were submitted after its public debates had been brought to a close. In view of the quite exceptional circumstances surrounding its mandate, the Commission decided to take into consideration, insofar as possible, any new fact brought to its attention in accordance with procedural rules, before the date of its final deliberations.

III THE FAMINE: THE FACTS

A. OVERWHELMING EVIDENCE

3. The existence of a famine situation in Ukraine between approximately August/September, 1932, and July, 1933, is no longer in doubt.

Although for years it was fiercely denied by the Soviet authorities, today the fact is almost universally accepted within the USSR.

(a) Testimony

4. The fact of the famine clearly emerged from the testimony of survivors who made statements before the Commission about their living conditions during the contentious period. Moreover, this testimony, whose sincerity is beyond doubt, is confirmed by other evidence supplied in other forums and brought to the attention of the Commission.

Whatever doubts, if any, are aroused by the explanations of witnesses on the situation prevailing in Ukraine in 1932-33, it is perfectly clear that Ukraine was undeniably in the grip of famine. It is true that the peasants sometimes suffered from food shortages. Nonetheless, the extreme dearth of food supplies described by the witnesses and at the origin of the frightful suffering which befell them cannot seriously be interpreted as the mere expression of an habitually hard life. In fact, such a conclusion would be all the

more implausible because the Ukraine peasantry was generally well-off, and its more privileged members were quite frankly rich.

(b) Press Reports (Western Countries)

5. The USSR authorities traditionally exercised strict control on the foreign journalists entering their territory. It was therefore difficult for representatives of the Western press to fully report on the catastrophic situation in Ukraine in 1932-33 and, besides, all access to the Ukraine and North Caucasus regions was prohibited in 1933.

It is understandable that reports on the famine raging in Ukraine were relatively limited in the Western press, but they are not lacking; far from it. Articles about the famine can be found, for example, in the Daily Telegraph, the Manchester Guardian, the New York Herald Tribune, the Figaro, the Neue Zuercher Zeitung, La Stampa, and all attest to the existence and extent of the phenomenon. These articles are admittedly by journalists who, in order to visit the Ukraine to investigate and send back reports, did not always respect the regulations applying to journalists in the USSR. However, one cannot conclude that these infringements of Soviet rules suffice to raise doubts as to the veracity of the facts which were reported.

The articles published by Malcolm Muggeridge in the Manchester Guardian in March 1933, and the studies published in 1934 by William Chamberlin, correspondent in Russia for the Christian Science Monitor, deserve a special mention in this respect. The reports of these journalists, whose integrity has never been questioned, leave no doubt as to the reality of a famine of which they had wide personal knowledge.

6. It is true that the press was not unanimous: some journalists - particularly W. Duranty and L. Fischer - even denied that a state of famine struck Ukraine in 1932-33. They did not hide the difficulties confronting the people especially with regard to food supplies, but they still categorically denied that Ukraine was hit by famine at that time. The position of these journalists can perhaps be explained by ideological sympathy which, in a context marked by the diplomatic isolation of the Soviet Union, wanted to forestall the erosion of the nascent Communist image. L. Fischer, who had no personal

knowledge of the facts he reported, later apologized in this connection. This is not true of W. Duranty, correspondent for the New York Times, who, despite his travels in Ukraine and North Caucasus, continued to deny the reality of a famine of which he must have been aware. It is particularly regrettable on the part of a well-known journalist who at that time had just received the Pulitzer Prize.

(c) Diplomatic Sources

7. On different occasions, the reports of Western consuls established in Kharkov, and, more generally, of the diplomatic missions accredited in Moscow, refer unambiguously to the famine situation prevailing in Ukraine from autumn 1932 to summer 1933. German and Italian diplomatic or consular reports in particular were brought to the attention of the Commission, which was also informed of the correspondence on the subject exchanged by the great Western powers.

These reports are not in all ways fully reliable as, in some cases, they do not display full knowledge of the related facts. Nonetheless, they unequivocally corroborate the existence of a famine situation, the extent and atrocity of which the Western states were fully aware.

Admittedly, there were foreign, official personalities who, like certain journalists, denied the famine situation. For example, after visiting the Soviet Union in August and September, 1932, the former French Prime Minister E. Herriot categorically rejected the existence of a famine in Ukraine and did not hesitate to blame journalists who maintained the contrary. Whether E. Herriot was sincere or not, his testimony cannot be taken very seriously because of the well-publicized arrangements for his five-day visit to Ukraine. According to Alexei Kalenyk, as explained by Mr. Liber, the visit was carefully prepared to give the best picture of Ukraine - about which the most alarming rumours had been circulating for many months - so, the trip could only lead to this conclusion.

(d) Soviet Sources

8. For many years, the Soviet Union passed over the existence of a 1932-33 famine in Ukraine in complete silence except for formal denials issued, when necessary,

by the authorities and the official press as well as by scientific and university circles.

As a consequence, in 1932-33, both the Ukrainian SSR and All-Union Soviet authorities openly denied the famine situation reported more especially by the Western press, and the grave accusations to which it gave rise. Moreover, it is clear, in the light of the testimony before the Commission, that people in Ukraine, through fear, felt required to maintain silence on the subject of the famine, even in schools, and that sanctions were inflicted on those who ignored the ruling.

This organized silence lasted for as long as Stalin ruled every aspect of Soviet political life. After his death, the fact that Khruschev denounced the grave injustices stemming from his predecessor's policies explains why allusions to the tragic fate of Ukraine in 1932-33 became more frequent. As a rule, the famine was still not explicitly mentioned, and convoluted expressions were used to disguise any embarrassing "confession". There were exceptions to this "prudent" behaviour. For instance, Roman Terekhov, a Ukrainian Party Secretary, dismissed in January 1933, published an article in the Pravda in 1964 declaring that he had personally warned Stalin of the famine existing in 1932-33. There is clear reference to the famine in Khruschev's memoirs. After his removal, their authenticity was questioned, but this is confirmed by his memoirs "Khruschev Remembers" in 1965. The famine in Ukraine is also described in barely veiled terms in I. Stadnyuk's novel, "People are not Angels", appearing for the first time in 1962 in the Leningrad Journal, Neva.

It took many years to complete the process of destalinization. In general, and understandably so, it was only after Mr. Gorbachev came to power that the existence of the Ukraine famine in 1932-33 seems to be widely accepted today, even by Soviet officials, regardless of the divergent opinions on the causes and extent of the famine and the responsibilities involved. See as examples, the letters to the editor of Ogonek of January 9 and 16, 1988, and of March 19 and 26, 1988, as well as the articles published by Professor S. Kulchytsky in News from Ukraine (issue dated February, 1988), and submitted to the Commission by the Petitioner.

It is true that the gravity of the famine is still

being denied in certain quarters, as is seen, for example, in an article by Jeff Coplon in The Village Voice, January 12, 1988, concerning a book by Doug Tottle, "Fraud, Famine & Fascism". The Commission tried, without success, to have Mr. Tottle testify before the Commission.

(e) Scholarly Works

9. The Commission notes that in the last twenty years or so there has been an increase in the number of scholarly works and scientific studies on the Ukraine famine of 1932-33. These works were brought to its attention by the applicant and by the General Counsel. The Commission examined these sources very carefully and some of their authors, such as Messrs Conquest, Kosinski, Luciuk, Mace and Slavutych, appeared publicly at the hearings in Brussels or in New York.

The Commission did not assess specifically the scientific merit of these works. It does observe that they are in complete agreement on the existence of the famine.

It is a fact that these studies are often the work of specialists of Ukrainian origin or were funded by sponsors in the Ukrainian diaspora. For this reason, caution was taken before accepting any conclusions which might be suspected of partiality. The Commission cannot systematically reject the results of these studies which have been confirmed.

B THE EXTENT OF THE FAMINE

10. We have examined the extent of the famine, which broke out in Ukraine in 1932-33, from three perspectives: (a) duration; (b) geographic location; (c) number of victims.

(a) Duration

11. The nature of events makes it almost impossible to attribute a precise day to the beginning and end of the Ukraine famine of 1932-33, and this is understandable. With that proviso, all the sources seem to agree on the broad sequence of events: the famine appeared at the end of summer 1932, reached its peak by the beginning of spring 1933, and came to an end in the early summer of 1933. This is the consensus of all the depositions taken

by the Commission, whether they come from survivors or from experts; their position is also clearly borne out by all the literature on the famine.

It is obvious that the famine was a gradual phenomenon. Its precursory signs appeared early in 1932 and were the easily foreseeable culmination of the attacks Stalin launched against the peasantry in general and Ukraine in particular, from the end of the previous decade. The successive grain procurements imposed on Ukraine significantly reduced the population's food supplies. A decisive blow was dealt them in July, 1932, when Moscow imposed a quota of 7.7 million tons of grain. Later, this quota was reduced to 6.6 million tons at the demand of the Third All-Ukrainian Party Conference. But even this reduced quota was manifestly beyond the capacities of a population which, despite a fairly good harvest, had gradually been reduced to the famine conditions which appeared in Ukraine in early autumn 1932. Incidentally, it is worth noting that at the opening session of the Third All-Ukrainian Party Conference in July, 1932, S. Kossior, First Secretary of the Ukrainian Communist Party, had officially referred to the alarming shortage of food.

From all the evidence received, it emerged that the famine was at its most terrible in March, 1933, even if other dates are sometimes put forward (end April, for example). Sorely tried by the harsh winter and having exhausted the last stores of food which they had managed to save from the requisitions, the peasants starved to death in great numbers. Postyshev's appointment to the post of Second Secretary of the Communist Party, in January, 1933, seems to have aggravated the situation; it was followed by the reinforcement of the measures directed against the Ukrainian population, and this led to the most appalling sufferings in the early spring of 1933.

Just as it took many months to implement the conditions which brought about the famine, so it took many months before the famine came to an end. Witnesses and experts agree, however, that by the end of April/early May, 1933, the grain requisitions were temporarily halted, or at least considerably reduced. Food rations were distributed, though not on a regular basis, to the survivors who were allowed to gather the fruits of the year's first harvests. Famine conditions may therefore be said to have disappeared by the

beginning of summer 1933, although it would take years to mitigate the tragic consequences of more than ten months of total privation which caused death on a massive scale.

(b) Geographic Spread

12. From all the depositions received by the Commission, as well as from the studies brought to its attention, it is clear that the famine covered, without exception, all the territories within the political frontiers of the Ukraine Republic. Localities inhabited by people of non-Ukrainian origin were not spared. Their fate may not have been absolutely identical to that of localities with a Ukrainian majority, although no serious proof of such differentiated treatment has been put before the Commission.

13. The famine was not confined to Ukraine. In 1932-33, it also struck other regions of the Soviet Union, mainly Kazakhstan, the Don and Kuban areas of the North Caucasus Territory, along with the Volga basin and some parts of Western Siberia.

Chronologically, Kazakhstan was the first territory affected by famine. Inhabited for the most part by nomadic herders of Turkish origin, the region showed very early signs of strong resistance to the forced collectivization of agriculture implemented by Stalin. The famine appeared here in the first months of 1932 and apparently caused even greater suffering than in Ukraine. Remember that when they had slaughtered their last cattle to feed themselves and escape official requisitions, these nomads - in contrast to the Ukrainian farmers - could not count on food crops, no matter how inadequate, because they did not grow any.

Generally speaking, the North Caucasus Territory experienced a very similar situation to that of Ukraine. The Don and Kuban regions, with a majority of Cossacks, were the worst hit by the famine. Following the Bolshevik Revolution, autonomous Cossack republics were founded in this territory to satisfy the traditionally strong nationalistic sentiments of the inhabitants. These republics were dissolved on July 18, 1923, and the Cossacks were known mandatorily as Russians or Ukrainians depending on their ancestry. Moreover, a policy of Ukrainization was systematically enforced in much of Kuban after 1923. In these territories, the measures

taken by the Soviet authorities during the famine faithfully reproduced those which were then being applied in Ukraine and seem to have been aimed at regions with an ethnic Ukrainian majority.

The 1932-33 famine also struck in the Volga basin inhabited by peoples of mixed ethnic origins. People of German origin living in the region since the eighteenth century, and regrouped in the Volga German Republic instituted after the Bolshevik Revolution, seemed to have been particularly affected. It is said that Stalin had always regarded them with deep mistrust bordering on open hostility.

14. Although the famine was mainly concentrated in Ukraine or in territories with a Ukrainian majority, it is beyond doubt that other regions with different ethnic majorities were among its victims; the famine apparently reached maximum intensity in Kazakhstan. Further, there is little or no evidence that the territories with Russian majorities suffered famine. It is striking that Belorussia, adjacent to Ukraine and with very similar general characteristics, mutatis mutandis, escaped the famine.

We know of no explanation as to why the Russian territories escaped the famine in this way. They had not been spared ten years earlier, during the 1921-22 famine.

(c) Number of Victims

15. There are no exact records of the number of victims claimed by the 1932-33 famine in Ukraine and, hence, of the number of people who died. In his memoirs, Khruschev, quoted by J. Sopinka in his opening statement to the Commission, declared:

> "I can't give an exact figure because no one was keeping count. All we knew was that people were dying in enormous numbers".

It is generally accepted that the figures were extremely high. The Commission might have contented itself with this widely-accepted finding but, since it was requested to verify the exact extent and effects of the famine, it felt it should go into the matter more deeply.

16. The first problem is one of method. In the absence of reliable registers, it is important to agree on the

method which would enable a credible estimation of the number of victims. An evaluation of this kind can be made in several ways. One can, for instance, make sample counts and make extrapolations for the whole of Ukraine. Pavlo Hlushanytsia defended this thesis before the Commission. Considering that in his village (Novoselytsia in the Popelianskyj district in Jhytomyrska oblast), 42% of the population died as a result of the famine; he estimated at 16 million the total number of victims in Ukraine. It hardly seems possible to use this method since so few admissible samples are available. The results to which it leads are scarcely more credible than many unauthorized estimations without the slightest objective foundation. For example, in a letter to Sir John Simon dated July 17, 1933, W. Strang writes:

> "Unauthorized estimates of the number of people who have died, either directly or indirectly, from malnutrition in the past year vary up to as much as the fantastic figure of 10,000,000".

Similarly, Dr. Schiller, the agricultural attache of the German Embassy, put the number of famine victims at 6 million people, according to a letter dated July 13, 1933, from the Italian Ambassador in Moscow to his Minister of Foreign Affairs.

The Commission sees no point in reviewing all the conceivable methods which might be applied and were brought to its attention. It need only observe that, in order to justify their estimates, all the most reliable experts used a demographic method based on an analysis of the results of the censuses carried out in the Soviet Union before and after the famine. Two censuses are particularly valuable in this respect. The first took place in 1926, i.e. six years before the famine began, and recorded 31,195,000 Ukrainians out of a total population of 147,627,900 people in the Soviet Union. The second census took place in 1939, i.e. six years <u>after</u> the famine; it recorded 28,111,000 Ukrainians out of a total population of 170,557,100 inhabitants. The population of Ukraine had therefore declined, in thirteen years, by 3,084,000 people; that is, by 9.9%. The decline contrasts sharply with the rise of 11.3% in neighbouring Belorussia (a difference of 20.2%) and of 15.7% for the Soviet Union as a whole. The difference of 21.9% in Kazakhstan is even more significant.

Scientific circles in the Soviet Union and in the West generally maintain that the figures obtained by the 1926 census are too low. Conversely, the results of the 1939 census are widely taken to be overestimated. The excess population could be explained by the desire of the census officials, for fear of sanctions, to register a population increase of satisfying proportions in the light of the progression, deemed inevitable, of a Communist society. It is true that the results of a census carried out in 1937 were destroyed, or at least not published, because they were judged politically unacceptable and its authors were shot for plotting to discredit socialism by an obvious underestimation of the population of the Soviet Union. This precedent certainly incited their successors to act prudently.

17. The primary data provided by a comparison of the censuses must be corrected in relation to several factors, such as the overall population growth rate and the number of victims of dekulakization, before establishing an acceptable evaluation of the number of famine victims.

The Commission does not intend analyzing all these correctives in detail. It is not its role as a Commission of Inquiry to put an end to the controversies to which their utilization might give rise. It is content to observe that the experts are not unanimous about these correctives, and this explains their variable estimations - 4.4 million (Maksudov); 4.5 million (Kosinski); 5 million (Conquest); 7.5 million (Mace). Despite the many explanations received on this point, the Commission does not feel able to choose between one or other figure. It is clear, however, that the number of famine victims in Ukraine was at least 4.5 million, something which no one disputes. To this figure must be added the famine victims outside Ukraine. These are generally estimated at 3 million, of which 1 million respectively in Kazakhstan and North Caucasus. The 1932-33 famine would therefore seem to have claimed at least 7.5 million victims; this figure may be underestimated and is certainly so in the light of conclusions upheld by some experts.

18. To the direct victims of the famine must be added all the other victims of Stalin's policies and, in particular, dekulakization, in order to fully evaluate the losses inflicted on the Ukrainian people at that time.

C THE CAUSES OF THE FAMINE

19. The excessive grain procurements (b) in July of 1932 were the immediate cause of the famine which broke out in Ukraine in the autumn of that year. It has been charged by the Petitioner that deeper roots are to be found in the forced collectivization of agriculture (c), and in the dekulakization (d) undertaken for many years by the Soviet authorities; and by the keen desire of a centralizing government to combat traditional Ukrainian nationalism.

Before dwelling on these various causes, some general considerations can usefully be mentioned here (a).

(a) Introduction

20. However exceptional it was in every way, the 1932-33 famine is not without precedent in the history of Ukraine.

We would refer, in particular, to the famine which broke out in the summer of 1921 and lasted almost two years. It is similar in some respects to the 1932-33 famine, but the two famines cannot be mistaken one for the other. The 1921 famine spread all over Russia as well as Ukraine; secondly, it can be broadly attributed to unfavourable climatic conditions even if the drought is not enough to explain it away. Lastly, the 1921 famine was officially recognized by the Soviet authorities who appealed for foreign aid to overcome it.

It is possible, if not probable, that at that time the Soviet authorities tried to profit from the misfortune caused by the famine, to strengthen the power of Moscow and Communist rule. This stand may explain the delay in officially recognizing the Ukrainian zones devastated by famine, and in dispatching essential relief supplies. It is surely not impossible that the Soviet Government, in these circumstances, felt that the famine could serve as an effective tool, however odious, for policy implementation. Seemingly, this was Lenin's idea when, in 1891, he opposed relief for the Volga regions affected by famine (he was living there at the time) on the grounds that the sufferings inflicted would help to make the masses more radical, more in favour of the advent of Communism. During cross-examination of

Professor Conquest by the General Counsel to the Commission, he recalled this as Lenin's position. In any case, there is no possible comparison between the advantage expected a posteriori during the 1921-22 famine and the systematic policy which, intentionally or not, led to the famine ten years later. It is of secondary importance that no drought, like the one which struck in 1921, was observed in 1932, with the exception of the adverse weather conditions in Kazakhstan in 1931.

21. It is paradoxical that the famine broke out in one of the richest regions of the USSR. At that time, Ukraine alone supplied almost 30% of Soviet resources, although it only represented 3% of Soviet territory and 20% of its population. Agriculture had always flourished in Ukraine, and this explains the importance of the grain procurements which were the immediate cause of the famine in the autumn of 1932 (their role was more limited, though present, in the 1921-22 famine).

The very serious difficulties of the Soviet economy in the early 1930s must be mentioned here. After the period of "war Communism" when the authorities tried to introduce immediately and without preparation a rigorous Communist system implying the radical suppression of all private property, Lenin was forced to adopt a more flexible policy to avoid total economic disaster. He therefore launched the NEP (New Economic Policy), which was proclaimed on March 15, 1921, at the Tenth Congress of the Communist Party and signalled a halt to forced socialization. The NEP was most beneficial to Ukraine, allowing it to gradually repair the devastation caused by the war and the revolution. However, the policy was abandoned by Stalin when he seized power after Lenin died. Although it was not formally abolished until December, 1929, the NEP gave way in 1928 to the first Five Year Plan (piatylitka), whose aim was to set up a centralized economic system with the collectivization of agriculture and the accelerated industrialization of the Soviet Union. The famine broke out in Ukraine before the plan came to an end.

There is, of course, no necessary link between this economic policy and the famine, any more than between the famine and Communist ideology. Neither Communism nor economic centralization could starve the people of Ukraine in 1932. Nevertheless, we do not overlook the high cost to the Soviet Union in the 1930s of a programme of industrialization essential for its economic

development and independence vis-a-vis the highly industrialized Western powers. This cost is related to the massive imports of technology without which rapid industrialization was doomed to failure. It presupposes that the USSR would earn from its exports the resources needed to shoulder this expenditure. Among these exports, agricultural products such as wheat and maize play a very important role, and Ukraine was undoubtedly their main supplier.

It is easy to understand the principle whereby the Soviet authorities, for national purposes, tried to obtain by procurements the crucial resources for their industrialization plan; moreover, its implementation had to be speeded up in the fear - not entirely groundless - of a stranglehold by capitalist countries. Need it be pointed out, however, that this situation cannot justify the conditions in which these procurements were later carried out? It is also understandable that the policy of industrialization led to the promotion of urban life at the expense of the countryside, and accentuated the traditional mistrust of the Communist leaders toward the peasantry. The construction of Communist society was indisputably accompanied by increased urbanization which the need for industrialization necessarily strengthened. Many rural peoples were gradually concentrated in towns and cities - official control was easier here than in the country - and converted to industry. These citizens, now city dwellers and workers, were forgetful of the traditions of independence of the peasantry and accepted orders with greater docility. There is no doubt that this logic could hardly be favourable to Ukraine; here the peasants, prosperous and much more individualistic by tradition than other peoples, were ill-suited to the classic schema of proletarization linked to industrialization and to the urbanization fundamental to the building of a new society through the dictatorship of the proletariat.

(b) Grain Procurements

22. The grain supplies imposed on Ukraine in July, 1932, constitute the immediate cause of the famine which broke out two months later. As was already stressed, the level of procurement was much too high and, in the absence of outside relief, was bound to lead to dramatic food shortages.

The system of procurement in kind is not exceptional

in itself. There are many precedents: the imposition may take the form of a tax, a payment or an exceptional contribution required in a state of emergency. The Soviet Republic, like the Czarist Empire, had recourse to it on many occasions.

A decree "on the monopoly of food" of May 9, 1917, authorized the Commissariat of Food to requisition any grain exceeding twice the farmers' needs. In 1919, the amounts to be collected were based on the sole needs of the state, without consideration for the farmers' resources. Food detachments were created to carry out these procurements, in application of a decree of May 27, 1918. They worked with great brutality and in a most arbitrary fashion. These measures may have been justified in time of war, but they were also rooted in Lenin's will to ensure transition from capitalism to socialism, by this expedient.

NEP implementation marked the end of these brutal methods. The procurements lasted but became "gentler" in the form of "voluntary" food sales at agreed prices to the state. This "soft" procedure allowed the authorities, at least in the beginning, to collect essential supplies without too much difficulty. In 1926, for example, 3.3 million tons of grain were raised, representing 21% of the overall harvest, which was excellent on the whole. In 1927-28, the Soviet government reverted to the practice of forced procurements. The change can doubtless be explained by the need to increase grain collection considerably, while avoiding refusal on the part of farmers who might withhold voluntary contributions, since quotas had been stepped up. The reason for this escalation is not quite clear. It was said that the global food needs of the peoples of the Soviet Union had risen, but it is more likely that the authorities wanted to increase export earnings in order to finance imports essential to the implementation of an accelerated industrialization programme. It is also likely that they were attempting, by the high level of procurements, to break the farmers' resistance to the forced collectivization of agriculture ordained by Stalin in 1928.

In 1930, the quota imposed on Ukraine was fixed at 7.7 million tons. Thanks to an exceptionally good harvest, the quota was filled, though hardly any grain was left for storage. The same quota was maintained in 1931, but was not filled because the harvest was bad.

Notwithstanding, 7 million tons were requisitioned, and this seriously diminished the farmers' resources. Yet, the very same quota was demanded in 1932, although it represented more than 50% of the annual harvest in Ukraine. The procurement was clearly disproportionate, and this was stressed in public by Ukrainian leaders such as Stanislav Kossior, Mykola Skrypnyk and Panas Lyubchenko at the Third All-Ukrainian Party Conference which met from July 6 to 9, 1932, in the presence of Kaganovich and Molotov, Moscow's official representatives. A reduction of 1.1 million tons was granted, but even this lower figure was beyond the capacity of the Ukrainian peasantry. In the end, only 3.7 million tons were collected by the authorities, despite the immense efforts undertaken to squeeze their last supplies from the farmers, gradually stricken by famine.

23. The principle of the technique is extremely simple: it consists in imposing on collective farms (and on individual peasants who might have temporarily escaped collectivization) a compulsory quota of grain to be delivered to the state, without regard for all their other personal needs or resources. In theory, supplies were to be paid, but the price offered was ridiculously low. In 1933, for example, it came to 4 or 5% of the price which was obtainable on the free market.

The procedure was governed by rules and regulations leaving no further doubt as to its formal legality. The quotas were fixed in Moscow by a Planning Commission without regard for the real situation of the interested parties, and additional supplies could be demanded if necessary. Various measures were gradually adopted to reinforce the efficiency of the process, especially from 1932 onwards, in the form of regularly-revised decrees, depending on needs and circumstances. From the documents submitted to the Commission, it is clear, for example, that:

- the collective farms (kolkhoz) as well as individual farmers were forbidden to store grain for their personal needs or to sell grain on the free market, until the imposed quota had been handed over in its entirety;
- orders were given to search farms in order to find the grain which had been fraudulently subtracted from the procurement quotas;

- the peasants were forced to pay in kind any services rendered, such as the use of tractors and other equipment and the grinding of grain, and this aggravated food shortages;
- the kolkhozes were forbidden to supply their members until the seed reserves fixed by law had been officially stored.

The system was rapidly applied to other foodstuffs such as meat, milk, butter and wool, and developed along similar lines. Its implementation also seems to have met with great difficulties. The logic justifying the grain quotas can explain why it was stretched to cover other foods, but the possible utility of these supplies for the authorities is in many ways less evident. It must necessarily be some desire to crush the peoples concerned which overrides objective needs, in order to justify the generalization of the procurements.

24. The plainly exorbitant nature of these compulsory supplies led inevitably to famine, since the peasants no longer had the food to meet subsistence needs.

The Commission noted that, among other survival strategies, the peasants were obliged to hide as much food as possible and to eat the reserves of seed grain set aside for the next sowing season. Both reactions aggravated their condition.

The fact of hiding the grain and food in general gave the authorities a basis for searching people's homes, and this was the occasion for all kinds of abuse and ill-treatment that terrorized the people.

In addition, the total or partial disappearance of the grain stored for seed irrevocably compromised any hope of overcoming such extreme shortages. The authorities used this danger as a pretext for increasing the misery of the people in the autumn of 1932.

25. The local administrative authorities, under the orders of the usual higher-ranking officials, seem to have been formally in charge of the procurements. In effect, the "activists" (aktyv) held a role of considerable importance. Their part was crucial in 1932-33 when the peasants, in the throes of extreme misery and despite the compulsory procurements, tried to hoard the meagre supplies which would have allowed them

to escape the famine.

Whatever their responsibilities, these activists do not seem to have enjoyed any very precise formal status. Basically, they were individuals who were devoted to the Communist cause and who were prepared to carry out any task, despicable though it might be, to ensure that decisions were followed and that the policies defined by Moscow were executed. Very frequently these activists were former members of the committees of poor peasants (komnezam) or workers sent from the towns to supervise the execution of Moscow's orders in the Ukrainian countryside, especially as regards collectivization ("25-thousanders"), or dropouts such as alcoholics and thieves who, by and large, had been rejected by the local bourgeoisie. None of them commanded respect in a society which was fundamentally opposed to the new orientations of Soviet policy. It is clear that this situation did not facilitate the application of the grain procurements.

Generally, these activists formed brigades, called "buksyr" brigades or tow brigades. Apart from one or two "ordinary" members, these brigades consisted of a member of the Party, a member of the local Soviet, one or other young Communist, a student or two on vacation, and the local schoolmaster if he was a Communist. The use of these brigades seems to have been commonplace from the early days of the famine.

The activist methods became more and more brutal from autumn 1932 onwards, as is shown from the great number of depositions admitted by the Commission. House searches to discover hidden food gave rise, in particular, to ill-treatment and humiliations of all kinds. They were usually carried out at night and were accompanied by robbery and destruction of property, as well as by physical outrage. The aim was apparently to terrorize the population. The deeper Ukraine was plunged into famine, the more the requisitions were accompanied by abominable acts of violence. The Soviet authorities were informed of these brutalities which - to take one instance - were openly denounced in a letter addressed to Stalin on April 16, 1933, by Mr. Sholokhov, who, however, did not question the very principle of forced procurements. His protest was in vain, although in his reply Stalin promised that the authors of senseless acts of violence would be punished, but at the same time he denounced the existence in Ukraine of a campaign of sabotage aimed at depriving the Red Army and the workers

of bread.

The activists do not seem to have been affected by the famine. They even had permission to keep for their own use some of the grain and other food which the peasants had saved by cheating and which was discovered during house searches. This permission only served to heighten the activists' brutal zeal.

26. While awaiting transportation, the requisitioned grain was stored in warehouses or simply stacked in situ near railway stations. As the famine grew worse, the peasants, now totally without food, were irresistibly attracted to these stores. It is understandable that the starving tried to steal the food they needed to survive, and even to take possession of it by brute force.

As the disturbances spread, the authorities called in the army to guard the stocks, and the soldiers, usually Russian or at least not Ukrainians, did not hesitate to use their arms to safeguard the procurements. By virtue of the decree of August 7, 1932, on the safeguard of socialist property, provision was made for very heavy penalties, including death and the confiscation of all possessions, against those who tried to get hold of the grain or other food belonging to the state.

From concurring testimonies, it emerges that these warehouses or other stockpiles were literally overflowing with grain which often rotted on the spot despite the dire food shortages of the local population. Perhaps administrative disorganization was at the bottom of this paradoxical situation, but it does suggest that the authorities were not so acutely short of the grain amassed as to justify its compulsory delivery.

27. Different sanctions were permitted by law to guarantee the proper functioning of the procurements system. They were extremely heavy for the most part and were often carried out with great brutality. The elementary guarantees of a fair trial seem to be entirely absent. It appears that no consideration was given to the state of necessity which might have explained why the procurement order had not been fully respected.

A decree of December 6, 1932, organizing the black-listing (chorna doshka) of the villages considered guilty

of sabotage deserves a special mention. This measure entails:

- the immediate closing of the state and cooperative stores, and the removal of all their supplies;
- a complete ban on all trade, be it by collective or by individual farms, or by their members;
- the immediate termination of all credits and advances, and their compulsory repayment;
- the purging of all foreign and hostile elements from cooperative and state apparatus;
- the purging of all "foreign elements" and "saboteurs of the grain procurement campaign" from the collective farm.

Originally, six villages were blacklisted in this way. On December 15, 1932, the measure was extended to 88 whole districts (raions) out of the 358 in the Ukraine at the time. Some authors mention 82 villages on December 13. The inhabitants of these districts were deported en masse to the north.

28. The practice of grain procurements was not restricted to Ukraine; in fact, it spread through all the agricultural territories of the Soviet Union.

However, it was argued before the Commission that Ukraine had to ensure a disproportionate share of these forced grain procurements in relation to its production. Quoting a study by V. Holubnychy, J. Sopinka, in his opening statement, declares that in 1936, 38% of the total quota for the Soviet Union fell to Ukraine, whereas its production only represented 27% of total output. Overall, this imbalance does not seem to be disputed by the experts whose studies were brought to the attention of the Commission.

This disproportion might be objectively justifiable, but the Petitioner sees here an indication of a determination to harm Ukraine in particular.

In any case, it is clear that the notable dependence of Ukraine on agricultural production could only heighten the harmful effects of a policy of grain procurements which directly attacked its main source of wealth.

(c) Collectivizaton

29. The abolition of private ownership of the means of

production is one of the axioms of Marxism, as understood in the Soviet Union at the time. The meaning of "the means of production" is necessarily not fixed and therefore it does not imply the collectivization of agriculture. However, the axiom may easily lead to collectivization.

For a long time, the Soviet authorities adopted a very prudent attitude in this connection, for fear of stirring up hostility on the part of the countless peasants who had taken advantage of the Czarist regime to carve up the great estates. Immediately after the Bolshevik Revolution, in a 1917 land decree, it was stated that the most just solution would consist in the conversion of all land "to the use of all who work on it" and that the "form of land tenure must be completely free ... as may be decided by individual villages." A 1918 decree on the "socialization" of the land emphasized the merits of collectivization but did not impose it, limiting itself basically to organizing the land distribution described in the aforementioned decree of 1917. Despite the rapidly-deteriorating relations between the authorities and the peasantry, the authorities merely promoted a collective regime which they supported, and little change occurred until 1928. State publicity in favour of collective farming does not seem to have been very successful because, according to Professor Conquest, by mid-1928 less than 2% of households belonged to the kolkhozes.

State policy changed radically in 1928. The adoption of the first Five Year Plan and the abandoning of the NEP were accompanied by the decision to collectivize agriculture by compulsory measures. To begin with, the authorities were content to incite the peasants in various ways to volunteer to join the collective farms, but without forcing them to do so. In the autumn of 1929, collective farms still only represented 5.6% of households and 3.7% of Ukraine's arable land. In November, 1929, the Politburo decided to speed up the process, but without exaggeration: 20% of the arable land and 30% of the households had to be collectivized by the end of 1932. Four months later, in February, 1930, the official attitude hardened. Total immediate collectivization was proclaimed, and this is why by March 1, 1930, the kolkhozes controlled 69% of the arable land and 63% of the peasant households.

The publication in the Pravda of March 2, 1930, of

a speech by Stalin entitled "Dizziness from Success" marks a pause, no doubt justified by the very strong resistance to collectivization and dekulakization in Ukraine. The peasants were given permission to leave the collective farms, and they did so as a body. This was only a temporary tactical retreat. From the end of the year, forced collectivization returned, and by the end of 1931 it affected 70.5% of all farm households. This proportion explains why almost three-quarters of the Ukrainian peasantry were under the kolkhoz regime when the famine broke out in 1932.

30. Collectivization was, in the first place, a reflection of politico-ideological motivations. It became compulsory when it was realized that it would never be carried out on a "voluntary" basis, despite the incentives employed.

Collectivization was bound to attract a political power seeking to exert strict control over individuals, because the changes in social behaviour which it implies promotes a system of surveillance which the Soviet authorities strongly favoured right from the beginning. It is also possible that the same authorities sought to settle the nomads whose presence has been a constant source of annoyance for modern states. At least this settling process resulted from the measures taken, with disastrous consequences for the Kazaks.

Lastly, collectivization was of undeniable economic interest, at least a priori; on the one level. It meant that viable production units could be established, doing away with the innumerable small-holdings unable to reach a minimum threshold of productivity; on another level, it would allow control over all the capital available for the economy, with the aim of orienting it, for example, towards industrial development.

On the other hand, it seems that collectivization never pursued declared ethnic or racial goals, and this standpoint was not defended before the Commission. Several experts, including Professors Chirovsky, Conquest and Slavutych, do not apparently dispute the fact that collectivization was used to break partisan nationalisms, condemned as "petit bourgeois" and representing a long-term threat to the cohesion of the Soviet state. This goal was not limited to Ukraine. It is probable, however, that Ukraine was a region particularly well-suited for implementing this policy, insofar as the

territory was known for its fiery nationalism and its dominant peasant class. In such circumstances, collectivization meant crushing the peasantry, "traditional cradle of Ukrainian nationalism".

31. So long as it remained optional, collectivization demanded no particular enforcement, so that the authorities relied on various ways of encouraging the peasants into the kolkhozes.

A very "soft" method was used in the early years of the first Five Year Plan. The goals were fixed by decree depending on the regions involved, but there was no provision for forced implementation in order to bring about coercive collectivization. The official discourse became more and more pressing as, thanks to dekulakization, the gap widened between the Ukrainian peasantry and the Soviet government. Persuasion gave way to intimidation, and individual farmers were increasingly subjected to harmful, discriminatory measures, chiefly fiscal in character. In the early '30s, the methods used were definitely brutal, and violence was systematically utilized when the sort of truce decided by Stalin after his speech of March 2nd came to an end. It is beyond doubt that the privileged treatment given the kolkhozes obviously incited individual peasants to become members, even if these collective farms did not escape the famine in the end.

At first, the authorities sent travelling representatives into the villages to convince the peasants to join the collective farms. This campaign was considered inadequate, and a decree of 1929 therefore announced the recruitment of 25,000 proletariat volunteers (the "25-thousanders") who, after brief training, would go and preach the virtues of collectivization to country people. The recruits were engaged for a year to start with, but were given permanent employment from the end of 1930. The volunteers were almost all workers. Those sent to Ukraine were Russian or at least non-Ukrainian for the most part - a factor which did little to reinforce their credit in the eyes of the local population. From 1930 onwards, they were assisted by millions of soldiers and by workers temporarily posted to villages by the authorities.

Growing popular resistance to collectivization and dekulakization, especially in Ukraine, would incite the

"25-thousanders" (their number was actually much higher) to rely on tougher and tougher methods which became decidedly brutal. Since they had great difficulty obtaining their promised salary, they were encouraged to turn to local sources for substitute payments, and this did not improve relations with the peasantry. When the famine broke out, they allied themselves with the local activists to ensure both the respect of grain procurements and the collectivization of agriculture.

32. In Ukraine in particular, collectivization and dekulakization met with very fierce resistance, which could only aggravate the brutality of the procedures used to enforce them. Very many acts of resistance were put before the Commission and bear witness to the extreme hostility towards collectivization and dekulakization. Resistance included such acts as:

- the slaughter of cattle, the destruction of harvests and setting fire to farm buildings;
- the murder of party members and of other officials in the villages;
- anti-kolkhoz demonstrations which often attracted several thousand people and were almost insurrectionary in character, on more than one occasion;
- armed local rebellions;
- the revolt of the women who tried to get back their collectivized belongings and to leave the kolkhozes ("babski bunty").

This resistance was implacably repressed by the authorities, who did not hesitate to make widespread use of armed force. However, resistance was not confined to the peasants marked out for collectivization.

Early on, the Ukrainian Communist Party itself was acutely reluctant to implement a policy of which its members widely disapproved. Hence the purge which followed in 1929-30 and led to the exclusion of 21,000 party members, or more than 50% of total membership. Moreover, by July, 1932, 80% of party raion secretaries had been removed.

Finally, collectivization encountered fierce opposition at the very heart of the Politburo, specifically from Zinoviev, Radek and Rykov. According to Professor Chirovsky, this explains why they were liquidated by Stalin.

33. Collectivization was never limited to Ukraine, as this would have been contrary to a basic tenet of Marxist-Leninism concerning economic and social organization.

Nevertheless, it seems that it was in Ukraine that forced collectivization was implemented most rapidly, at a pace which was achieved at virtually no other time or place, as appears from evidence laid before the Commission.

It also appears that it was in Ukraine that collectivization provoked the fiercest resistance. This could be explained by the objective resources which only Ukraine had at its disposal. However, it seems that more fundamentally the Ukrainians have always manifested great individuality, a fact which explains, in essence, their natural resistance to any form of collectivization. It should be noted here that Ukraine never knew the semi-collective (collectivist?) formulae of the "mir" or the "obshchina" which were practiced in Russia under the Czarist regime.

Even if it is probable that the Soviet authorities used collectivization to try to crush nationalist tendencies, it does not seem, however, that in this respect Ukraine was a special case, subject to the reservation that national sentiment there was particularly strong and was supported by a peasantry whose destruction was the objective of collectivization and dekulakization.

(d) Dekulakization

34. The "kulak" (in Ukrainian kurkul) was in principle a rich peasant in the top stratum of a Ukrainian society traditionally divided into three categories: kurkuli, seredniaki, and bidnyaki. These were, however, very loose categories which varied from region to region.

No precise definition has been given of the kulak even if, in global terms, the notion relates to the most prosperous peasants. Progressively, it was the employing of salaried staff which seems to have become the determining factor in the circumstances, even if originally the term appeared to mean a local money-lender.

A very precise estimate of the number of kulaks has

never been made. Most experts consider, however, that when Stalin took power, the kulaks comprised between 3 and 5% of the total population of the USSR.

In Ukraine, the kulaks (kurkuli) were at the very centre of social life. It was not that they had a monopoly on wealth; far from it. It was that, in exemplary fashion, they expressed the identity of the Ukrainian people whose language, culture and structures - particularly the religious ones - they preserved intact. It was among the kulaks that the national feeling was strongest and most widespread.

Once they had taken on the class struggle, the Soviet authorities quite soon became interested in the kulaks, who were considered to be the most wealthy peasants. For quite some time, however, they refrained from defining who they were, being content with stressing that they were different from the poor peasantry. As the struggle against the kulaks intensified, in May, 1929, the Council of People's Commissars formulated seemingly more precise criteria, like the employing of labour, the hiring of agricultural machinery, the possession of a mill, the exercise of commercial activity, the granting of loans... These criteria, however, were so wide that they permitted all peasants without limit to be considered kulaks.

In the absence of a precise definition, the authorities, both regional and local, whose task it was to identify the kulaks living within their jurisdiction, had a power which was made even greater by the right, if necessary, to adopt the criteria provided by Moscow to local conditions. Very soon, the determining factor became not so much someone's relative prosperity, as their possession of a certain political authority or influence, as the authorities had a tendency to qualify kulaks as anyone they feared politically. This explains why, in certain villages, dekulakization affected more than 15% of the population, whereas kulaks usually comprised only 3 to 5%.

35. When the Bolsheviks took power, the kulaks became the object of certain specific measures which their prosperity, if not their influence, was supposed to justify. This discriminatory treatment does not seem to have been systematic before 1929. In the first months of that year, however, there appeared sporadic signs of a policy of systematic elimination of kulaks, notably in

Ukraine, and mainly at the instigation of the local authorities. After that, Moscow's attitude changed radically, compared with what it was originally. On December 27, 1929, during a lecture on the Agrarian Question at the Conference of Marxist Students, Stalin effectively officially announced his intention to proceed to the "liquidation of the kulaks as a class". This was the beginning of dekulakization. It was to be formally instigated by the decree of February 4, 1930, adopted on the basis of a resolution "on measures for the elimination of kulak households in districts of comprehensive collectivization" passed by the Politburo on January 30, 1930.

When the famine ended, dekulakization too was practically complete. It reduced the kulaks to a subhuman state; their fate compared by V. Grossman, reformed "activist", to that of the Jews under the Nazi regime.

36. According to Marxist logic, it seems that the requirements of the class struggle provide the most likely explanation for the dekulakization decided by Stalin in December, 1925.

In the face of this explanation it should not be forgotten, however, that in point of fact the people who were dekulakized were far from constituting a homogeneous class which might find its place without difficulty in the schema of the class struggle. It was not so much that the kulaks as such did not constitute a class strictly speaking; it was above all that the victims of dekulakization were frequently not even kulaks, however widely one might define the notion.

Since this explanation is not entirely satisfactory, other arguments have been advanced in order to explain dekulakization. Thus an economic objective has been postulated [providing indispensable manpower for the industries (mines ...) of the regions to which kulaks were deported], or a security consideration (putting an end to the campaigns of sabotage and terrorism waged by the kulaks, the existence of which, however, has scarcely been established). None of this, however, is very convincing.

Finally, it should be noted that it is possible that dekulakization was, at least in part, a response to nationalist preoccupations. To be sure, no one has

maintained before the Commission that it had responded to racial or ethnic antagonisms. It is, nevertheless, a fact that the kulaks, particularly in Ukraine, traditionally fostered very strong national feelings. To liquidate the kulaks was also, according to this theory, to crush a nationalist tendency which was dangerous for the Soviet authorities.

37. According to the Politburo resolution, distinction had to be made between three categories of kulaks.

The first category was composed of kulaks who, reputedly active counterrevolutionaries, should be arrested immediately and imprisoned or, more frequently, shot without any form of trial.

The kulaks of the second category were to be subject to deportation to Siberia or the Arctic regions, after confiscation of their property.

The less prosperous and least influential kulaks formed the third category. Reputedly "honest", they were, normally, simply expelled from collective farms, after partial confiscation of their property, and dispersed within the province, where they would be asked either to tend the poorest land or to carry out menial jobs.

The criteria for distribution among the categories was particularly hazy, which reinforced the arbitrariness of the authorities.

The kulaks who escaped death were deprived of practically all their rights. Access to schools was denied to their children; they were largely refused the benefits of state services. No recourse was offered to them against the treatment, however contrary to the law, to which they were subject.

Forced collectivization and dekulakization aroused fierce resistance on the part of the kulaks, the objects of systematic liquidation, which has already been mentioned above. These resistance movements provoked ferocious repressions which to a large extent depended upon armed force.

38. It seems that in theory the village Soviets had the responsibility of drawing up lists of peasants to be "dekulakized", based on plans transmitted by the district

authorities, themselves acting on orders from the province, which was controlled by Moscow. These plans, however, appear to have been no more than a total figure of kulaks to be liquidated. Their execution was generally assured by special brigades in which "activists" played a dominant part. Their assistance was, in particular, shown to be indispensable in organizing mass movements of the population. In these brigades the presence of Russians seems to have been important, as emerges from evidence gathered by the Commission.

39. There is no completely reliable estimate of the number of victims of dekulakization in the Soviet Union. Basing their figures on Soviet authors, Professors Kosyk and Conquest do, however, put the number of people deported at ±1,500,000. Making reference to an unnamed Soviet source, Professor Kosyk quotes 240,757 families; the same figure is quoted by Roy Medvedev. In addition, 300,000 to 500,000 kulaks were at this time executed in Ukraine.

40. Dekulakization was a general policy applied to the whole Soviet Union and was never specific to Ukraine.

However, the freedom enjoyed by the local authorities to interpret the general criteria adopted by Moscow for defining the term "kulak", and to amend them if necessary to take account of local situations, explains why the categories of persons affected by dekulakization in Ukraine could have been slightly different from those in other parts of the Soviet Union.

(e) Denationalization

41. Ukraine has a long history and an age-old culture. These have given its inhabitants a keen awareness of a specific identity which survived even after the Russian Empire, in the eighteenth century, had put an end to their dreams of independence.

When the Czarist regime was struck down by the Bolshevik Revolution in 1917, it is understandable that at a time when nationalisms were triumphing in other countries, the Ukrainians should have tried to form an independent state. The creation of a Ukrainian People's Republic was proclaimed in Kiev on November 20, 1917, under the leadership of Petliura and Vynnychenko. On December 25, 1917, the Bolsheviks, who were definitely

in the minority following the elections of the Constituent Assembly, nevertheless formed a "Soviet" government under H. Kotsyubinsky in Kharkov. This was the government which entered Kiev on the heels of the Red Army on February 12, 1918. During the months it was in power, this government set in motion an intensive policy of russification, tinged with strong anti-Ukrainian feeling.

After the Brest-Litovsk treaty, in 1918, Ukraine passed under German occupation until the German capitulation allowed Petliura to come to power in December, 1918. Already on February 5, 1919, the Ukrainian government was forced to abandon Kiev, captured again by the Red Army, and it is there in 1919 that K. Rakovsky proclaims the creation of a Soviet Republic of Ukraine.

In August, 1919, the nationalist government took control of Ukraine for the last time, following the victorious offensive of the White Army commanded by Denikin. Despite its alliance with Poland, Petliura's forces were not able to withstand a third decisive Soviet occupation, established once and for all in November, 1920. For some months, the nationalists managed to launch guerrilla attacks against the Soviet "occupant". These groups of armed men were wiped out by the end of 1921 and were never a threat to the security of the Soviet Union - at the time, the Soviet press made repeated attacks against "kulak banditry".

After the collapse of the Petliura regime, a Soviet government was installed in Ukraine under tight control from Moscow. There could be no question of independence, even if the Soviet Union claimed to be a federal state respectful of the autonomy of its republics.

42. After the period of "war Communism" during which he attempted to cast the Soviet peoples without delay into the mould of a Communist society, Lenin reverted to more flexibility because he saw the rising threat of chaos. The turnabout on the economic level found expression in the adoption of the NEP in 1921. It actually led the party, during its Twelfth Congress in April, 1923, to defend a policy of "indigenization" (korenizatsiya), respectful of the specific characteristics of the diverse nationalities which made up the Soviet Union.

In Ukraine, this policy of Ukrainization quickly

produced remarkable results, which were certainly much more spectacular than in the other republics of the USSR. It led, in particular, to the forceful renaissance of Ukrainian nationalism, temporarily strangled after the Red Army recovered Ukraine in 1920. Many nationalist leaders, including the former President M. Hrushevsky, came back from exile and settled in Ukraine where, in 1924, they went so far as to proclaim their equal attachment to Ukraine and to Communism (Declaration of the Sixty-Six). This wind of liberalism gave birth to intense cultural activity, which was expressed through the noteworthy development of Ukrainian literature and the publication of many studies on the Ukrainian language. In 1925, O. Shumsky even demanded that the direction of the party in Ukraine be entrusted to a Ukrainian. Insistent voices were raised, calling for more autonomy in economic and cultural affairs.

O. Shumsky would be accused of "national deviation" and dismissed in 1927. Yet in the same year, L. Kaganovich was replaced by S. Kossior as First Secretary of the Ukraine Communist Party. The new Commissar of Education, M. Skrypnyk, faithful Bolshevik though he was, did not abandon Ukrainization in the slightest. Symbolically, he asked experts to purge the Ukrainian language of all Russianisms. Under the rule of this new strong man, the Ukrainian consciousness was bound to make strides, while allusions to Ukrainian independence, even within a Soviet federation, became more and more frequent. The idea was not merely that Ukraine should recover full autonomy, but that it should get back all the adjacent territories with a Ukrainian majority. M. Skrypnyk even called for an official modification of the republic's frontiers.

43. The reaction set in from 1929 onwards, when the forced collectivization of agriculture and dekulakization were ordained.

Attacks against the intelligentsia were the first signs that Moscow was determined to resume tight control over a nation affirming its autonomy. The most prominent intellectuals were the subject of accusations of all kinds. In July, 1929, mass arrests were carried out, on the pretence of a plot within the Union for the Liberation of Ukraine - apparently a complete fabrication by the authorities. In March and April, 1930, forty-five members of that so-called organization - writers, lexicographers, members of the Academy of Sciences - were

subjected to show trials organized in the Kharkov Opera House. Most of the accused, from whom false confessions had been extracted, were former members of the parties in power at the time of Petliura's nationalist government and were condemned to heavy prison sentences. Purges were carried out in university circles and in the Academy of Sciences and, under the pretext of an anti-Soviet conspiracy, many intellectuals ended up in prison or were forced to go into exile.

Most of the former leaders of the national movement, in particular President Hrushevsky and the Prime Minister Holubovych, were arrested in February, 1931, and were accused of conspiracy within the "Ukrainian National Centre". Heavy sentences were pronounced, though no public trial was organized.

In the same way, attacks against the Ukrainian Autocephalous Orthodox Church multiplied. Already in 1924, a secret OGPU report deplored its growing influence on the Ukrainian people and did not hesitate to call the Metropolitan a "secret propagator of Ukrainian separatism". In 1926, the Metropolitan was arrested and forced to give up his ecclesial functions. A more radical measure was taken in 1930, when the Autocephalous Church was dissolved by the Metropolitan, under duress from the authorities. Most religious buildings were gradually closed and many priests were prosecuted for anti-Soviet conspiracy, especially during the trial of the so-called members of the "Union for the Liberation of the Ukraine". Following the protests caused by the church's dissolution, a new Metropolitan was appointed in December, 1930, but his church was practically dead by this time. The 300 remaining parishes were allowed to establish the Ukrainian Orthodox Church, but they disappeared for good in 1936.

Under the direction of Pavel Postyshev, Ukraine suffered mortal blows during the famine which decimated the republic in the autumn of 1932. Postyshev was appointed Second Secretary of the Ukrainian Central Committee in January, 1933, and soon became the most powerful figure in Ukraine. He quickly ended the policy of Ukrainization by placing the republic under the direct control of Moscow. On February 28, 1933, M. Skrypnyk was forced to retire from his post of Commissar of Education. He was accused again and again of "nationalist deviations" and was driven to suicide four months later. Arrests among the intellectuals continued to multiply,

particularly among the linguists accused of trying to separate the Ukrainian language "from the fraternal Russian tongue". Large-scale purges were launched against all the scientific and cultural organizations, to eliminate the "Petliurists and bourgeois nationalists", according to a decree dated December 14, 1932. A year later, hardly anything remained of the policy of Ukrainization and of the hoped-for autonomous cultural development of Ukraine. A policy of russification got under way without any further concessions to the national identity of its people.

44. The renewed control over nationalities, after the laissez-aller of "indigenization", does not seem to have been limited to Ukraine, even though few regions of the Soviet Union displayed such intense national sentiment or suffered so acutely as a consequence of its repression.

In strict Marxist logic, nationality is meaningless because the proletariat on whom the construction of a perfect society rests is by definition stateless. Consequently, Lenin considered nationalism as the sign of conservative "petit bourgeois" capitalism which must be destroyed, even though it might be temporarily used to advantage to topple the regimes in power and install Bolshevik power. With this aim in mind, he was prepared to give the peoples of the USSR a limited right to self-determination. This, however, never entailed the right to complete autonomous development on the basis of national origin, within the Soviet Union.

Ideology apart, it was difficult for those who had come to power in Moscow to contemplate the disintegration of the state which they had wanted for many years to rule. As secessionist efforts became more evident, the Bolsheviks had no choice but to reinforce the unity of a tottering empire, all the more at risk since even Communists themselves were not always willing to bow before Moscow's tutelage. Once unity had been preserved, more autonomy was granted to the constituent parts of the empire. The history of the first years of Soviet Ukraine shows that, in the circumstances, it was not easy to maintain a fair balance. In terms of the usual attitude of states, one can imagine why the Soviet authorities avoided centrifugal movements which almost caused the empire to disintegrate after the downfall of the Czarist regime.

In Ukraine, national sentiment was particularly strong in rural areas where the population was Ukrainian in the majority. It was less intense in cities and towns where non-Ukrainians were in the majority. For example, J. Mace reckons that in 1926 only 20 to 30% of the urban population in Ukraine was of Ukrainian origin. There was a strong Russian presence in the republic. In this context, the fight against nationalist extremes looked like a struggle against the peasantry. Given the natural hostility of urban Communists towards bourgeois peasants, at least in the early years of the Bolshevik state, it is not always easy to decide which of the two factors - the national character or the peasantry - was determinant in the goal pursued.

It is possible that the misfortunes of Ukraine may partly be explained by "Ukrainophobia", which some sources, such as the academician Sakharov, attribute to Stalin. This cannot be easily verified even though Lenin, on more than one occasion, criticized Stalin for his Russian chauvinism, a rather odd trait in his personality. Be that as it may, no evidence put before the Commission appealed to strictly ethnic or racial motives to explain the denationalization which was pursued by order from Moscow from 1930 onwards.

(f) Conclusions

45. As the Commission has already stated, it is beyond doubt that the immediate cause of the 1932-33 famine lay in the grain procurements imposed upon Ukraine from 1930 onwards. The quotas demanded were obviously excessive and, in early autumn 1932, the Ukrainian peasants found they did not have the food supplies which would have kept famine at bay. As they searched desperately for food, the peasants' first reaction was to eat the grain seed stored for future sowing seasons; this jeopardized still further, by their own means, any chance they might have had of overcoming the extreme scarcity of food.

It is also indisputable that the dreadful effects of the excessive grain procurements were considerably aggravated by the general situation prevailing in Ukraine where the Soviet authorities were trying to carry out the forced collectivization of agriculture, to eliminate the kulaks and to snuff out those centrifugal Ukrainian tendencies which threatened the unity of the Soviet Union. Although they are not the only reason for the famine, the ensuing disorders and injustices would

magnify the catastrophic consequences of a shortfall of cereals out of all proportion.

The disaster might be interpreted as a series of tragic coincidences, but the Petitioner, backed by many witnesses and experts, goes much further. In fact, the applicant reproaches the Soviet authorities with having, in essence, orchestrated the famine to ensure the proper implementation of their policies, even at the cost of indescribable sufferings. It is the Petitioner's contention that collectivization, dekulakization and denationalization expressed in different ways the unequivocal determination of the Soviet authorities to destroy the Ukrainian nation and that - in the last resort - the famine was the final, particularly abominable, instrument of policy execution.

The famine was certainly man-made in the sense that its immediate origin lies in human behaviour - first and foremost, the grain procurements - and not, for example, in climatic conditions or in natural catastrophes, i.e. earthquakes. Does this mean that it resulted in truth from a "human", carefully-laid plan? The question is more complex than it at first appears.

46. Logically there is no necessary connection between grain procurements, collectivization, dekulakization and denationalization.

No decisive evidence of such independence or interdependence was put to the Commission. Until such time as the Soviet archives have been studied in depth, it is difficult to give a categorical answer. Nonetheless, it is very likely that these policies, pursued at the same time, were part of the same plan. How can one seriously believe that these policies implemented simultaneously did not share a common goal, unless it was to contribute in the final analysis to the welfare of society and the well-being of its members? This would be surprizing. It is much more likely that these policies arose from the resolution of the Soviet leadership to progress decisively towards the building of Communist society, by adopting those measures which were a natural extension of Marxist ideology. Close investigation may prove that this was not so, when all is said and done. Nevertheless, considering all the elements which have been put to the Commission, nothing points in this direction. The Commission therefore believes that, in all probability, the grain

procurements, collectivization, dekulakization and denationalization pursued a common, if not exclusive, goal and may not be radically disassociated when analyzing the causes of the famine.

47. Is this to say that the Soviet authorities actually adopted a strategy of recourse to famine in order to carry out their policies, as has been alleged?

The evidence which could irrefutably prove the existence of such criminal intent would have to be exceptional by its very nature. One can hardly envisage Stalin officially recording his intention of starving his people in order to put his policies into effect. Proof in such circumstances would ordinarily rely on various converging indications, provided these were sufficiently serious and conclusive to establish beyond reasonable doubt the presence or absence of a preconceived plan.

The Commission reiterates its regret at the Soviet and Ukrainian authorities not taking part in the inquiry; their collaboration would very likely have enabled the Commission to make decisive headway in the search for truth, particularly in the absence of published material from the official archives of the Soviet Union and the Ukrainian Republic. This obviously complicates the task of the Commission. Nevertheless, five facts have been established to the satisfaction of the Commission:

(I) It is beyond doubt that the Ukraine was severely affected by famine in 1932-33 and that the Ukrainian and Soviet authorities were aware of the dire food shortages of the population.

It is possible that the details of such individual situation, in each Ukrainian locality, were unknown to the authorities. However, it is clear that no authority could fail to be informed of the facts surrounding the terrible famine in Ukraine, as for example by the problem of disposition of the dead bodies.

This is obvious for the Ukrainian authorities themselves: how could they have been genuinely unaware of the ravages caused by the famine? The main representatives must have had direct knowledge of the frightful suffering of the people, which some of them explicitly admitted in later years. The famine could not have taken the ruling circles completely by surprize, since M. Skrypnyk had drawn their attention to the very

worrying level of the grain reserves at the Third All-Ukrainian Conference in July, 1932.

Molotov and Kaganovich represented the Politburo at the conference, and their presence leads us to believe that from the start Moscow knew that Ukraine was threatened by a famine which became a tragic reality in autumn 1932. All things considered, it is now confirmed many times over that Stalin was duly informed of the critical situation prevailing in Ukraine because of food shortages. Roman Terekhov, First Secretary of the Kharkov Provincial Committee (before he was replaced by P. Postyshev) personally informed Stalin during the January, 1933, plenum of the Central Committee, as he himself explicitly reported in Pravda thirty-one years later. Admiral Fyodor Raskolnikov, of the Black Sea fleet, and General Yona Yakir, commanding the military district of Kiev, sent Stalin official letters of protestation and asked for relief. If proof is still needed, the evidence before the Commission shows that the OGPU reports are unambiguous on the subject.

There can be no doubt that other members of the Politburo were also informed. N. Khruschev, in his memoirs, does not hide the fact. And there is the account which Demchenko, head of the Kiev Regional Party Committee, gave to Mikoyan on the convoy entering Kiev station loaded with corpses picked up all the way from Poltava.

(II) It is also indisputable that, although they were aware of the dramatic conditions in Ukraine, the Soviet authorities refrained from sending any relief until summer 1933. They allowed the famine to get a firm hold and cause greater and greater devastation over a period of ten months, without trying to avert its effects, even late in the day, as it had done ten years earlier during the 1921-22 famine.

If it is agreed that apart from supplying seed grain only for sowing in the next harvest (this was early in 1933), the authorities distributed no relief supplies to the people dying of hunger, while the USSR continued to export cereals. Moreover, they asked for no outside help. On the contrary, under the pretext that there was no scarcity of food, they opposed the intervention of various non-governmental organizations (established mainly in the Ukraine territory then attached to Poland) which were anxious to send famine relief. For instance,

they did not bother to answer the appeals of the Inter-Faith Relief Committee created in Vienna by Cardinal Innitzer and directed by E. Ammende, Secretary General of the European Council of Nationalities. It seems that the sending of certificates to designated individuals through the apparatus of the torgsin ("Trade with Foreigners") was practically the only means by which these agencies could send relief on an infinitely small scale. The fact that the torgsin warehouses were full while the famine was claiming innumerable victims seems to confirm the authorities' refusal to help the starving.

(III) The Soviet authorities adopted various legal measures which amplified the disastrous effects of the famine by preventing the victims from finding any food at all or from leaving the region. The following points are worth mentioning:

- the decree of August 7, 1932 on the protection of socialist property forbade the victims, on pain of very heavy sanctions, to remove from warehouses or from stockpiles rotting in the railway stations the food they needed to survive;
- the decrees of September 13, 1932 and March 17, 1933, on the fixing of the peasants to the land, forbade peasants to leave the kolkhozes to find other employment unless they were in possession of a contract guaranteed and approved by the people in charge of the kolkhoz;
- the decree of December 4, 1932, organized a system of interior passports forbidding the movement of famine victims without authorization. Consequently, peasants who tried to escape the famine by seeking refuge outside Ukraine were turned back without consideration when they tried to cross the frontier.

It is clear that these measures may be justified for reasons unconnected with the intent of aggravating the famine. Any goal for the general enforcement of law and order could easily be used to justify any and each of these measures, and it cannot therefore be inferred that the Soviet authorities were ill-intentioned. Be that as it may, these measures produced undeniably very bad effects on the population. Not content with providing no relief, the authorities aggravated the ruling caused by the famine by singularly limiting the possibilities of escape routes open to the victims. It may be argued

that this indirect effect was not intentional. At least, it could not have been overlooked, a fact which increases the responsibility of those who let the famine break out and spread throughout Ukraine.

(IV) According to the evidence put before the Commission, it seems certain that Ukrainian towns and cities largely escaped the famine, and so did the rural local authorities charged with carrying out the grain procurements and implementing collectivization.

It also seems certain that many of these urban dwellers were of non-Ukrainian origin. Also, many people of the rural authorities were Russian.

(V) It is true that the Soviet authorities at the time denied the existence of any famine in Ukraine and that, against all evidence to the contrary, persisted in their denials for more than fifty years, with the exception of Khruschev's private avowal.

This denial explains sanctions taken against the officials of the 1937 census; they were guilty of having cast too naked a light on the enormous population deficit in Ukraine.

Do the above findings point to a preconceived carefully prepared plan to starve the Ukraine? The existence of such a plan appears nowhere in the documents submitted to the Commission and no serious evidence seems to substantiate it, apart from allegations too general to be fully reliable. It is possible that a personality as monstrous as Stalin might have conceived the most insane strategies. However, with the information now at its disposal, the Commission is unable to affirm the existence of a preconceived plan to organize a famine in the Ukraine, in order to ensure the success of Moscow's policies.

That no preconceived strategy existed does not mean that the famine was merely the accidental outcome of policies unfortunately interacting to annihilate the Ukrainian people. The Commission believes that the Soviet authorities, without actively wanting the famine, most likely took advantage of it once it occurred to force the peasants to accept policies which they strongly opposed. Since famine proved to be a potent weapon, as the events of 1921-22 had perhaps suggested, the authorities soon resorted to it, whatever the cost to the

Ukrainian people. This was the Italian Ambassador's assessment when, in a telegram of July 11, 1933 to his Foreign Minister, he underlines that "the Government's great skill has thus been its knowledge of how to make the most of the famine weapon."

It may be incontrovertibly established in the near future - for example, when the archives from Stalin's day have been examined - either that Stalin had from the outset imagined an insane programme to starve the Ukraine or, conversely, that the authorities' attitudes upon the outbreak of famine in the autumn of 1932 resulted from their carelessness and inexperience. All the facts laid before the Commission nevertheless suggest that, in all probability, Stalin and his associates sought to make the most of the famine and only concerned themselves with ending it once their goal had been served.

48. It is undeniable that the famine extended beyond the Ukraine; the Volga basin and North Caucasus in particular being severely affected by the shortage of food. It is equally clear that the grain procurements, collectivization and dekulakization were not exclusively applied to the Ukraine. "Desukrainization" itself is but the Ukrainian version of a more widespread policy of renewed control over other nationalities, when the dangers to the unity of the USSR of a policy of "indigenization" became apparent.

Does this mean that there was nothing specific about the situation in Ukraine?

This would seem exaggerated. From the mass of testimonies gathered by the Commission, there can be little doubt that the Soviet authorities tried to impose on Ukraine and on predominantly Ukrainian territories, faster than on other regions, policies devised for all. This conclusion is supported by comparing the situation of each Soviet republic, and therefore precludes any unreserved assimilation of the fate of the Ukrainian peasants to that of the Soviet peoples as a whole. Objective reasons may have justified this particular treatment, including the fear that Ukrainian "nationalist deviations" would induce systematic resistance to Moscow's orders. The fact of this particular treatment remains undeniable.

It is more than likely that the Soviet authorities in Ukraine and elsewhere strove to overcome a

"petit bourgeois" nationalism that in the long term threatened the stability of the Soviet Union. Such a goal is easily understandable in principle. The risk of separatism did exist in the Ukraine, considering the success of the policy of "ukrainization" in areas where national feeling was traditionally very strong. This trend probably explains the extent of Moscow's intervention, if not its methods, from 1930 onwards. The Commission does not believe that the 1932-33 famine was systematically organized to crush the Ukrainian nation once and for all; nonetheless, it is of the opinion that the Soviet authorities used the famine voluntarily, when it happened, to crown their new policy of denationalization. It is significant that, generally speaking, the famine in Ukraine spared the towns where the people were mostly non-Ukrainian; likewise, in the countryside where the famine raged, local officials (Russian for the most part) responsible for the grain procurements, the enforced collectivization of agriculture and dekulakization, did not suffer.

D. THE EFFECTS OF THE FAMINE

49. The immediate effect of the famine in Ukraine in 1932-33 was to inflict disastrous damage on a formerly wealthy region and terrible sufferings on the Ukrainian people. These are attested by the innumerable famine-related deaths, which are difficult to estimate precisely but which were not less than 4.5 million, according to the figures mentioned earlier in this report. These sufferings were compounded by the serious physical and psychological disorders of those who survived malnutrition, some of whom never recovered. Lastly, these sufferings are palpable in the shocking moral degradation caused by the unceasing desperate search for food. Instances of cannibalism brought to the notice of the Commission are reminders of this fact. Even without such extremes, the jealousy, the fights, the informing, the murders or suicides by hanging (numerous, according to the witnesses) manifest the immense moral distress of the Ukrainian people.

These sufferings were added to those arising from collectivization, dekulakization and denationalization, under the aegis of authorities bent upon radically altering the structures of Ukrainian society, so as to make it conform to the requirements of Marxist Communism and the dictatorship of the proletariat. Misery was caused by the searches, confiscations, arrests,

executions, deportations and all the other measures resorted to, which inflicted the Ukrainian people so traumatically. Events have since demonstrated that the identity of the Ukrainian people survived these tragic ordeals, although they will never be forgotten; and that its representatives seek, as the establishment of this Commission proves, to shed full light on the 1932-33 famine and on the responsibilities arising from it. It is the duty of the international community to assist them in this enterprise.

E. THE FAMINE: RESPONSIBILITY

50. As it has repeatedly stressed, the International Commission of Inquiry into the 1932-33 Famine in Ukraine is not a court, still less a criminal court.

Nonetheless, the Commission, by its Terms of Reference, must formulate recommendations "as to responsibility for the famine". The exact meaning of these words was not otherwise explained. The Commission believes that, on this basis, it must examine whether the factors that led to a tragic famine can be ascribed to certain persons in particular and, thereafter, whether these persons, in acting as they did, could be deemed to be proceeding morally or lawfully. During the debates, and particularly in the closing submission of the Counsel for Petitioner, W. Liber, Esq., an accusation of genocide was made.

A. Imputability

51. Inasmuch as the famine was man-made, i.e. did not result from exclusively natural causes (drought, volcanic eruptions, for example), it is obvious that it rested on human actions that must necessarily be ascribed to certain persons, whatever the role, conscious or not, intentional or not, in the increased scarcity of food supplies that progressively led to the famine.

As the report points out, responsibility for the famine almost certainly lies with the authorities of the Soviet Union. They often decreed and promulgated the various measures - above all, the grain procurements - that induced the famine. When the famine broke out, the same authorities also refrained from assisting the famished population and from seeking essential relief supplies.

The Commission has no doubt as to this responsibility. Whether the authorities organized the famine or tried to take advantage of it is not the issue here; it suffices that the famine occurred and grew worse as the normal outcome of the measures they adopted.

52. These authorities are, generally speaking, those that defined and implemented, at the central, regional or local level, the various measures that provoked or aggravated the famine.

We are referring just as much to the ordinary administrative authorities as the other authorities comprising the Communist Party of the USSR. The crucial role that has always belonged to this party in the organization and running of the Soviet state is common knowledge. The 1932-33 famine is apparently no exception to the rule, illustrating as it does the decisive part played by the party in the tragic events that befell Ukraine.

These authorities are specifically all those who, at the various organized echelons of Soviet society, carried out those measures that for ten months occasioned a dire shortage of foodstuffs in Ukraine. They are local just as much as central, Ukrainian as well as Soviet. It is evident that the responsibility of the local officials cannot be entirely absolved on the grounds that they acted on the orders and under the control of Moscow. They might not have been able to oppose the wholesale implementation in Ukraine of the measures that resulted in the famine, or even of substantially modifying them. Some officials vainly did their best, only reaping punishment meted out to them for insubordination. Nevertheless, it clearly emerges from the evidence put before the Commission that the local authorities did not limit themselves merely to fulfilling orders but, by their behaviour, sometimes aggravated the damaging effects of the measures they applied. In most cases, this turn for the worse stemmed from the particularly infamous circumstances in which Moscow's decisions were enforced; sometimes, however, it originated from the freedom of action of the local authorities to adapt statutorily formulated general criteria to particular circumstances. This was particularly noticeable when it came to labelling persons as kulaks.

All the witnesses or experts heard by the Commission bear out the considerable role played here by activists

who cooperated with local officials in carrying out Moscow's injunctions. The term "activist" is not restricted to agents or state employees conspicuous for special zeal in their work; it refers primarily to individuals whose commitment to the Bolshevik cause disposed them to wholeheartedly support the authorities in their drive toward socialism, while sometimes gaining valuable returns. Given the circumstances in which they operated, these activists must in principle be counted as de facto agents of the Republic of Ukraine, and therefore of the USSR whose responsibility is thus engaged, notwithstanding the fact that those activists had not been officially appointed. The activists were allowed to exercise, on behalf of the Soviet state, prerogatives pertaining to public power, such as the executing of searches or deportation orders. The Commission feels that this conclusion is all the more justified because the activists - the "25-thousanders" - were, in the first place, recruited by the authorities in Moscow to go and help advance Communist society in the rural areas. For this reason, the Soviet authorities cannot reject responsibility for the acts perpetrated by these activists on the grounds that these recruits went about their business with no mandate or official status.

Whatever the considerable role of these local authorities in the enforcement of particular policies, it appears obvious nevertheless that the prime responsibility rests with the central powers. The body of studies and of testimonies compiled by the Commission unequivocally confirms this. Nor is the fact surprizing. Like all other sensitive questions, collectivization, dekulakization, denationalization and grain procurements were master-minded in Moscow.

Not only were the guidelines of a policy devised here, but also their practical application - in their essence, at any rate - as is shown by the decrees issued to ensure their implementation and by the instructions, often secret, accompanying them. The central authorities did not merely specify rules, whether as guidelines or in practical terms; they also strove to closely follow their implementation in Ukraine. Here the secret police and the local party echelons were of great help to them. This explains why officials, who did not diligently comply with Moscow's policies, were called to order or were even dismissed, interned or executed. Indeed, many Ukrainian officials were dismissed by Moscow during the famine because they were slow about putting orders into

effect or openly opposed them. This is further proof of the decisive responsibility borne by the central party ranks for the steps that led to the tragic events of 1932-33.

53. The acts and behaviour leading to the tragic events of 1932-33 may certainly be imputed to the Soviet authorities. However certain the conclusion, there remains the duty to investigate which persons, sheltering behind an administrative facade, must shoulder the brunt of the responsibility for the famine in Ukraine.

Scores of names were submitted to the Commission, although it could not properly ascertain the actual role played by each one in these complex events. Particularly at the local level, it is largely impossible to attribute personal responsibility to a particular individual, even though the Soviet authorities undoubtedly bear a responsibility. Though it does not dispute the sincerity of the witnesses heard, the Commission was generally unable to verify allegations referring to particular officials, because the very gravity of the accusations demand that they be retained only when their veracity has been duly established. However justified this reservation, certain individual responsibilities can still be noted in greater detail.

All the available material - testimonies, documents, studies - attributes key responsibility to J. Stalin. It is he who first and foremost bears responsibility for the Ukraine famine of 1932-33. It was the outcome of policies which he initiated when he finally seized power in the Soviet Union, after ousting his rivals after Lenin's death. Stalin could not have been ignorant of the famine, because it was reported to him many times. He is all the more to blame for refusing to assist the Ukrainian population before July, 1933, trying first to use the famine to impose his policies for good on the refractory peasantry. It is true, as the Commission has already underlined, that there is no irrefutable proof of this monstrous calculation. The fact remains that, for ten months, Stalin did nothing to alleviate the sufferings his policies had inflicted on Ukraine, and this is enough to make him carry the brunt of responsibility.

It is reasonable to maintain that this responsibility must be shared by the other members of the Politburo. The precise role that these other members

played cannot easily be determined. It seems to have been less decisive than one might have expected. At the time, Stalin exercised absolute control over the Politburo. He did not hesitate to eliminate those who tried to oppose him, for instance, with regard to dekulakization.

Reservations must be expressed concerning L. Kaganovich and V. Molotov, Stalin's lieutenants, whose names came up many times during the Commission's research, and who also played quite a major role in the famine; they were sent several times to the Ukraine to see that Moscow's instructions were properly carried out by the authorities. It is, however, difficult to determine their precise responsibility for the famine, on the sole basis of the information brought before the Commission.

As for the Ukraine, the figures occupying the key positions inside the party and the administration must surely have been aware of the widespread devastation arising from the policies which they supervised "locally". V.A. Balitsky, Chief of the Ukrainian GPU; V. Chubar, Chairman of the Ukrainian Council of Commissars; S. Kossior, First Secretary of the Communist Party of Ukraine; and G.I. Petrovsky, President of the Ukraine, were referred to more especially during the Commission's debates. In view of the available data, it seems likely that these people acted upon and made others act upon the injunctions that brought such misery to the Ukrainian people. They presumably did so as a group, with all the more thoroughness, insofar as their Bolshevik past did not dispose them to query the injunctions coming from the top of the party. Nonetheless, given the evidence before the Commission, these men do not seem to have played a key role. One can condemn them for remaining passive when they knew well the extent of the people's sufferings, and for not remonstrating with Moscow through fear of sanctions. Few were as courageous as M. Skrypnyk; his disapproval of pernicious policies, though somewhat tardy, drove him to commit suicide in July, 1933. R. Terekhov, Secretary of the Regional Party Committee in Kharkov, was dismissed by Stalin for informing him of the famine in Ukraine.

Such grievances are perfectly justified. One cannot entirely excuse guilty passiveness on the sole grounds that any protest, not to mention refusal to obey directives, exposed officials to serious dangers. The

nature of the responsibilities these persons held probably required that they show less compliance. How be it, they do not seem to have played a really active part in the planning and carrying-out of the measures that triggered-off and accompanied the famine.

An exception is very probably to be made in the case of Pavel Postyshev, appointed Second Secretary of the Communist Party of Ukraine in January, 1933. Of Russian nationality, Postyshev then seized effective power in Ukraine, where he acted as Stalin's right-hand man. Concurring testimonies bear out his major role in the stepping-up of the grain procurements, in the repression of the so-called "national deviations" and, more generally, in the hardening of the measures taken against the peasants to enforce collectivization and exterminate the kulaks. M. Khataevich, who preceded Postyshev as Second Secretary, also appears to have acted brutally towards them and was actually censured by Moscow in January, 1930; but he apparently did not exercise such widespread responsibilities as Postyshev, however loathsome the way in which he acquitted himself of his assignments.

B. Legal Responsibility

54. Committed by Terms of Reference to make recommendations "as to responsibility for the famine", the Commission cannot avoid considering the legal consequences of the measures adopted by the Soviet authorities who stand formally accused of genocide by the Petitioner.

Given the gravity of the accusations brought against the Soviet authorities, it is with respect to the fundamental norms of international law that the policy adopted in the Ukraine at the time of the famine must be examined, whether they be in accordance or not with the law then applicable in the USSR.

55. First we examined the charge by the Petitioner that "the famine constituted genocide".

"genocide" is an expression that was coined after the Second World War to condemn the persecution of the Jews and of the gypsies by the Nazis. In a resolution unanimously adopted on December 11, 1946, the General Assembly of the United Nations considered that it was:

> "a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices - ... - are punishable"

Two years later, genocide was the subject of a "convention on the prevention and punishment of the crime of genocide", likewise adopted unanimously by the 56 members of the General Assembly on December 9, 1948. The convention entered into force on January 12, 1951.

If the facts blamed on the Soviet authorities with regard to the Ukraine famine of 1932-33 are to be called "genocide", we must see:

- whether the required elements of this crime are present;
- whether a rule condemning genocide existed at the time of the famine.

(a) Constituent Elements of Genocide

56. Article II of the convention defines "genocide" as follows:

> "In the present convention, genocide means any of the following acts committed with the 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."

According to this definition, which today is unanimously accepted, three elements are required to constitute a case of genocide:

- "a national, ethnical, racial or religious group";
- an "intent to destroy, in whole or in part" this group "as such";

- an intent as defined in one or other of the acts enumerated in the points (a) to (e) of Article II.

i)57. As regards the 1932-33 famine, the first and third conditions are obviously fulfilled.

The Ukrainian people indeed constitute an ethnic or national group in keeping with the meaning of the convention; this cannot reasonably be disputed.

Likewise, the events at the time easily confirm that the Soviet authorities at least "kill(ed) members" of this group or "cause(d) serious bodily or mental harm to (their) members, even though they might not have "deliberately inflict(ed) on the group conditions of life calculated to bring about its physical destruction in whole or in part." This point can hardly be challenged. There is therefore no need to discuss the apparently restrictive wording of Article II which omits, for instance, political groups or cultural genocide from the groups and acts which are mentioned specifically.

ii)58. On the other hand, it is more difficult to ascertain the fulfilment of the second condition, namely the existence of an "intent to destroy" a group "as such". These words prompt a legal question: What must one understand by "intent to destroy ... as such"? as well as a practical question: How can it be proved?

From the working documents of the convention, it emerges that the need for intentionality is justified by the need to identify the specificity of genocide. Contrary to the original project, there need be no premeditation. There may thus be a case of genocide even though the destruction of a group was not organized or planned beforehand by the powers that be; it is enough that, the occasion arising, the intent to annihilate the group existed. With this restriction, the convention does not specify other features of this intent. It seems reasonable in consequence to hold that it must be determined in the light of rules usually followed by modern states with regard to criminal offences, in accordance with the goals of the convention. It should be noted here that during the debates on the project certain states, such as France and the USSR, voiced serious reservations as to this criterion of intentionality. Their concern was not, however, to deny that genocide needed to be "voluntary" to be punishable;

it was solely to guard against abusive pleas of innocence on the ground of absence of intent.

Even when the intention is present, there is genocide only when the purpose is to eliminate the group "as such". This precision is intended to emphasize that it is due to their membership of the group that the persecuted victims referred to in Article II must be struck down. There is no genocide if some other "objective" reason explains the behaviour adopted towards them. The precision is doubtless important; one cannot, however, read into it any other restriction in the condemnation of a crime.

Lastly, neither the text of the convention nor the working documents define any rule whatever as regards the method of proof. This proof is inevitably very difficult as it would be exceptional today for any power to admit openly, as Hitler did as to the Jews, its intention of exterminating a group. It is with due respect for all relevant circumstances that one must therefore determine in each case if this genocidal intent can reasonably be established. The first task is to undertake an objective analysis of the facts, so as to assess the likelihood of an intent to annihilate a group. Several authors underline the fact that the number of victims in itself could be of great evidentiary value in proving the necessary intent.

The convention does not say at what point the proportion of the group targeted for liquidation is such that its elimination becomes genocide. Some insist that the proportion must be "substantial". One cannot rule out the validity of this restriction, even though Article II does not explicitly mention it. It seems pointless to discuss this inasmuch as, in Ukraine, 4.5 million victims minimum, not counting the victims of dekulakization and denationalization, seems sufficiently high to satisfy the legal prescriptions.

59. Was there "intent to destroy" the Ukrainian people?

As the Commission has already said, there exists no serious evidence that the famine was really devised by the authorities to definitively implement their policies. In this sense, it was not wanted, even if these authorities willed the policies that resulted in the famine. However, it is very likely that the Soviet authorities sought, under the direction of Stalin, to

capitalize on the famine once it started, which explains why for ten months they left the Ukrainian peasantry to its fate, aggravating by their decisions the havoc wrought by a catastrophic dearth of foodstuffs. While the famine does not seem premeditated, however much the authorities wanted to impose repressive policies, the will to strike the Ukrainian peasantry appears to have existed when the famine broke out in the autumn of 1932. Admittedly, no decisive proof of such an intent exists; a thorough analysis of the Soviet archives would be necessary to confirm or invalidate the latter with relative certainty. Such an analysis is not available to the Commission; however, in view of all the substantiating data, it deems likely that such an intention existed.

It is hardly justified to deny all validity to the accusation of genocide on the grounds that the peasants who suffered from the famine represented a social class and not a national, racial or religious group, as covered by the convention. It is certainly true that the peasants suffered most from a famine that largely spared Ukrainian towns and cities. However, as testified many times before the Commission, the peasantry were the backbone of the Ukrainian nation which proclaimed its independence in 1918; on this point, it is revealing that the city dwellers in the Ukraine were mainly of non-Ukrainian extraction. Hence, it is evident that a national group, in the sense of the convention, is concerned. The sole fact that the Soviet authorities undertook to subject an individualistic and wealthy peasantry does not mean that they necessarily sought to destroy the Ukrainian nation; it cannot be argued, however, that because the victims of the famine happened to be peasants, genocide must be ruled out simply because a national group was not targeted.

If the intent to eliminate seems to have been present, was it nevertheless bent upon eliminating "a national, ethnical, racial or religious group, <u>"as such"</u>? The General Counsel raised the counter-argument that the aim might have been only to eradicate a social class regarded as intrinsically subversive, and added that this is conclusively proven by the fact that the famine did not strike Ukraine alone. Yet again, reliable evidence supporting either thesis is lacking. Whatever the proclaimed convictions of the officials of the Soviet Union in Marxist dogmas, it is difficult to believe that they were not pursuing any "nationalist" goal when they

used the famine to impose, on Ukraine, policies disastrous for its people. Admittedly, no one asserted before the Commission that ethnic or racial factors would account, wholly or in part, for the tragic events of 1932-33, despite the traditional hostility between Russians and Ukrainians. In this sense, there is no ethnic or racial group that the authorities endeavoured to exterminate as such. But there remained a "national" group, whose "nationalist deviations" Moscow did not tolerate. The will to denationalize the Ukraine was in this respect clearly formulated, even though it did not pursue any racial or ethnic objective. It is likely that its original raison d'etre was to preserve the integrity of the Soviet Union from any menace and equally to check a national "petit bourgeois" inclination not congruous with the underlying prerequisites of Communism. By merely looking at what happened, i.e. at the conditions in which this denationalization was effected and at the scale it assumed, following the people's opposition, it is hard to believe that the authorities limited themselves to this narrow objective. On the contrary, it is the impression of the Commission that Stalin tried, through the famine, to deal a terminal blow to the Ukrainian nation "as such", and this attempt sheds light on the enormity of the sufferings endured.

There is no doubt that the famine and the policies from which it arose were not confined to Ukraine, even if the territories with a Ukrainian majority appear to have been tragically privileged. Moreover, history has since largely confirmed that Stalin's hatred extended beyond the Ukrainians. One is led to envisage the possibility of a series of genocides, however frightful that might be, but this in itself does not rule out the hypothesis of a genocide during the 1932-33 famine.

To this extent, and with due regard for the substantiating data supplied it, the Commission deems it plausible that the constituent elements of genocide were in existence at the time.

(b) The Declaratory or Constitutive Character of the Convention

60. The non-retroactivity of penal laws is a well-established general principle, unambiguously accepted. The principle precludes punishing a person for deeds committed when they were not illegal.

This rule is applicable to the convention of December 9, 1948, for the prevention and repression of genocide, just as to any other penal clause. Yet it does not apply here. Strictly speaking, the convention as a matter of fact does not condemn genocide; it merely compels states to cooperate in the prevention and repression of this international crime, which is not explicitly condemned in its provisions. It is to the signatory states that it behoves, following Article V,

> "to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present convention and, in particular, to provide effective penalties for persons guilty of genocide ..."

It is agreed that these "national" measures will not normally be qualified to condemn, as stated by the non-retroactivity principle, deeds antedating their promulgation, or at least the enactment of the convention.

This question of the non-retroactivity of penal law does not concern the Commission, which is not invested with any repressive mission against anyone whatsoever. What it wants is simply to decide whether the convention of December 9, 1948, has a declaratory or constitutive character when it states that genocide is contrary to international law. If it is constitutive (or creative) of law in this regard, it obviously cannot be cited to dispute the lawfulness of deeds antedating its enactment. If, on the other hand, it is purely declaratory, nothing prohibits from it being referred to, at least as long as the precept which it merely notes existed at the time the deeds occurred.

61. The convention of December 9, 1948, is indisputably constitutive of law in that it imposes on its signatories obligations as regards cooperation in the prevention or repression of genocide that did not formerly exist. It is certain, besides, that the very word "genocide" - then entirely new - is unknown to international practice prior to the end of World War II. Does this mean that the deeds on which it focuses must be considered in agreement with international law before the promulgation of the convention of December 9, 1948? In other words, does this mean that a state was free, prior to that date, in the sphere of the law of nations, "to destroy, in whole

"or in part, a national, ethnical, racial or religious group, as such"? This statement is open to question.

It is unquestionable that the classical law of nations, before the modern development of the law relating to human rights, did not usually bother about the way in which a state behaved towards its subjects. It contented itself with granting to foreigners, via diplomatic protection, some minimum standard of justice. It is equally certain that notwithstanding its indifference in principle, this law progressively concerned itself with condemning the crudest and most systematic violations of the basic rights of groups and individuals; this incidentally explains how the United Nations General Assembly adopted unanimously in 1948 the Universal Declaration of Human Rights and the convention for the prevention and repression of the crime of genocide. Without going back to Grotius, who gave to kings the right to demand condemnation "of injuries which do not directly affect thens (themselves or their subjects) but excessively violate the law of nature or of nations in regard to any person whatsoever", several indications would hint that the illegality of what was called "genocide" in 1948 had its roots in a period earlier than the convention:

- in the wording of Article I, "the Contracting Parties confirm that genocide ... is a crime under international law", with the preamble to the convention "recognizing that at all periods of history genocide has inflicted great losses on humanity";
- from the end of the nineteenth century, humanitarian intervention was allowed to preserve certain populations from massive persecution (principally in Turkey), which suggests that there exists a limit to the freedom for a state to treat its subjects as it pleases;
- from the end of the nineteenth century, the so-called Martens clause, introduced in the 1899 and 1907 conventions of The Hague, implies that certain elementary humanitarian demands must always be met in conflicts, even though they are not expressly laid out in a body of positive law;
- arrangements were included in the Treaties of Versailles and of Sevres to condemn the "supreme offences against international morality"

perpetrated by Germany and Turkey during World War I, which would confirm that a minimum of humanity cannot legally be ignored totally. It is of little import from this point of view that these arrangements were not put into effect, because Emperor William II took refuge in the Netherlands and because the Treaty of Sevres was not ratified;

- the Charter of the International Nuremberg Tribunal, annexed to the agreement concluded on August 8, 1945, by the governments of France, the United Kingdom, the United States and the USSR "acting in the interests of all the United Nations", provides for the punishment of "crimes against humanity: namely murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, "racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal" (Article VI), which suggests that genocide be perforce illegal before a convention was even adopted on the subject at the United Nations;
- in its advisory opinion of May 28, 1951, the International Court of Justice has explicitly stated "that the principles underlying the convention are principles which are recognized by civilized nations as binding on states, even without any conventional obligation" (I.C.J. Rep. 1951, p 23);
- many scholars considered from the outset that the three first Articles of the convention of December 9, 1948, had a customary nature, which is difficult to understand if the illegality of genocide only arose with its enactment.

62. From the above, it seems reasonable to hold that the illegality of what was called genocide in the 1948 convention pre-existed the latter.

From when exactly does the emergence of this new rule date? It is hard to say so with certainty in a judicial order such as the international order, where the normative process is not formalized and where rules require quite a long time for general practices to become well established, which will then, with the help of the opinio juris, enable these rules indisputably to acquire a customary nature.

There exists, according to this theory, a period of gestation rather than a date of birth. The Commission has no doubt in this regard that this period had already started for quite some time when the 1932-33 famine hit the Ukraine in the above-mentioned circumstances. The Commission therefore feels justified in maintaining that if genocide of the Ukrainian people occurred, it was contrary to the provisions of the international law then in force.

63. In any case, the Commission as a whole wishes to underscore that the policies which were applied to the Ukrainian people and led to the tragic events of 1932-33 disregard the precepts of basic morality which are binding on Soviet as on all other authorities, and that the Soviet authorities must in consequence be vigorously condemned.

Whether these precepts be juridical or not, no one can deny the incalculable sufferings which their violation inflicted on the Ukrainian people, and the first obligation for the authorities that perpetrated them is to admit this.

DISSENTING OPINION BY PROFESSOR GEORGES LEVASSEUR

First of all, I must clearly state that I concur with the Majority Opinion as set out up to paragraph number 56.

I have kept in mind that our Commission is a Commission of Inquiry whose model is the International Commission of Criminal Inquiry which has been suggested at the International Law Association Conference held in Montreal (1982). One must try, as much as possible, to adhere to the spirit of the ILA draft, even though many articles from it are inadequate for the functioning of our Commission according to its Terms of Reference.

One of the most important differences is that the USSR authorities declined to be present at the Commission's sessions. However, the existence of a General Counsel (according to Article 22-A of the ILA draft statute and Article 3 of our Terms of Reference) has been extremely useful. All exhibits have been taken into consideration, including reports of the U.S. Congress Commission on the Ukraine Famine, and every document submitted to all members of our Commission. If other documents were not sent and distributed, then they should have been submitted to the Commission in a supplementary session. This may have been useful, as many documents seem to have come to light in the USSR during the last few months.

While in London in November, 1989, the Commission decided not to hold a supplementary session but held a deliberative session reaching decisions in accordance with the exhibits, witness testimony and documents that were discussed and produced before us to that point.

According to our Terms of Reference, we have to make "recommendations as to responsibility for the famine"; this has to be done pursuant to Articles 27 and 28 of the ILA draft statute. To reach such conclusions, the Commission must, according to Article 14-1 of the ILA draft statute:

> "apply international law, including general principles of law recognized by nations, and the law established by international conventions".

It is on the application of these rules that the undersigned dissents on some points from the findings described in the Majority Opinion, paragraph numbers 57 to 62:

I The Qualification of "Genocide"

General Counsel Hunter, in his closing submissions (pp 45 - 47) said he believed that:

> "the evidence does not support a conclusion of genocide as defined in the convention."

My opinion is the same. I personally agree with his statement:

> "There is no evidence to destroy a national, ethnic, racial or religious group. There is evidence of intent, and there is evidence of ruthlessness in compulsory grain requisitions, dekulakization and collectivization"

(see the report adopted by the Commission, paragraph numbers 19 - 48, about the causes of the famine).

Personally, I also do not think that it is equivalent to an intention to destroy a national, ethnic, racial or religious group "as such". I am not convinced by the arguments developed in the Majority Opinion of the Commission, paragraph numbers 58 in fine and 59.

Though many examples of genocide seem to have occurred since the adoption of the 1948 convention, to date no prosecution has ever been attempted in any part of the world.

I am not sure, either, that the genocide convention has a declarative character, so that it could be applied to facts which took place nearly twenty years before. For this reason, the arguments developed in paragraphs 60 and 61 of the Commission Majority Opinion do not seem convincing to me, though I shall use some of them to support my own opinion about the qualification to be applied to the facts into which our Commission inquired.

II The Qualification of "Crime Against Humanity"

The declarative character of the crime against humanity seems to me much more decisively established. The reference to Grotius or to the canonist appears clearly much more adequate to crime against humanity than to genocide (which is, in fact, a variety of crime against humanity; it was perhaps perceived to some degree during the First World War, when the extermination of the Armenians by the Turks took place).

In fact, "humanitarian intervention" was practised

during the whole 19th century; diplomatically by Great Britain, France and Russia against Turkey in 1827; by the U.S.A. against Turkey in 1840; by European countries against Russia in favour of the Polish population in 1865; militarily by France against the Druses in 1860, with the agreement of Turkey. When the U.S.A. invaded Cuba in 1898, it was presented as a humanitarian intervention. In 1933, the League of Nations was asked to protest and act (which it did not) when the German laws against Jews were adopted (Bentwich, Canadian Bar Review 1933, p 19).

So, this is why I think that crime against humanity was recognized in international law before the Ukraine famine.

Still, the formula "crime against humanity" first appears with the Nuremberg trials, where it constituted a piece of the trilogy: crimes against peace, war crimes and crimes against humanity. Jurisdiction was conferred to the International Tribunal of Nuremberg, as to crimes against humanity, when those crimes had some link with one of the two others. Several of the Nuremberg defendants were tried for crimes against humanity (mostly at the same time as for one or two of the other charges, to say nothing of the charge of conspiracy); some of them were acquitted, others were condemned. In fact, that sort of crime was committed essentially by Germany's authorities, before the war, against the Jews who were its own citizens.

The crime against humanity appears, too, in the other Nuremberg trials conducted per Telford Taylor; we find it also in the decisions of the military courts of the Allied Armies (of. War Crimes Trials Reports, 15 vol.) and in those courts which applied law number 10 of the Interallied Control Council (of. Meyrowits, Paris, L.G.D.J. 1960, especially on the application by German courts in the U.S. occupation zone). After the war, the convictions of Eichman in Israel and, more recently, of Artukowic in Yugoslavia, were for crimes against humanity.

In all these cases, the jurisdiction of these courts to judge the crimes against humanity supposed a link with the world war. But if that condition was necessary to justify the jurisdiction of those courts, it was in no way a part of the notion itself, and it seems clear by

now that this umbilical cord must be cut.

The texts which define that sort of crime speak of: murder, extermination, slavery, deportation, torture "and other inhuman treatments against any civil population". Another form of the same crime is the persecution for political, ethnic or religious reasons, committed whether in violation of the local law or not. That is the definition given by Cherif Bassiouni in Article 5 of his draft of an international penal code (Revue Internationale de Droit Penal 1981, p 130).

For many people, and especially French jurists and public opinion, the difference between war crimes and crimes against humanity was not clear. M. de Menthon, who was the French prosecuting counsel at Nuremberg, said:

> "The arrest of a woman for resistance activities is a lawful act; the torture of that woman is a war crime; sending her in an extermination camp and using her for medical experiments is a crime against humanity."

The crime against humanity is a very serious violation of the fundamental rights of any human being. Mostly such violations are massive ones and are committed according to systematic policy tending to the elimination of the victims. The collaboration of public authorities, even during times of peace and against citizens of the state, is often a characteristic which makes those criminal acts - which are especially revolting - crimes against humanity because they do not seem compatible with elementary respect of human dignity (aff. Einsatz-Gruppen, W.C.T.R. IX p 49). On the contrary, mere attacks on private property are not sufficient (aff. Flick, W.C.T.R. I p. 48; aff. I.G. Farben, W.C.T.R. X p. 30).

The evidence gathered by the Commission has clearly shown that the crimes committed during the Ukraine famine were indeed crimes against humanity.

The specificity of the crimes against humanity became more evident in France about 1960. The French criminal law did not recognize that category of crimes; of course, all the acts which can be called so are criminal ones. But the difficulty arose, at that time,

because of the limitation rules (ten years for the prosecution, twenty years for the execution of the sentence). Many people feared that such criminals could avoid punishment. So, a law of December 26, 1964, has had to objectively and clearly establish that the crimes against humanity were "imprescriptibles par leur nature". On November 26, 1968, a U.N.O. resolution adopted the same rule, which clearly shows that the lack of limitation has a declarative character and must be understood as a rule of international law.

The 1964 French law refers to the definition of crimes against humanity contained in the U.N.O. resolution adopted on February 13, 1946, and to the International Nuremberg Tribunal charter. Some prosecutions have taken place (Barbie, Touvier, Loguay). To date, only Barbie has been convicted, but the French Cour de Cassation has had the opportunity six times to bring some precision to the definition and regime of that crime.

The French draft of a new Penal Code (which was submitted to the parliamentary process in 1986) begins its livre II concerning the "crimes et delits contre les personnes" by a "Titre I" called "Des crimes contre l'humanite". Our specific crime is contained in Article 211-2. In my mind, the acts which took place during the Ukraine famine should constitute a crime of that sort.

Inasmuch as the Commission is asked to make recommendations as to responsibility for the famine, in my opinion I concur with my colleagues' statements in paragraph numbers 51 to 53 of the Majority Opinion. But I think a qualification of the facts should establish crimes against humanity, not genocide, against whosoever might be sent for judgment.

SEPARATE STATEMENT OF PROFESSOR COVEY T. OLIVER

I concur with all the factual determinations made in the Majority Opinion; and in a general assessment of responsibility, I have no difficulty in characterizing the horrors, mass cruelties, intended sufferings and deaths in millions as "criminal" in a moral sense. Further, I agree that the legal term "crimes against humanity," pioneered at the War Crimes Trials at Nuremberg, might appropriately apply to the facts as we have determined them to have been in 1932-33, if there had been a trial based upon violations of customary international law.

The Petitioner, for reasons that I quite well understand and with which I sympathize, has maintained before us that the atrocities of the famine constitute in a strict legal sense the crime of genocide. Putting aside technical - but highly important - issues involving whether the modern crime of genocide came into being by positive law after World War II or was inherent in customary international law before the famine of 1932-33, I am not convinced that the Petitioners have made a technical, legal case for genocide under the facts. On this issue, Professor Ian Hunter, as General Counsel to the Commission, raised fundamental difficulties with the concept that genocide as a legal crime had been established from the evidence offered. Learned Counsel for the Petitioner did not, in my opinion, effectively meet Professor Hunter's contentions. (See New York Hearing transcript of closing submissions by Mr. Hunter, pp. 45-48, and by Mr. Liber for the Petitioner, pp. 96-104.)

I find that the Petitioner did not come to grips with two issues fundamental to the legal <u>crime</u> of genocide, whatever its origin; viz.: (1) Specific criminal intent to destroy Ukrainian ethnicity-nationality and, (2) An exclusively Ukrainian scope of injury through central Soviet operations, Union-wide.

I have no objection to the increasing use of the term "genocide" as the ultimate stigmatization of horrible and utterly indefensible acts, such as a dictator's blood-lust; but the <u>legal</u> crime is a more sharply-etched reality within the penumbra of outrage. To confuse the shadow with the core legal crime tends to cheapen the latter and threatens unjust applications <u>of the law</u>. (I wrote this before the recent events in

Romania, but the ground on which the Ceausescus were tried, condemned and speedily executed was genocide! Was it, legally? Or did the female Ceausescu perhaps make a point when she said, of the charge of mass slayings in demonstrating crowds, "... and they call this 'genocide'?")

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SEPARATE OPINION OF PRESIDENT,
PROFESSOR JACOB SUNDBERG

1. I regret not being able to join my colleagues on the Commission in their majority opinion. I have put more emphasis on the procedural aspects of the work of the Commission and, as a result, I have felt forced to embark upon a scrutiny of the evidence before us which advances along partly different roads than those followed by the majority.

2. The Commission, we all agree, has taken for a point of departure the draft statute for Commissions of Inquiry which was published by the International Law Association in its report of the 60th Conference, pp 424-445, with an explanatory report on pp 445-454. Serving on the Committee on International Criminal Law which created that draft, I have felt more keenly responsible for the procedural ideas and principles underlying the notion of an International Commission of Inquiry than I might have felt otherwise. This has made me also look at the work of our Commission in the light of the same ideas and principles, and that too has coloured my thinking in such a way that writing a separate, mostly concurring, opinion has become imperative.

3. More specifically, I consider that more consideration is due to the ILA draft and the thinking underlying it. Consequently, in this Separate Opinion more attention has been paid to the position of the parties to the proceeding and their attitudes towards findings.

PROCEDURE

4. Parties

The fundamental differences of opinion in matters of procedure affect the very character of the proceedings before the Commission, and that spills over into the evaluation of the evidence.

The International Commission of Inquiry into the 1932-33 Famine in Ukraine has been seized upon a petition by the World Congress of Free Ukrainians, which is a non-governmental organization present in Canada and claiming to represent the victims of the alleged famine.

This is well in line with the thinking underlying the

ILA draft statute. In the report of the 60th Conference, it states:

> "As well, under the statute, not only a state but also the victim of an alleged offence is entitled to petition the Commission (art. 16, lit. a). This practice has been utilized under the European Convention for the Protection of Human Rights and Fundamental Freedoms with the additional protocols and has proved to be the most effective means against infringements of the Convention by states.
> It is the individual victim of an offence who is vitally interested in the prosecution of the offender, not necessarily for reasons of vengeance, but because of the consequences resulting from the criminal's condemnation, for the sake of prevention and/or to establish the basis for an indemnification for the damages caused by the offence. Without the institution of the individual petition, a victim could only hope that the state of his citizenship might decide to petition the Commission, which could not necessarily be the case. In addition to the individual petition, the statute provides for a petition by groups of persons concerned or by non-governmental organizations present in a contracting state and claiming to be the victims of the alleged offence."

The Petitioner's representative, Mr. John Sopinka, Q.C. (as he then was) has informed the Commission of Inquiry as follows:

> "The World Congress of Free Ukrainians (WCFU) is the spokesman for the vast Ukrainian communities outside of Ukraine, numbering nearly four million people. Established in 1957 by delegates from 250 organizations in 20 countries, the Congress represents all facets of religious, social, political, economic, cultural and educational life of Ukrainians outside Ukraine.
>
> The overall activities and operations of the WCFU are based and outlined in its

"Constitutional Aims, specifically:
-.

- to work toward the realization of the of the rights of the Ukrainian people as set forth in the U.N. Universal Declaration of Human Rights;
- to preserve the national identity and heritage of the Ukrainian people and to develop and pass from generation to generation the Ukrainian language, culture and national traditions."

The Commission of Inquiry has accepted the World Congress as Petitioner and party before it in the sense if its Rules of Procedure, Rule 2.

Taking action under Rule 3(1) of its Rules of Procedure, the Commission has created the position of General Counsel as being necessary for the proper performance of its duties. This, too, is in line with the thinking underlying the ILA draft statute. In the report of the 60th Conference, it states:

> "Art. 22(1) There shall be a General Counsel who shall have the rights of a party before the Commission."

The position of General Counsel is further elaborated in the explanatory report in the following way:

> "The General Counsel, vested with the rights of a party, shall direct the proceedings into the appropriate channels, accelerate the same and facilitate the functioning of the Commission. He has to compile and to examine the incriminating, as well as the exonerating circumstances, in order to enable the Commission to work efficiently."

The Commission of Inquiry has retained as General Counsel Professor Ian Hunter, Barrister and Solicitor, of the University of Western Ontario, London, Ontario, by Decision of February 14, 1988.

Dr. Hunter approached his task by informing the Commission of Inquiry as follows:

> "I have the honour to appear as counsel to this International Commission of Inquiry. I represent no state or country, no party or ideology, no public or private interest. My brief is only to ensure that all of the evidence is fully presented and fairly put before the Commission; that complacent assumptions do not go unchallenged; that ideology is not passed off as history. So that, at the end of these hearings, the truth concerning a controversial historical epic may emerge. Given the passage of more than half a century since the events in question, that is a difficult and challenging enough assignment. My brief has been to cross-examine witnesses on their assertions, to assess the evidence and to put before you these conclusions, to which I submit the evidence fairly leads."

Dr. Hunter has elaborated on this further in his second submission:

> "This is not an adversarial proceeding. It is a search for the truth. I am not Mr. Liber's adversary in these proceedings."

(Mr. Liber appeared as counsel for the Petitioner upon Mr. Sopinka's elevation to the Bench of the Supreme Court of Canada.)

Taking further action under Rule 3(1) of its Rules of Procedure, the Commission of Inquiry has invited the national authorities of the Soviet Union to assist it in the performance of its functions.

Again, this is in line with the thinking underlying the ILA draft statute. In the report of the 60th Conference it states:

> "Art. 20
> (1) The Commission may request national authorities to assist it in the performance

"of its functions;
(2) A Contracting State shall render such assistance in conformity with any convention(s) or other instrument(s) it has accepted;
(3) The Commission may call upon any state to supply information which may be relevant to the inquiry."

In the explanatory report, it is simply observed that:

"National, judicial and/or administrative assistance may be indispensable for an inquiry before the Commission."

Since the ILA draft statute is only a draft, and no state thus has accepted to render any assistance to the Commission of Inquiry, the Commission has followed the path of ad hoc improvisation, the Acting President of the Commission extending by letter of February 13, 1988, an invitation to the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, Mr. Nicolai Ryzhkov, to contribute by appropriate officers, individuals and groups in the USSR to the proceedings of the Commission. The letter also requested, in the interest of historical accuracy, access on behalf of the Commission to certain archives and public records within the Soviet Union. As a result of the dispatching of this invitation, the Commission of Inquiry has received: (1) a letter of March 1, 1988, from the First Secretary of the USSR Embassy in Canada, Mr. Yuri Bogayevsky; (2) a letter of October 10, 1988, signed by two members of the Academy of Sciences in the Ukrainian SSR - Boris Babij and Ivan Kuras - and two scholars unconnected with the Academy - Drs. Stanislav Kulchytsky and Volodymyr Denisov; and (3) a letter of January 23, 1989, from the First Secretary, Mr. Bogayevsky.

5. Terms of Reference

The Commission of Inquiry is a self-generated body. It has itself set its Terms of Reference. Under these, the purpose of the Commission is to inquire into and report on the 1932-33 famine in Ukraine. Without

restricting the generality of the foregoing, it is to inquire and report on:

(1) the existence and extent of the famine;
(2) the cause or causes of such famine;
(3) the effect it had on Ukraine and its people;
(4) the recommendations as to responsibility for the famine.

After due penetration of the evidence presented to the Commission of Inquiry, General Counsel has proposed that three additional issues should be addressed which, in his opinion, had arisen in the hearings and which require answering; viz:

(5) the cover-up, how it worked and who was responsible;
(6) the role of Western governments; and
(7) a ruling on whether the famine was an act of genocide.

Petitioner has expressed his agreement to having these three additional issues included in the Terms of Reference, thinking that they form part of the overall picture and will be of assistance in coming to a decision.

As to the suggested amendments, I do not find it necessary on my part to address the issue, since I think that a fair reading of the original terms allows the inclusion of these three additional issues.

6. Evidence

Having this procedural set-up as a background, I arrive at slightly different conclusions in the evaluation of the evidence.

As to evidence, the Rules of Procedure say no more than that different procedures should be applied when receiving viva voce evidence from witnesses and experts.

It is in line with the thinking underlying the ILA draft statute that the Commission of Inquiry also has permitted other kinds of evidence. In the report from the 60th Conference, it states:

"Art. 19
The Commission may hear more than one petitioner on the same matter. Each petitioner shall have the right to be represented. Petitioners shall also have the right to cross-examine witnesses and submit evidence in accordance with the Commission's Rules of Procedure.

Art. 21
(1) The Commission shall examine the evidence offered by the petitioner;
(2) The Commission may call witness(es) for examination, request evidence and call expert(s).

Art. 25
(1) The Commission may receive documentary evidence, evidence from witnesses and other appropriate evidentiary material. This shall be made available in the language of the alleged offender and of the petitioner;
(2) If the inquiries of the Commission are conducted in a language which the alleged offender does not understand, an interpreter shall be appointed for him at the Commission's expense."

In the explanatory report, it elaborates that the petitioner shall have the right to submit evidence and to contribute to the elucidation of other evidence by Cross-Examination. The Commission shall examine the evidence offered by the petitioner; it is entitled, as well, to request and examine evidence ex officio, thereby excluding the sole control of the proceedings by the parties thereto.

The explanatory report has the following to say about the principles set out in draft article 25:

"There are no precise rules on evidence and the Commission may receive any evidence in its discretion."

It is, therefore, proper to say a few words about the principles I have followed here.

7. The Taking of Evidence

The Commission of Inquiry has held two hearing sessions. The first one took place in Brussels, May 23-27, 1988, at the Europa Hotel; the second one took place in New York, New York, October 31-November 4, 1988, at the U.N. Plaza Hotel. During both sessions, evidence was taken and submissions were heard by the Petitioner and General Counsel. A special evidence-taking session took place on June 27, 1988, at Robertsbridge, Sussex, England, in the presence of Professor G.I.A.D. Draper, representing the Commission. At this session, testimony was given by Mr. Malcolm Muggeridge.

8. Evaluation of Evidence and Agreement Between Parties

When it comes to the evaluation of the evidence, it is, in my opinion, clear, given the special character of the proceedings, that extra weight is to be accorded evidence to which there is agreement between the parties. Such matters may also, consequently, be given no more than summary attention on my part. All the more attention should then be given to those matters in which there is disagreement between the parties.

9. Evaluation of Evidence and Admission Against Interest

I am also in sympathy with the attitude that extra weight may be accorded evidence which can be classified as admission against interest; in this case, any admission which can be deduced from official Soviet statements of position. The fact that Professor Kulchytsky is referred to by Mr. Bogayevsky in the USSR Embassy letter of March 1, 1988, and that Professor Kulchytsky furthermore is one of the signers of the letter to the Commission of Inquiry of October 18, 1988, in my opinion means that any admission by Professor Kulchytsky, of relevance to our inquiry, is an admission against interest and should be treated accordingly. It also follows from this approach that official papers or statutory instruments, adopted by all-Union authorities or SSR authorities or Communist Party official bodies, within the Soviet Union, are to be interpreted in the light of the same rule.

10. Evaluation of Evidence: Public Knowledge

On the other hand, I cannot share the reliance of the majority on facts which may be considered widely-held public knowledge. What is widely reported in the press and brought to the attention of "world opinion" calls for scepticism rather than trust in this infested area where we have the most glaring examples of deceitful media manipulation and cover-up. This is an area where indeed we have had the experience of "world opinion" being master-minded from Moscow by Willi Munzenberg, the journalistic genius who developed the idea of "fellow travellers" and added mastery to the methods of using such auxiliaries exactly to manipulate public opinion in the service of the Soviet and Communist Party organs worldwide (see exhibit P-30, pp 199-200). The same methods were vigorously employed again as recently as during the Vietnam War.

11. Classification of Evidence

The evidence brought before the Commission of Inquiry is, in my opinion, best classified in three categories - two viva voce and one documentary; viz:

(1) eye-witnesses;
(2) expert witnesses;
(3) documentary evidence.

I have no difficulty with the two viva voce categories. The witnesses have been subject to Cross-Examination, and the Commission has been able to form its opinion as to the validity of assertions made.

The documentary-evidence category is much more problematical. It partly overlaps the expert-witness category inasmuch as the drafter of the document, be it a book or report, has been present and cross-examined on his text. When this is not the case, different considerations apply.

12. Documentary Evidence

General Counsel has taken the position that all the

documents to file are going in by consent and that he only will argue as to the interpretation of these documents. The documentary-evidence exhibits received by the Commission of Inquiry are listed in Part I of the Final Report of the Commission. These exhibits are of many different kinds.

Many are books. A book is something that the members of the Commission of Inquiry can read but possibly know very little about. Worse yet in this respect are newspaper clippings and articles. This type of evidence has to be handled very carefully, in my opinion, and should be accepted at face value only when a mass of documentary evidence all points in the same direction and leads to the same conclusion.

The parties have arrived at similar positions.

Mr. Sopinka put it this way:

> "All historical evidence is to some extent the opinion of the historian. In many instances historical facts are supported by documentary evidence, but in some instances no documents exist, in which case the opinion of those who have made a special study is tendered. The absence of documentary evidence does not render the opinion inadmissible, although it may affect its weight." (p 8)

Mr. Liber stated:

> "Finally, you have documentary evidence. We all know the Rules of Evidence; we all know the dangers of documentary evidence. It's hearsay evidence; you can't test its credibility; you have to take it the way it is. But what I urge you is to look at that documentary evidence, because there are portions of it that are very significant and important. And, if we submitted one document and said, 'Here, take a look at this,' I can understand your reluctance to accept or not to accept it or, if you accept it, to put much weight on it. But when we provide you with a ton of documentary evidence, and all of it is consistent, it

"dovetails; then I think you have to put weight on it." (pp 50-51)

Dr. Hunter stated:

"This Commission has had filed before it many, many documents, books, monographs, Soviet decrees, newspaper clippings. It is crucial to my submission to you that all of these constitute the evidence." (p 18)

13. The Paper Trail

The parties before the Commission of Inquiry have adopted the terminology of a "paper trail". Matters leaving a paper trail are decrees and other statutory instruments as well as public documents in general. The famine has left a paper trail.

The question may be raised why it is so, why it is that the administration of the famine was done through official decrees. Why is there a record?

Expert witness for the Petition, Dr. James Mace, has offered an answer:

"A government cannot function without decrees; particularly a government which rules as vast an area as the Soviet Union or, indeed, an area as large as the Ukrainian SSR, which is comparable in territory to France. One has to communicate instructions, and oftentimes threats as well, to literally thousands of local officials to get them to do what the government -- the central authorities -- want them to do. So, one has to leave that sort of paper trail. Many of these decrees were published in the press at that time so that they were available to the general population. They were binding on the general population. To implement a law or to implement a policy, it is essential that those who are to carry out that implementation, or are to be subject to it, know what the policy is."(p 171)

Very much of the complete paper trail, however,

remains buried in the Soviet archives. Doctor Mace stated further:

> "The Soviet Union doesn't burn books or alter archival records of its own, to my knowledge as a historian. What it does is it controls, very strictly, access to those archives and documents." (p 179)

It will be recalled that the Commission of Inquiry, by letter of February 13, 1988, to Mr. Nicolai Ryzhkov, Chairman of the USSR Council of Ministers, has requested access to certain archives and public records in the Soviet Union. I regret to say that the request never met any reaction. (of supra No. 4)

Compensating for this, to some extent, is the fact that documentation is being kept, but inaccessible, and has entailed a number of spot discoveries, many of them as a result of the German invasion of the USSR and subsequent retreat, accompanied by bringing archives to Europe in the course of the Second World War (see exhibit P-37, p 56 - Mace, "The Famine of 1933: a Survey of the Sources"). In this way, we have a paper trail which includes the secret directive to the OGPU - the so-called cannibalism decree - which was not, in fact, published. Also included is an equally secret order from A.A. Andreyev, Commissar of Transport, to railway officials, permitting none of the starving Ukrainian peasantry to travel to Moscow (see exhibit P-12, tab 74; exhibit P-36, vol. 2, pp 465-467).

The documentation that directly determines the number of people who perished in the famine belongs, however, to what is lost in the Soviet closed archives. From Dr. Mace's testimony, the following may be set out:

> "There is the 1937 Soviet census, and perhaps even more important than that are the various raw data, the various memoranda and discussions which must have taken place within the central statistical administration of the Soviet Union. Those records were obviously seized by the People's Commissariat of Internal Affairs in 1937, when the responsible officials of the Census Bureau were arrested." (pp 176-177)

While the paper trail thus may establish part of the picture, in particular as a specimen of admission against interest, it does not provide the full picture.

The point was raised, when evidence was received on the resumption of the collectivization offensive in 1930, when "... the peasants were once again forced, persuaded, intimidated, cajoled, taxed and ordered onto collective "farms." This offensive does not seem to have left a paper trail. The Petitioner's expert witness, Dr. Conquest, gave the following explanation:

> "... that it is interestingly normal in the Soviet Union that indications are given and the local people on the spot are expected to follow them without being told."

Dr. Conquest also builds on the jail experience of Dr. Lucien Bilt, the Deputy Head of the Jewish Fund in Poland, who was jailed in Russia in 1939 and in 1943. At the former occasion, he was never attacked as a Jew, but on the later occasion he was always being used as a Jew. Getting to talk to his interrogators, he asked them if they got instructions which could explain the change in their attitude; the answer, as noted by Dr. Conquest, was:

> "No. It comes down somehow. We know it. This is the right line now."

Conquest concludes that "there wasn't anything said but a few hints of Stalin's method rather than a formal approach." (p 139)

MERITS

14. Existence of Famine

Based on the analysis of the parties' positions and the character of the evidence presented above, I will now turn to the first question raised in the Terms of Reference set by the Commission of Inquiry.

In his article published under the title "Honestly Facing the Past," in "News from Ukraine No. 2, 1983," and

referred to by the USSR Embassy in Ottawa, Professor Stanislav Kulchytsky addresses the issue of the famine. While the article includes a great deal of assertions which will not harmonize well with all the findings I will be making in this Separate Opinion, what matters here are only the admissions against interest. Professor Kulchytsky writes about "the famine of the early 1930s," and the period when "whole villages became deserted in the regions hit by famine." Furthermore, he states that, "the winter of 1932-1933 was the culmination of that crisis; the food shortages, which were becoming ever more acute spread over most of the USSR territory, including the main grain-growing regions of Ukraine."

I find in this a clear admission that there was a famine, that it culminated in the winter of 1932-1933, and that it hit the main grain-growing regions of Ukraine.

On this basis, I conclude there was famine in Ukraine in 1932-1933.

15. Extent of Famine

Insofar as the extent of the famine is concerned, I adopt the reasoning of the majority set out under numbers 10-18 in the Opinion of the majority.

16. Causes of the Famine

Addressing the issue of what caused the famine, thus found, the matter is best separated in a number of different categories. On the one hand, following the paper trail you arrive at a number of manifest, non-controvertible causes which certainly have contributed to the famine and which allow placing responsibility squarely on the shoulders of particular individuals, but which have not been the only causes, and the effect of which is today beyond possible quantification. Another category includes manifest and immediate causes, the responsibility for which, however, tends to fade away by being spread among innumerable individuals belonging to the general system. A third category includes causes of a more socio-philosophical character, which certainly were causal to the famine but which also come into the category of justification and defences when

responsibility is in issue.

In this Separate Opinion, it will be attempted to keep these three major categories distinct.

17. The Paper Trail - Statutory Instruments

On August 7, 1932, a law was established titled "On the Preservation of the Property of State Enterprises, Kolkhozes and Cooperatives and the Strengthening of Socialist Ownership," (exhibit P-3, tab 9). It is signed by K. Kalinin, Chairman of the Central Executive Committee of the USSR; T. Molotov, Chairman of the Council of People's Commissars, countersigned by Skiabin; and by A. Enukidse, Secretary of the Central Executive Committee. However, Lev Kopelev reports that the law was conceived and written by Joseph Stalin personally, when Kopelev touches upon the matter in his book, "The Education of a True Believer." This text is repeatedly referred to by Drs. Conquest and Mace (p 252 with further references). In the preamble, the law said that those who encroach upon social property should be looked upon as "enemies of the people". The penalty included imprisonment in concentration camps and confiscation of all possessions. In practice, the law was invoked not only against petty thieves, but even against those who gleaned already-harvested fields (see exhibit P-12, tab 47; P-43, p 200).

Professor Kulchytsky asserts in his article, referred to above, that the background of the law was as follows:

> "The collective farmers even devised original tactics of sabotaging state purchases; they kept back the real harvest figures, leaving some grain in the straw in order to take that grain for themselves later on, after a second threshing, which was done secretly. Of course, faced with such facts, the top authorities brought pressure to bear upon the districts and farms which failed to meet the targets."

However, subsequent and subsidiary regulations broadened the sweep of the August 7th law. It was made to apply against all who stole beets (decree of

September 17, 1932, about the protection of property of state enterprises); against anyone who hid bread or grain (decree of November 20, 1932, regarding grain reserves); to peasants who maliciously undermined grain procurements (decree of December 10, 1932, ordering the search and confiscation of all hidden food). The implementation of the August 7th law was put into the hands of political departments attached to "Machine and Tractor Stations and State Farms" (decree of January 11, 1933, on the weakness of the work in the villages and the necessity of organizing political departments). Finally, the August 7th law was extended to apply to acts of sabotage or intentional lessening of sowing quota (decree of January 30, 1933).

On August 22, 1932, a new resolution of the Central Executive Committee and Sovnarkom "On the Struggle Against Speculation" - hereinafter the "Speculation Decree" - declared that the peasant who sold his grain without waiting for official permission ran the risk of being listed as a speculator. Kopelev, in the book referred to, observes:

> "In this resolution there was no mention of legality or the courts; it obligated 'the OGPU, the organs of prosecution and the local organs of power ... to apply the sentence of confinement in a concentration camp for a period of 5-10 years without the right of amnesty.' Such resolutions of the non-legislative departments (the Central Committee of the party) replaced and 'supplanted' the laws, simultaneously entrusting judicial functions to the OGPU - the secret police." (p 252)

On December 2, 1932, a follow-up decree was passed, according to which "bread trade" would be prosecuted as "speculation" according to the August 22 decree "in the oblasts, territories and republics which had not fulfilled their yearly quota of grain collection and which had not provided seed for the spring sowing."

Mr. Sopinka, Counsel for Petitioner, observed that the decree "forbade any private grain or bread trade; this made it impossible for peasants to buy bread."

Petitioner has asserted the existence of a "blockade" of the Ukrainian-Russian border for the purpose of preventing the entry of food into Ukraine. The evidence establishes that there was indeed a secret order to this effect, by A.A. Andreyev, Commissar of Transport, to the railway officials. "Train tickets were sold only to those who had written permission to travel." Those without travel permits were travelling "unlawfully" and, when they were discovered by GPU border guards stationed at border terminal points, the guards detrained the passengers and confiscated any food products carried by those returning to Ukraine. One authority for this was the Speculation Decree: "Even carrying loaves of bread was illegal, being branded as 'speculation'." (exhibit P-12, tab 47) (D. Solovey, p 356)

The evidence establishes that the blockade worked both ways.

> "I learned from other passengers that travelling for food to Moscow was forbidden so as to avoid compromising the Soviet system in the eyes of the foreigners. Those without special travel licences were rounded up, locked in one of the station halls and kept under guard until the following morning. Next morning, I and hundreds like myself were loaded upon a freight train bound for Kiev. Thus we were escorted under guard without fares or travel licences back to where we had all come from." (exhibit P-12, tab 47)

Another sanction, imposed for lagging in grain collection, was, according to the evidence, the establishment of commercial blockade - the so-called "Black List".

This sanction was first to be found in an appeal signed December 6, 1932 by W. Chubar and Stanislav V. Kossior, Chairman of the Council of People's Commissars and Secretary of the Central Executive Committee in Ukraine respectively. In this appeal, the signing bodies "call upon the sincere and devoted members of the collective farms and on those toiling peasants who are individual holders, to organize all their resources for a merciless struggle with kurkuls and their henchmen."

It was resolved to:

> "halt the supply of goods immediately, halt the local cooperative and state trading and remove all visible supplies from the cooperative and state stores. Prohibit completely all collective farm trading."

In a follow-up resolution of December 15, 1932, signed by the same officials, a list of districts lagging in grain collection was given, and it was ordered that "supplies to those villages are to be withheld until such time as they achieve a decisive improvement in plans for grain collection."

It was observed by the Petitioner that as of December 13, 1932, 82 of Ukraine's 494 administrative districts had been placed under the provisions of this decree.

The Black-List decrees were not published until the mid-1950s.

I find it manifest that applying all these various sanctions in a territory hit by famine must have contributed to the famine in a major way.

18. Other Manifest and Immediate Causes

Dr. Hunter, speaking as General Counsel, has urged the following findings upon the Commission of Inquiry:

> "The evidence, I submit, supports the conclusion that there were three primary causes of the famine. These causes, stated in chronological order rather than in order of severity, were:
> (1) compulsory grain requisitions.
> As I've already indicated a few moments ago, that policy of compulsory grain requisitions was a fact of agricultural life in the Soviet Union throughout the decade preceding the famine, the 1920s. There was nothing new and there was nothing Ukrainian about the policy of compulsory grain requisitions.
> (2) dekulakization.

"This meant, according to Dr. Conquest's evidence, the compulsory deportation of approximately 25 million peasant families to the Arctic, many to Siberia. And, as Dr. Conquest points out in his book, this is one fact that has never officially been denied by the Soviet Union. They've never denied that they deported kulaks, whereas they have denied the existence of the famine.

(3) collectivization.
The forcible transference of peasants from privately-owned and privately-tilled land to state-owned, state-operated collective farms; managed - or, on the evidence, more often mismanaged - by party officials and by party bureaucrats."

19. Grain Procurements

The relationship between state and individual has changed a number of times since the October Revolution. This relationship includes the duties imposed by the state on the people in the grain-growing territories of the Ukraine. An important part of these duties concerns what to do with the grain.

The immediate post-revolutionary period was characterized by militant communism or war communism. It meant supplanting a market economy based on mutual consent with a command economy; i.e. an economy not based on the exchange of monies for goods. It meant that the cities which produced very little were, in fact, supplied through forced requisitions of grain and other foodstuffs.

The Petrograd soviet - or workers' council - sent 150 workers to Ukraine, organizing the food-supply detachments. Such a detachment would go into a village and say, "Give us bread for your proletarian brothers, or else we will shoot you dead." As a system, this meant seizing the fruits of the farmer's labour and giving him nothing in return.

At that time in the Ukrainian SSR there existed an organization eventually called KOMNEZAM, an acronym for

the Committees of Non-Wealthy Peasants. This local support organization was interested in the grain seizure, partly because they were able to keep anything from 15 to 25% of what they seized. Thus, they had an incentive to seize as much as possible.

This group organization, functioning until 1924, was allowed to exert state power in the villages. It carried out its own campaign of seizing kulak surplus land and livestock, distributing it to those who were not wealthy. The membership of this organization was able, if it saw something it liked or coveted from a more prosperous peasant, to seize and distribute it to its own members.

Such grain requisitions were both from Ukraine and other areas outside Ukraine where there were major grain-producing areas. From the Central Government's point of view, it was of course natural to take grain from areas thought to be hostile than from those which were less hostile.

These grain requisitions, meaning simply quotas, were the normal method of getting grain during the period 1918-1921. Lenin explained that this was not an emergency war measure, but rather intended to be the basis of the relationship between the village and town.

The New Economic Policy in Ukraine basically did away with this by 1924. At the 10th Congress of the Russian Communist Party, when Lenin brought in the NEP, the market system returned. However, in the Ukraine, the NEP came about six months later than the rest of the country because in Ukraine they wanted to carry out another round of requisitions. But when NEP came, it meant basically that the state had to buy from the peasant and more or less allowed the peasants to have secure tenure of their individual farms. They were allowed to sell whatever surplus they might wish on the open market, subject however to price control.

The last year of voluntary purchases of grain in Ukraine produced 303 million tons of grain, purchased by the state from the Ukrainian peasantry. This was 1926. It was 21% of the total harvest.

In the 1927-28 agricultural year, grain prices set

by the state were lowered. As a result, voluntary purchases dried up and the state no longer met its quotas in terms of purchases. The state again resorted to extraordinary methods of grain procurement. The government went back to forced requisitions, seizing produce from the countryside rather than buying. This was so because the peasants would not voluntarily part with what the state wanted at the prices offered. But the other side of the coin was lost productivity. Professor Kulchytsky describes the phenomenon in the following way:

> "Why then should the peasants try to raise the productivity of labour, not even knowing what share of the crop is going to remain in their collective farm? But this was exactly the situation that shaped up in Soviet agriculture, which resulted from the uncertain criteria of purchases. And after all, why preoccupy with the crop if it may go heaven knows where? The results were not long in coming: in a number of Ukraine's districts (especially in the southern-steppe area) almost half of the harvest was not gathered in, was not transported to granaries or was lost during the threshing in 1931."

Collectivization is inter alia a way of controlling the crop. The essence of collectivization was that private farms would be consolidated so that an entire group of farmers would go out and plant and harvest as a group. It was much easier to control the crop under these circumstances. You bring the crop into a single threshing room. There is an official saying, "We want X quantity of the given crop; this is your obligation to the state." And the official stands there until that amount is threshed, and then he takes it.

So, collectivization was basically a mechanism for controlling the crop. When collectivization arrived, the collective farms were simply given a quota. The quota was just an order for the amount in the bins of the collective farm. The quota was normally decided by the Planning Commission in Moscow. It was not very well informed. It said that this is what the peasants should have produced from one hectare, so and so many poods.

Furthermore, the theory could not be that collectivization was producing a lot lower grain output. The modern collectivized peasant was supposed to be working harder and producing more than the backward muzhik preceding him. The collective farms were therefore given targets which were the absolute maximum, assuming the best possible yield from a given acreage. These were theoretical, ideal quotas. They were set by bureaucrats who knew little about the actual farming realities.

Under collectivization, since the state had more direct control of the crop, the figures of state procurement increased radically. In 1930, 7.7 million tons were procured forcibly. That was 33% of the harvest. It was more grain than was ever taken from Ukraine before or since. The same quota - 7.7 million tons - was maintained in 1931. However, only 7.0 million tons were actually procured. In many areas even the seed was taken in order to meet the quotas. By the spring and summer of 1932, it was clear that there were very serious food-supply difficulties in rural areas of the Ukrainian SSR and elsewhere.

In May, 1932, a series of concessions were made; they consisted of lowering the grain-procurement quotas throughout the Soviet Union. In the Ukrainian SSR quotas were lowered from 7.7 million to 6.6 million tons.

In July, 1932, the Third All-Ukrainian Communist Party Conference was held in Kharkov. The responsible officials then stated that a further lowering of this quota - 6.6 million - was necessary. Molotov and Kaganovich, however, insisted upon retaining the 7.7 million figure. Eventually the figure was not met, despite the fact that Soviet authorities in the Ukrainian SSR did their best, fully aware that meeting it would lead to extreme deprivation in the countryside. By the beginning of September, people were leaving the collective farms as a reflection of extreme hardship.

What followed was a purge in the Communist Party. On September 16, 1932, the Odessa Regional Party Bureau censured four of its raikoms for their non-fulfilment of the grain-procurement plan. On October 5, 1932, the

entire Kiev Regional Party Secretariat was so censured. From June 1, to October 1, a total of 121 of Ukraine's 494 chairmen of the district governments were replaced. From July 1 to November 1, 1932, 47 of the 494 district party secretaries were replaced.

Stalin then intervened by appointing two major officials, Mendel Khataevich and Ivan Akulov. Khataevich made the following statement:

> "We must guarantee the complete delivery of bread to the working class and the Red Army. So long as the annual grain-procurement plan is not wholly fulfilled, this task will be primary and decisive."

Professor Kulchytsky describes the situation as follows:

> "In early November of 1932, extraordinary commissions set up to expedite grain purchases were sent to Kharkov (the then Ukraine capital), Rostov-on-Don and Saratov (centres of grain-growing regions of Russia). Guided solely by the data about the so-called biological yield capacity - i.e. standing crops - the members of the commission, who arrived in Kharkov, knew nothing about the losses through poor management. By comparing the ideal productivity with the amount of grain that was actually brought in, one could arrive at the figure accounting for those losses. But the members of the commission erroneously held that the grain had been stolen and, therefore, gave instructions to carry out grain purchases, in the period of winter of 1932-1933, using coercive methods. In other words, confiscation of grain was launched without taking into account the true reason that had led to its shortages."

The system of procurement was based upon a series of state-imposed contracts ("kontraktsia"). These contracts were between a given farm or collective farm, on the one hand, and machine tractor stations on the other. By law, however, those farms which were not serviced by machine tractor stations were subject to

state obligations no less than those incurred by those who were serviced by such stations, indeed usually higher than the latter. But until the beginning of 1933, it was not officially in the nature of a tax.

Professor Kulchytsky describes what followed:

> "On January 19, 1933, the USSR Council of People's Commissars and the Central Committee of the All-Union Communist Party (Bolsheviks) adopted a resolution which provided for the creation of a new economic situation. The per-hectare principle of grain purchases was introduced. Under the new set-up, the collective farmers knew their share of the yield well before the sowing campaign. That created incentives, and the peasants became interested in expanding crop areas and eliminating mismanagement. Thus, Lenin's principle of tax in kind was revived. But the resolution could not yield immediate results, and people were already starving. In the winter of 1939, when it became obvious that the population of many agricultural regions had neither food stocks nor seed resources, some urgent measures were taken."

20. Dekulakization

Roy Medvedev explains the decline in Soviet agricultural production in the following way (p 249):

> "Earlier it had been assumed that agricultural production would increase and that the capital accumulated in that sector could be used extensively for industrialization; these calculations had to be revised. On the average, 33.4% of the surplus product derived from agriculture was used for industrial development during the first Five-Year Plan. At the beginning of the planning period, the figure was close to 50%, but in 1932 it fell to 18.1%. At the end of the First Five-Year Plan, the starving villages were hardly able to help industrialization."

The decline in agricultural production was largely due to the collectivization of agriculture in its Stalinist variant. Gross agricultural output declined throughout the first Five-Year Plan. There was an especially sharp drop in livestock production. The consequences of this fall continued to be felt even during the second and third Five-Year Plans.

The 15th Communist Party Congress in 1927 introduced high and more-progressive taxes on the prosperous peasants or kulaks.

A few days from the end of that Congress, Stalin made a sudden turn to "the left" in agricultural policy, putting into effect the forced requisition of grain and sending out instructions for the application of extraordinary measures against the kulaks. There followed a wave of confiscations and violence towards wealthy peasants throughout the entire country.

Inevitably, the kulaks reacted to the extraordinary measures by curtailing their production. Many kulaks "liquidated themselves". They sold their basic means of production and hid their money and valuables. Middle peasants had no incentive to increase production, since they might then be labelled "kulaks".

The extraordinary measures in the winter of 1927-1928 had meant a declaration of war against the kulaks and the end of NEP in the countryside. There being very few state and collective farms at the time, the result was going to be famine.

The renewal of the extraordinary measures increased grain procurements for a few months. But the new pressure on the kulaks also caused a new decrease in the amount of land sown, and a new wave of self-liquidation occurred.

A dangerous situation was thus developing in the middle of 1929. At this time, in his own speech, Stalin linked the principle of dekulakization and collectivization. Something had to be done. Various kinds of black-market operations were thriving. What was chosen was to speed up the collective-farm movement in

order to limit and ultimately destroy the kulaks' monopoly on marketable grain. In Stalin's formula, "the way out is to turn the small and scattered peasant farms into large united farms based on the cultivation of land in common, to go over to collective cultivation of the land on the basis of a new higher technique."

In December 1929, a special commission of the Politburo was formed on collectivization as well as a subcommission specifically on the kulaks. This same month, Stalin called for "liquidation of the kulaks as a class," and stated that "dekulakization", meaning dispossession of the kulaks, "should be an essential aspect of the collective farms in carrying out complete collectivization." Stalin said, "Now dekulakization ... is an integral part of the formation and development of collective farms."

A campaign to dispossess the kulaks got under way, and the ensuing regulation meant simply trying to introduce some order into the brutal operation that had already been set into motion. Some kulaks were to be isolated at once by incarceration in prisons and corrective labour camps; others were to be banished to remote regions of the country.

By 1930, it was clear that Stalin had launched what he himself called "the revolution from above". In order to carry out the orders that came from above, not exclusively in writing but often in oral form only, an emergency situation was created in the countryside and, with it, an increase in the role of the GPU.

Peasants were forced to join collective farms under threat of dekulakization or as "an enemy of the Soviet regime". Some tried to create not collectives but communes, meaning that the peasants were forced to put all their livestock, poultry and household gardens into a collective pool. Consequently, before joining the collective farms, many peasants slaughtered their livestock. Sometime after the publication of Stalin's "dizzy with success" speech, the Central Committee proposed to stop the use of force and allow peasants to leave the collective farms if they so wished. But they were not allowed to take back their livestock and land when leaving. So, when pressure on the peasantry was

renewed in the fall, it is not surprising that the figures for collectivization soon began to rise again.

THE UNDERLYING CAUSES OF THE FAMINE

21. Marxism, Nationality Policy and Peasant Policy

It is part of the Marxist canon that nationality as a concept is a bourgeois idea and linked with the existence of an independent peasantry.

The peasantry as such constituted an obvious problem to any Marxist. Karl Marx had foreseen the coming of Marxist socialism in countries in which the industrial working class constituted the vast majority. In Russia, however, there was practically no working class of this kind. It was then believed that the middle peasantry would be an ally of the proletariat, but not a reliable one. How to deal with the peasants remained a permanent problem.

Stalin was Commissary for the Nationalities under Lenin from 1917 until 1922. He played a leading part in the formation of a number of pseudo-national regions along the western fringe of the Soviet Union. The most important among these was Ukraine, which was given the status of an SSR of its own.

In 1923, however, there was a re-evaluation of nationality policy. Nationality policy, in Soviet thought and action, was now seen more as a concomitant of the policy toward the peasantry. The national problem was seen as, at bottom, a peasant problem; nationality policy reflected, to some degree, peasant policy.

"The process of collectivization" - wrote Dr. Ammende - "meant a campaign against soil, nationhood and religion." Dr. Ammende was well-placed to make this observation, since he was the Secretary General of the European Congress of Nationalities, a non-governmental body with the task of overseeing the observance of the minority protection treaty system functioning under the League of Nations. However, Dr. Ammende adds:

> "It would be wrong if the impression were conveyed that this policy of destroying entire groups within the population were directed exclusively against the nationalities. The Moscow Government adopts similar measures against all those groups within Russia proper which resemble the nationalities in remaining loyal to the concepts of religion, family, nationhood, etc." (p 183)

Dr. Ammende cites the fact of the Kuban Cossacks as a chief example, they being equally destroyed by the famine. "The chief crime of the Kuban Cossacks was that they resisted the forcible collection of grain."

The meaning of the new attitude may be deduced from the speeches made at the Central Committee meeting early in 1933; i.e. by Kaganovich and Postyshev. These speeches included, as reported to the Commission by Dr. Conquest, the line: "We are hitting the kulak because private property is the basis of nationalism, but also because they are kulak."

The same is stressed by Dr. Mace in one of his articles (exhibit P-18, tab 5, p 6):

> "As early as 1950, one finds statements in the Soviet Ukrainian press that in Ukraine the collectivization of agriculture had a particular task, the elimination of the social basis of Ukrainian nationalism, which was perceived to exist in individual peasant agriculture. The famine of 1933 seems to have been above all an attempt to destroy the Ukrainian nation as a social organism and political factor within the Soviet Union." (in Serbyn & Krawchenko, eds. "Famine in Ukraine, 1932-1933", exhibit P-37).

Dr. Conquest, in his book (exhibit P-11, p 219) adds the following observation:

> "Stalin clearly understood that the essence of Ukrainian nationhood was contained in the intelligentsia who articulated it, but also in the peasant masses who had sustained it

> "over the centuries. The 'decapitation' of the nation by removing its spokesmen was indeed essential - and was later evidently to be the motive for Katyn and for the selective deportations from the Baltic States in 1940."

Dr. Ammende's observations are much in harmony with this:

> "Almost simultaneously with the beginning of the struggle with the Ukrainians, the White Russians and other nationalities (i.e. in December, 1932), the government resolved on much severer measures than hitherto for the exploitation of the peasantry. Under such slogans as the pursuit of 'saboteurs', 'counter-revolutionaries', 'enemies of the State', and so on, stronger pressure was exercised to extract from the peasants the grain they still possessed. Moscow exerted itself to the uttermost to seize the peasants' last reserves for the requirements of a privileged category and for the fulfilment of the Five-Year Plan: in other words, for the maintenance of exports." (p 56)

The relationship between Marxism and nationalism in this historical situation is also reflected in a speech by Postyshev delivered in late 1933 and reported by Ammende (p 142):

> "He stated that any attempt to harmonize proletarian internationalism with nationalism must make it an instrument of the nationalist counter-revolution ..."

Postyshev's programme therefore meant "war to the knife on all the national movements". (p 145)

22. Industrialization Policy

Stalin's industrialization policy may be explained as follows:

With the predetermined advance into the future,

being part of the Marxist credo, industrialization was a must. If the proletarian government was going to have a strong proletarian base, it must industrialize. In an agricultural country like Russia, the way to do it was to industrialize by getting the surplus from the peasantry. This could be done by actively seizing what the peasant produces and using that to pay for industrialization. Essentially that was what Stalin did. The trouble with this policy was that agricultural production decreased and produced less and less of a surplus. Continued industrialization meant under such circumstances you had to consider more and more in agriculture to be a surplus. When enough was considered to be a surplus, famine became the lot of the peasantry.

At the 10th anniversary of the October Revolution, Stalin proclaimed two paramount aims in the domestic field: radical collectivization of the peasants and the creation of a powerful Russian industry. A month later, at the 15th Party Congress, the State Planning Commission was entrusted with working out the first Five-Year Plan for the entire economy of the Soviet Union. The Five-Year Plan, accepted late in 1928, meant enormous investments in industry. During the first year of the Five-Year Plan, 1,300 million rubles were invested. According to the plan, the production of pig-iron was to be 5.5 million tons by the end of 1929. It was 13.4 million in Germany and 10.5 million in France. At the end of 1933, pig-iron production in the Soviet Union was already at 10 million tons. At the start of the war with Germany, it stood at 17 million tons. Within a few years, Russia had become an industrial nation.

23. Exports Policy

Grain was, in fact, the major exportable commodity which the Soviet Union produced in this period. The total grain exports were, in millions of hundredweights, 2.6 for 1929; 48.4 in 1930; 51.8 in 1932; 17.6 in 1933; and 8.4 in 1934. The Soviet grain was sold on the world market, and prices were dropping. The 1932-1933 exports were somewhat lower than they had been in 1930-1931, but they were well above the level that they had been before 1930.

The Soviet Union was in a very difficult foreign

exchange situation during this period. The Great Depression of 1929-1933 had a negative impact on the USSR's foreign trade, because prices sharply decreased for raw materials and agricultural produce. The Soviet Union needed to export goods to pay for the massive imports of machinery for the first Five-Year Plan. The commitment to the plan made it unthinkable to slow down plans for industrialization, although that certainly would have been feasible. It also made little effort to import industrial equipment and technology on credit, although some credits seem to have been extended.

THE MISSING RELIEF

24. Grain Procurements Not Stopped

(a) What did Moscow know?

When looking for the causes of the famine, one major question will of necessity be: Why was the grain-procurement campaign not stopped when people were dying by the millions? Before addressing that question, however, it has to be established that the ruling circles in Moscow knew about the famine. Consequently, it is necessary to first look at the evidence on this point.

The 3rd All-Ukrainian Conference of the Ukrainian Communist Party met July 6-9, 1932, and local officials told the Moscow representatives present - Viacheslav Mikhailovich Molotov and Lazar Moisevich Kaganovich - about the starvation due to the excessive grain procurement, and were virtually unanimous in predicting disaster. (Mace testimony p 62)

From the latter half of 1932, there was also evidence that Roman Iakovich Terekhov, Secretary of the Party Committee in Kharkov oblast at the time, told Stalin face-to-face about the famine (Pravda May 26, 1964; see exhibit P-46, p 82; also in "Khruschev Remembers", exhibit P-20, extensively discussed by General Counsel in the course of Dr. Mace's testimony, pp 117-122). Furthermore, it is mentioned by Dr. Ammende in his book (exhibit P-30, p 62) that Anastas Mikoyan, then People's Commissary, stayed in Kiev during April,

1933. He was approached by Marya Sofronovna Demchenko, First Secretary of the Party Committee in the Kiev oblast, who asked him if Stalin and the Politburo knew what was going on in the Ukraine and described a train pulling into Kiev station loaded with corpses it had picked up all the way from Poltava (exhibit P-11, p 324) Moreover, by letter of April 16, 1933, Mikhail Sholokhov, the writer, addressed Stalin reporting about the brutal excesses in conducting the grain procurement. (exhibit P-11, p 232)

Therefore, I feel convinced about the accuracy of Dr. Mace's way of summarizing the events:

> "When Stalin was informed in May 1932 that the level of grain required from the Ukrainian countryside would lead to disaster, Stalin decided to intensify pressures upon the peasantry, and one can see then three measures, such as the August 7, 1932, decree on socialist property.
> As the situation worsened in the subsequent months of 1932, Stalin seems to have decided to have solved his problems with the Ukrainians once and for all by actually intensifying extractive pressures on the Ukrainian countryside. We can see that the officials Stalin sent to Ukraine both in October, 1932 and January, 1933, both exerted every effort to intensify grain seizures despite the fact that people were starving. It is inconceivable that these individuals, specifically Mendel Khataevich and Pavel Postyshev, were not working under Stalin's direct, specific orders.(p 190)
> It is very clear that the pressure comes from the top down. Stalin pressed the Communist Party of Ukraine, appointed new officials to leading posts within that organization. Those officials then became the spearhead of further measures of extraction in the countryside." (pp 191-192)

Furthermore, there is evidence of a more general nature as to what was known in Moscow, resulting from the studies of Drs. Ammende and Marco Carynnyk. Dr. Ammende

reports:

> "There was a shortage of food among the peasants of these regions as early as the beginning of the winter of 1932-3, and then a famine which grew more acute daily. Appeals for help were beginning to make themselves heard from various parts of the Soviet Union even at this early period. The relief organization at Geneva, the German relief organization, the Jewish Aid for Russia organization, etc., were then fully informed of the growing danger. It should be mentioned that in almost all the letters containing appeals for help to Russians living abroad, the terrible situation of the writers is described with the utmost frankness .... It is another question why the Soviet authorities permitted these appeals for help to reach the outer world." (exhibit P-30, pp 54-55)

Dr. Ammende explains that this attitude did change so that no more "famine letters" passed the frontiers (p 55) and summarises what happened in the following way:

> "After the experiences of the previous year, when news of the famine and the vast number of deaths had quickly reached the non-Communist world through letters and eye-witnesses' accounts, the Kremlin now resolved to take timely steps to render the events 'invisible'... The fact was that in 1932, as Pierre Berland rightly stated, the authorities had been surprised by the magnitude of the catastrophe." (exhibit P-30, p 75)

Added to this, should be Dr. Carynnyk's evidence showing that the famine was a matter of general knowledge in Moscow also among Western correspondents. It comes forward that many foreign observers had begun to report signs of actual or impending famine as early as the spring of 1932 (exhibit P-37, p 68) In March, 1932, e.g. Eugene Lyons reported such signs to New York (which brought about denials from Walter Duranty). On October 31, 1932, Walter Duranty visited the counsellor of the British Embassy in Moscow, having "at last awakened to

"the agricultural situation" as the counsellor reported to London. What Duranty then wrote to the New York Times was there interpreted as meaning the USSR being brought "to the edge of famine" (New York Times, Nov. 30, 1932), and this brought an immediate reaction from "governing circles here (not from the Censorship Department of the People's Commissariat for Foreign Affairs, but from higher spheres)" in the form of veiled threats. (exhibit P-37, p 71)

In my opinion, the evidence shows that the famine situation was well known in Moscow from the bottom to the top.

(b) Doing nothing.

Very little or nothing was done to provide some relief to the starving masses.

Dr. Ammende's plan of relief action was based on the following idea:

> "In my view, the stores of grain in the American ports and other surplus areas, which were, to some extent, unsaleable, should have been shipped at once to Odessa, Nikolaiev, Kherson and Rostov, the great Black Sea ports in the immediate neighbourhood of the famine area." (exhibit P-30, p 293)

Indeed, any grain exported during this period from the Soviet Union could have been used to feed the population. Dr. Conquest has suggested that the figure for grain exports in 1932 was around 2 million tons, and that alone would have been enough to save millions of lives.(p 96) The fact is, however, that, while there was a certain drop in the level of exports (Mace p 207), this drop reflected no relief to those starving.

Moreover, as suggested by Dr. Mace in his testimony:

> "What could have been done most easily would be to simply end forced procurements in areas where the people were starving to death, and to mobilize and to release, either as a loan or as a grant, foodstuffs in the possession

"of the state in those areas." (p 207)

Indeed, some action of this kind seems to have been taken. Dr. Ammende reports that Anastas Mikoyan, in April, 1933, "ordered that the reserves destined for the Red Army should be diverted to the aid of the population," and that, "some hundreds of 'commercial depots' were opened for this purpose." (exhibit P-30, p 62) Also, Dr. Mace in his testimony has made reference to a seed and fodder loan which was extended on February 25, 1933, to Ukraine and North Caucasus territories, adding that:

> "Later, some of this grain, we do not know specifically how much, was used as food primarily to provide incentive for peasants to take part in the spring sowing." (p 168)

Professor Kulchytsky refers to this decision in the following language:

> "On February 25, 1933, the USSR Council of People's Commissars and the Central Committee of the All-Union Communist Party (Bolsheviks) adopted a resolution on allocating 20.3 million poods of seeds to Ukraine. (Actually, the first permission to use over 3 million poods of state grain stockpiled in the Republic was telegraphed on February 19). By the end of April, Ukraine received 34.3 million poods of grain."

Like Dr. Mace, Professor Kulchytsky does not say how much was allowed to be used as food for the starving. Certainly there is much evidence showing that this kind of relief was too little, too late, and generally inadequate. Dr. Mace has testified:

> "We know of cases in the Ukrainian SSR and in the North Caucasus territory where the silos would be overflowing with grain and grain would be piled outside the silos, a tarp would be put over it; sometimes some barbed wire would be strung around it; and the Red Army would stand on top of it to keep peasants from getting to it. That grain

> "rotted. It was not used for anything. It could have saved lives; it did not." (p 207)

25. Preventing Relief by Denials

(a) How easily manipulable was the Western press?

News Release No. 60, of April 25, 1983, published by the Press Office of the USSR Embassy in Canada, states that:

> "The whole picture in the Ukraine was not that of a nearly-complete collapse with a smell of a nationwide tragedy, as it is portrayed by the most zealous anti-Soviet writers in the media in Canada. On the contrary, the atmosphere of vigorous work and unparalleled enthusiasm prevailed as the nation embarked on great economic and social programmes."

This is a very late example of the policy of denial that was adopted relating to the famine. It is being charged by the Petitioner that these denials - the cover-up -

> "... caused additional grief and suffering and it did that because what it meant is that, if the party line is that there is no famine, then there is no need for help. And that is exactly what happened. They declined assistance from other agencies, other countries, because they took the position there was no famine." (Liber closing, p 75)

The main transmitter of these denials, chosen by the Soviet leadership, was the Western press. Understanding cause and effect in the famine situation, therefore, also necessitates a look at this transmitter, its ways of operation and potential of resistance to manipulation.

In 1921, the Soviet Government announced that they would admit "sympathetic foreign reporters". Among the early sympathizers arriving in Moscow under this policy were Walter Duranty and Louis Fischer. The press dispatches going out from Moscow were subject to

censorship, but the Moscow policy, naturally, was to convert the correspondents themselves to public relations people for the Soviet Union, when that was possible. A major success along this line was achieved in the case of the New York Times correspondent, Mr. Walter Duranty. Mr. A.J. Kliefoth, of the U.S. Embassy in Berlin, in his memorandum of June 4, 1931, reported a conversation he had, in the course of which:

> "... Duranty pointed out that, 'in agreement with the New York Times and the Soviet authorities,' his official dispatches always reflect the official opinion of the Soviet regime and not his own." (exhibit P-48, p 174)

What could not be achieved with the help of a P.R. man like Duranty was achieved with the help of the "fellow travellers", an invention with which the German Communist Willi Munzenberg has been credited. Munzenberg was a journalistic genius, active in the service of Soviet interests in the late 1920s and during the 1930s. Dr. Ammende refers to Willi Munzenberg's successful campaign in the summer of 1934, in the United States:

> "Munzenberg and his friends succeeded in holding mass meetings in all the cities of North America; and the camouflage was so successful that these activities were supported by numerous bourgeois people and papers." (exhibit P-30, p 199)

The mastery of Munzenberg's art was his ability to appeal to the intellectual and pseudo-intellectual circles in the non-Communist countries. He was the first who understood fully the great importance of exploiting, cynically and systematically, the moral weaknesses of certain intellectual circles for his own purposes, thereby transforming them into knowing or unknowing instruments in the service of the Soviet propaganda. Dr. Ammende marvelled at:

> "... how easy it is for Moscow and its emissaries to deal with non-Communist circles and how slight is these circles' power of resistance." (exhibit P-30, p 200)

Dr. Conquest testifies to the:

> "... academics of the highest standing who were taken in by the simplest methods of deceit." (p 100)

Since the Munzenberg art has been perfected in the service of the Soviet Union, and the cover-up continues partly to this day, it may be useful to point to some of the central mechanisms employed, identified in the evidence given by Dr. Mace.

> "I do believe that Communist Party organs and organs sympathetic to the Communist Party were, to a large degree, controlled by agents of the Soviet Union in this period. There's a great deal of evidence to that effect. Another sort: somewhat sympathetic press organs, they seem to have been more easily manipulable, either because of those who determined editorial policy or wrote for such journals, or because the Soviets were able to influence what correspondents in Moscow could publish. I believe Eugene Lyons once wrote that it is very difficult for people who have not been there to understand how completely the Soviet Government is able to control Western correspondents in Moscow (or at least it was able to do so under Stalin), both through the access to news stories and through the trade-off that, 'If you report this, you will not be allowed to cover something else which is of interest to you.'" (pp 193-194)

The working of these methods is amply documented in the evidence. Dr. Carynnyk describes the scene of Konstantin Umansky, the head of the Press Department of the Commissariat for Foreign Affairs, working out with the American correspondents in one of their hotel rooms "a formula for denying Jones' account" of the famine raging, published in Manchester Guardian, March 30, 1933. (exhibit P-37, pp 76-77) Dr. Mace touches upon the reactions of Sidney and Beatrice Webb in England, at that time working on the second edition of their book "Soviet

"Communism: a New Civilization". At the time the articles of Malcolm Muggeridge on the famine appeared in the Manchester Guardian (March 25-28, 1933) (exhibit P-8), his aunt, Beatrice Webb:

> "... approached the Soviet ambassador, inquired as to whether there was a famine, and was told that there was no famine and accepted that explanation." (p 153)

Dr. Conquest adds to this that the error of Sidney and Beatrice Webb:

> "... seems to have been that they thought documents were the same as realities (as to some extent perhaps they are in Britain), but it was not true in the Soviet Union. They were simply told there was not a famine, and took evidence from people who said there wasn't a famine, and said in their book there wasn't one." (p 100)

The fact that the Western press and Western intellectual circles were so manipulable and easily brought into tacit collaboration was nothing new to Stalin and his people. As testified to by Conquest, on one occasion Stalin was told that, "The West will see through this", and he said, "They will swallow it." This was his method. (p 101) While this to some extent, as asserted by the Petitioner, may almost make accomplices out of those who helped, it does not detract from the responsibility of those who gave the orders and master-minded the machinery. (Liber closing p 96)

(b) What was the effect of the denials?

The task to entangle cause and effect calls for a look at the effect of the denials of the famine. Certainly the denials could not obliterate the accounts; to that extent, the truth did come out. A number of true accounts appeared in all sorts of Western papers, e.g. Le Figaro, and Neue Zurcher Zeitung, on the European Continent. So, what was the effect? Dr. Conquest has ventured the following answer, which I find convincing:

> "It wasn't so much that he prevented all truth coming out, though that may have been his (Mr. Duranty's) intention, as that there were two stories. There was the story from the distinguished Westerners that there was no famine, and there was the stories from others that there was a famine. And the man in the street was, therefore, if not deceived, put in the position of not knowing, of not having anybody who he could rely on. Or so people thought." (p 101)

Did this effect correspond to the intent among those who gave the orders and master-minded the machinery? On this point, too, I feel inclined to accept the answer which has been ventured by Dr. Conquest in the course of his testimony:

> "They were, at that time, seeking diplomatic recognition from the United States, which came in November '33. They were beginning to toy with the idea of a Western policy, as it were. They wanted a good image to the West. And trade reasons. Also, the physicist, Alexander Weissberg, in his book, when he's in prison, tells us that the communists he talked to said, 'We couldn't tell the truth internationally because how on earth would the International Communist Movement stand it? They would fall to pieces.'
> There was obviously a great deal in that. And, secondly, he was also told: 'We can't tell it internally because, although lots of, many people know it, they don't know quite how extensive it is. If we had said peasants were starving everywhere, according to this estimate there would be rebellions.' So, there were good motives for not mentioning it."

Furthermore, in the opinion of Dr. Conquest, although it was not the strongest worry on the Soviet side, the denials were supposed to have some positive effect on the trade relations with the West. This probably "came into their calculations," although concealing that "Soviet timber being dumped at cheap prices because it was being cut down by kulak forced

"labour" was more important because of the great accusations in the West at that time of "dumping" timber. (pp 102-103)

The logic of the position that there was no famine, however, evidently precluded cooperation with international relief efforts to relieve the famine. If the Party line is there is no famine, then there is no need for help. And this makes the cover-up a fundamental element in the Petitioner's charges: "They declined assistance from other agencies, other countries, because they took the position that there was no famine." (Liber p 75)

The evidence does amply support that a number of international relief missions were being considered and even initiated, but brought to a stop by the Soviet regime's flat denial. As one instance, Dr. Mace has referred to the Ukrainian Central Relief Committee, founded in July, 1933 in Lviv, then under Polish rule. This committee:

> "... contacted the Soviet Embassy and asked to send aid to people that they believed were starving in Ukraine; the matter was then referred to the Soviet Foreign Ministry, which then responded that such aid would not be accepted because it was not needed." (p 166)

Another instance mentioned by Dr. Mace also summarizes the situation:

> "The British Government of that time, I believe, discussed at one point the question of sending famine relief to the Soviet Union should it be requested by the Soviet Government. The Soviet Government could very well have requested such famine relief and would have more than likely received it from a variety of sources in the West. Rather, the existence of famine was strenuously denied; all offers of aid were rejected." (p 169)

A third telling instance is reported by Dr. Ammende:

> "Thus, under the eyes of the Germans in Bessarabia - the houses and people on the Russian bank can easily be seen across Dniester - their friends and brethren starve to death in Soviet territory. The Germans had a surplus of grain, fruit and other food. In the summer of 1933, they raised 20 truckloads of grain, to place them at the disposal of a relief organization for their countrymen across the frontier. In vain; their help was declined." (exhibit P-30, p 69)

Finally, the denials add a considerable consistency to the intent to destroy, that is the Petitioner's main charge in this proceeding. On this point, the Petitioner argues as follows:

> "Certainly, it is difficult to hand out decrees ordering someone like Postyshev to go there and to increase grain requisitions when people are dying, if you are saying, 'My goodness gracious - people are dying, we need help.' So that, in order to be consistent, they denied that the famine took place. They continued to apply the sanctions against the people as if there were no famine.
> The decrees that were handed down were consistent with the cover-up, and that may be one of the reasons and the principal reason why they followed the cover-up." (Liber closing pp 75-76)

26. Making the Famine Invisible

(a) Tabooing and the spiral of silence.

Dr. Mace has spoken about the time when the "famine story" was practically forgotten (p 154). This was one of the great achievements of the Soviet mass-media operation in which so much was invested and which operation could claim as one of its figureheads a name as famous as Willi Munzenberg. The famine was turned into a non-issue. In his testimony, Dr. Conquest asserted "there were arrests for saying that the famine

"had taken place" (p 97). Certainly this contributed to the institutionalization of the famine as a non-issue. The long-term effects of such tabooing are integrated into what is now termed "the spiral of silence" - an expression coined by Professor Elisabeth Noelle-Neumann. What it meant has been touched upon in the course of the proceedings when the book by Anna Louise Strong, called "I Change Worlds" (New York, 1935) was discussed. The pertinent passage is the following one in which Miss Strong, who had come to the Soviet Union in 1922 and who wrote dispatches from there during the famine and after it, describes her protests to a Soviet official:

> "I protested to Borodyn: Why does everybody keep this deadly silence. Every communist to whom you mention the hunger glares at you as if you talk of treason. Why aren't we allowed to tell the facts?" (p 373)

In her case, it would seem that the spiral of silence had been enough to make her abstain from revealing the existence of a famine or widespread starvation in her dispatches.

(b) Restricting the journalists' freedom of movement.

The tabooing was supplemented by a travel ban on the foreign correspondents. Evidence on this point has been provided by Drs. Carynnyk and Ammende:

> "Until early 1933, when the full force of the famine struck Ukraine and the adjacent North Caucasus (much of which had been settled by Ukrainians), foreign correspondents were able to travel there as they chose. ... Malcolm Muggeridge ... simply bought a train ticket and without informing the authorities set off for Kiev and Rostov. ... Muggeridge's articles produced no response beyond the predictable attacks by Soviet sympathizers ... Moscow nonetheless began to discourage journalists from visiting Ukraine. Sir Esmond Ovey, the British ambassador to the USSR, reported the restriction to London on March 5, 1933. '... In fact, all correspondents have now been 'advised' by the press department of

> " 'Commissariat of Foreign Affairs to remain in Moscow.' Although the travel ban remained in effect all spring and summer, Western newspapers accepted it without protest and their correspondents in Moscow did not report the restriction on their journalistic freedom for over six months." (exhibit P-37, pp 71-72)
>
> Dr. Ammende interprets these restrictions as:
>
> "... measures taken by the Kremlin with the object of hermetically shutting off the Russian provinces from the outer world - such as the prohibition of all travel to the provinces by journalists and other foreigners, except under the complete control of the 'Intourist' organization and other Soviet authorities." (exhibit P-30, p 76)
>
> I find Dr. Ammende's interpretation plausible.

(c) Removing the starving: the internal passport decree, 1932.

On December 27, 1932, a decree was issued regarding the introduction of the uniform passport system in the USSR and regarding the obligatory registration of passports. (exhibit P-3, tab 23) It was adopted by the Central Executive Committee and the Council of People's Commissars, and was signed by M. Kalinin, President of the Committee; V. Molotov, Chairman of the Council; and A. Enukidze, Secretary of the Committee. The decree resolved to introduce the uniform passport system with obligatory registration of passports throughout the USSR in the course of 1933, and, first of all, in Moscow, Leningrad, Kharkov, Kiev, Odessa, Minsk, Rostov-on-Don and Vladivostok. The decree empowered the said Council to fix the time limits and order in which the passport system should be introduced in all other localities of the USSR. Finally, the governments of the allied republics were empowered to make the necessary amendments in their legal codes. Passport regulations were simultaneously issued by the same bodies, giving the police 10 days' time within which to present a draft instruction regarding the putting into effect of these regulations.

According to instructions adopted on January 14, 1933, the issuance of passports was to be completed no later than April 15, 1933, in Moscow, Leningrad and Kharkov; also within a 100-kilometre zone around Moscow and Leningrad, and a 50-kilometre zone around Kharkov. The registration of these newly-issued passports had to occur between February 1 and May 1, 1933. People then without passports were not permitted to stay in these towns and environs but were, if they did not leave by themselves within 10 days, "to be deported by the police" (rule 19).

The decree of April 28, 1933, stated this regime was extended to apply to Kiev, Odessa, an additional 22 cities and also "in towns and villages situated in the 100-kilometre zone along the West European frontier of the USSR." (exhibit P-3, tab 36)

The background of these decrees is described by Dr. Ammende, calling it "the great cleaning-up process by which the hungry populations were removed from the visible into the 'invisible' zones," and "a measure which is probably unique of its kind". (exhibit P-30, pp 75, 182) Dr. Ammende sees the passport decrees in relation to the surprise which the authorities had experienced in 1932 by the magnitude of the catastrophe, and observes:

> "A repetition was to be avoided. Now there was time to take all necessary measures. ... The energy and speed with which the Government set about this task was without doubt a remarkable achievement. In the future it would be impossible to see people dying and dead of starvation in the streets. The towns were to be freed from those categories of people who could not or must not be helped. This was done mainly with an eye to those taking part in the trips organized by the Soviet Russian tourist bureau and to foreign guests of honour, visiting the capitals and provincial centres according to a prearranged plan. Radical measures were therefore adopted to ensure that death should overtake some of these starving people not in the towns but outside the urban zone - 60 miles away. ... Many thousands of starving

> "people were expelled; the authorities refused these unfortunates permission to stay on the ground of a new passport law." (exhibit P-30, pp 75-76)

It is natural to see in the same light the secret order of A.A. Andreyev, Commissar of Transport, which established the blockade of the Ukrainian-Russian border. In fact, it is said by a traveller having experienced the effect of the order that he "learned from other passengers that travelling for food to Moscow was forbidden so as to avoid compromising the Soviet system in the eyes of the foreigners". (exhibit P-36, vol. II, p 468; of P-12, tab 47)

In my opinion, the effects of the passport decrees have been well described by Dr. Ammende. Whether these effects were also the intended ones must be judged in relation to the overall picture. The investment in the cover-up and what is now known about the system of denials, in addition to the highly centralized system of government concentrating planning to a few, in my opinion makes it unavoidable to see these decrees as also being part of the same plan; consequently, the effects described were the effects intended.

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27. The Postyshev Decrees

The Petitioner has brought to our attention two decrees, dated December 14, 1932 and January 24, 1933, both connected with Mr. Pavel Petrovich Postyshev's mission in Ukraine. According to Dr. Conquest's testimony, Postyshev "is the single political figure who is taken to be the main arm of Stalin". (p 82) Consequently, I find it natural to call them the "Postyshev decrees". In the Petitioner's documentation, it is said that:

> "Postyshev had a dual mandate; not only was he to intensify the grain seizures (and therefore the famine) in Ukraine, he was also charged with eliminating any and all 'national deviations',

> "that is, such modest national self-assertion as Ukrainians had hitherto been allowed by the USSR." (exhibit P-3, tab 21)

What the Petitioner is suggesting is, at the end of the day, that Postyshev's dual mandate included to create the famine and destroy Ukrainian nationalism; two intents, the implementation of which was linked.

We are here faced with the problem of finding documents that would support the decisions being made in the Politburo and were, in fact, the basis for the policies that were being enforced. Professor Chirovsky, in his evidence, has explained that:

> "... the documents were published under the name of decrees and the decrees were issued either by Politburo or by the Central Committee (of the Communist Party of the Soviet Union) or the Council of Ministers or Presidium. (p 18)
> The decrees themselves say very little about the reasons, only the policy outlines. But before the decrees were read and pronounced and given to the public knowledge, meetings were held and speeches were delivered to explain the reasons why." (p 40)

It is relevant to note that in the literature Postyshev is identified as Secretary of the All-Union Communist Party Central Committee section on agitation, propaganda and organization (exhibit P-48, p 234) and as Stalin's "special confidant and pleni-potentiary" (von Rauch, "A History of Soviet Russia", 5th ed. 1967 p 223)

While we do not have the text of the first decree, dated December 14, 1932, its existence is known because of Postyshev's speech before the plenum of the Ukrainian Central Committee published in Pravda, November 24, 1933 (Mace p 67). We know that it included a "historic decision". As to the second decision, of January 24, 1933, the short text has been submitted by the Petitioner, together with a major article on it published in Bilshovik Ukrainy, No 3/1933 (exhibit P-3, tab 30). I find it more convenient, however, to first discuss the last one.

In the decree, it is set out that:

> "The Central Committee considers it an established fact that the party organizations of Ukraine have been unable to cope with the task the Party assigned them regarding the grain procurements and the fulfilment of the plan for grain deliveries, despite the fact that it has been lowered three times.
> -.
> ...The Central Committee of the All Union Communist Party resolves (1) to assign a second secretary of the Central Committee of the Communist Party (Bolshevik) of Ukraine, and its first secretary of the Kharkov obkom Regional Party Committee, Central Committee Secretary, Comrade Postyshev ..."

In the literature, it has been pointed out that this action violated the Constitution of the Ukrainian Union Republic of the time, because the Politburo of the Communist Party of the Soviet Union (CPSU) was not a formal part of the Ukrainian Government per se. (N. Chirovsky, "An Introduction to Ukrainian History", New York, 1986, vol. III, pp 323-324). As put by Ammende, the decree made Postyshev "the Ukraine Dictator". (exhibit P-30, p 59)

The background is explained by Dr. Mace as follows (exhibit P-37, p 7):

> "Although Moscow was well aware of the disorganized state of Ukrainian agriculture as a result of collectivization, Soviet Ukraine was obliged to deliver 2.3 times the amount of grain marketed in the best precollectivization year. The 1930 quota of 7.7 million tons of grain was met, and it represented a third of a total harvest of 23 million tons... In 1931, despite a decline in sown area, Moscow kept the same quota of 7.7 million tons for Ukraine and insisted it be met even after it became apparent that the Ukrainian harvest had dropped to 18.3 million tons, according to official figures, and almost 38% of that was

> "lost during the harvest... The Ukrainian Soviet regime was able to deliver only 7 millions tons, and in 1932 the virtually unanimous opposition of the Ukrainian hierarchy forced Stalin to lower the 1932 quota to 6.5 million tons. ... The quotas were not met - only 4.7 million tons were obtained at a cost of millions of lives."

As to the purpose of the decree of January 24, 1933, our information stems from reports of some of Postyshev's speeches. Dr. Ammende gives the following account:

> "The purpose of this decree (based on the law of January 10, 1933) becomes apparent from a speech delivered from the Ukraine Dictator, Postyshev, at a plenary meeting of the Central Committee of the Communist Party in the Ukraine. -.-.-.-.-.-.-.-.-.-.-.-.-.-.-.-.-.-.-
> As Postyshev's remarks give a better idea than all the detailed reports in the world of the struggle ... I propose to give certain extracts here. He begins by openly admitting that the previous grain campaign had been a complete failure, and describes it as "last year's disgrace". Now, he went on, not a day, not a minute must be lost, and all eyes must remain fixed on the one great duty of collecting the grain with all possible energy and determination, since on this depended the position of the Soviet regime and - note these words - 'the maintenance of its influence abroad.' 'The task can only be fulfilled' - he went on 'if we reflect upon last year's mistakes.'
> What were the mistakes which, in Postyshev's view, led to the fiasco of the previous year's grain collection? This was ... the 'leniency' (serdobolie) with which the local authorities discharged their duty of taking the grain from the producers. To illustrate this harmful 'leniency', he quoted ... a regulation issued by the Odessa District Committee that the first hectare threshed 'was to be kept available for local or public consumption.' Postyshev commented on this as follows:

> " 'Need I waste words in pointing out how wrong such an instruction is, which assigns a secondary position to the delivery of grain to the State, while the feeding of the community is placed first? Is it not the best possible proof that some of our district committees were influenced by consumers' interests, thus promoting the class interests of our enemies to the detriment of the proletarian state? ... No; the Bolshevik struggle has no room for such leniency.'"
> (see exhibit P-30, pp 59, 60-61)

In Dr. Mace's testimony, he reminded us that Postyshev, on February 4, 1933, called an open joint plenum of Kharkov Regional Party Committee, City Committee, Party Secretaries of agricultural districts, and activists. When he spoke, he spoke in fact to the entire Communist Party of Ukraine organization. From the article in Bilshovik Ukrainy, No 3/1933, it may be quoted:

> "In his address to the Kharkov oblast and city committees, Comrade Postyshev sharply criticized the bureaucratic, aristocratic superficial work methods, which show no signs of any effort or any willingness to 'get in, up to one's elbows'..." (exhibit P-3, tab 30)

Dr. Mace, in his evidence, has quoted another part of the speech. Postyshev cited a hitherto secret statement by his predecessor, Roman Iacovich Terekhov, which authorized the seizure of seed grain from collective farms; but Terekhov had refused to go on record as favouring this measure. Postyshev had said:

> "We go on record, we will seize the seed. ... We need seed for the coming spring sowing campaign; we will also seize that - we will obtain, rather, that grain through the same methods that we have employed in the grain procurements campaigns, which means direct seizures, house-to-house searches." (p 68)

Dr. Mace also speaks about "the picture of a wholesale occupation of key posts in Ukraine by Postyshev's staff". (p 67)

Also the contemporary comment offered provides a perspective allowing insight into intent behind the decree.

From the article in Bilshovik Ukrainy, it may be set out:

> "The absence of active struggle to force grain procurement led to problems similar to those in previous years. The need to decisively correct such problems led to many workers believing that the battle for grain procurement and against resistance and sabotage had been suspended. Among the huge number of negative factors in the Party organization, special attention must be paid to the demobilizing ones, especially the often hidden and masked attitudes about the unrealistic demands of the Plan, which were found not only among county leaders, but also in the regional leadership, especially in Dnipropetrovsk and Odessa. These attitudes damages authentic Bolshevik organization in the battle for bread. -.-.-.-.-.-.-.-.-.-.-.-.-.-
> ...The organization of oblasts in Ukraine was meant to be a major step on the road to changing village management according to the new situation. Instead, oblast management was not up to the demands of the task. These leaders, as shown at the plenum of the Central Committee by Comrade Kossior, were suffering from exaggerated delusions of knowledge in how to run oblasts, as well as in how to keep power in one's hands." (exhibit P-3, tab 30)

Dr. Ammende observed:

> "It is hard to believe that, in a time of the most acute distress, when the whole world was already beginning to be aware of the calamity, the emissary of Moscow in the Ukraine capital

> "could make a declaration amounting to a strict order to his subordinates to set aside all human emotions in collecting the grain. But it was Postyshev's mission to save the foundations of the Soviet regime by assuring the supply of all the consuming districts and industrial centres. For him and for Moscow, therefore, there was only one way: to collect all the grain that could be got hold of and hand it over to the State. (exhibit P-30, pp 59-60) Postyshev's principle - 'away with compassion' - was followed to the letter. No pity, no consideration for the suffering population were allowed to interfere with the collection of grain in the Ukraine or elsewhere. The political sections and the court martial saw to that. Those who resisted were treated as separatists, saboteurs; in short as enemies of the State." (exhibit P-30, p 74)

Dr. Ammende's account of this side of the Postyshev operation relies mainly on dispatches from Pierre Berland, Moscow correspondent of the newspaper Temps. In reference to Mr. Berland, Dr. Ammende writes:

> "In particular he describes how, from spring onwards, Moscow 'mobilizes the most reliable Communist forces to carry on a regular campaign in the villages against the counter-revolutionary stronghold'. In March the notorious 'political sections', bodies of men carefully selected to take over the management of collectivized agriculture, and all devoted adherents of the Communist party, were dispatched into the country. ... The real offensive now began. ... by virtue of a decree issued in February of the previous year, martial law was now declared everywhere. It was administered by an emissary from Moscow, the head of the tractor and motor station, and a third Soviet official, such as the head of the nearest Soviet farm. The court had the right to condemn to death any person committing a punishable act and to carry out the sentence in a few hours. Like the

> "GPU in the towns, the 'political sections' are all-powerful in the provinces.
> -.
> Thenceforward the local Soviet officials, the Communist Party representatives, the secretaries of district committees, the presidents of executive committees, etc. - all these bodies were enumerated in the decree - were made personally responsible for seeing that the instructions given and the standards set up by the Central Committee were in no single instance modified by local concessions. 'Contrary to the practice in previous years, no dereliction of the duty of delivering grain immediately will be tolerated.' 'Contrary to the practice of previous years,' the decree goes on, 'grain deliveries will take place solely in accordance with fixed standards (i.e. those laid down by the Government beforehand).'"
> (exhibit P-30, pp 58, 59)

In reference to a resolution of February 19, 1932, regarding spring seeding, and issued by the Council of People's Commissars of the USSR, the Petitioner asserts that:

> "The decree also legitimized local violence by calling upon all collective farm workers to combat kurkul tendencies. This gave rise to local bands called the 'Red Broom' which would beat up and terrorize anyone who might be suspected of taking part in or sympathizing with the resistance. Even sheltering a child of a former kulak would invoke the wrath of the Red Broom."
> (exhibit P-3, tab 7, as summarized in index)

Turning now to the decree of December 14, 1932, it addresses the nationalities question. Postyshev's speech of November 24, 1933 revealed that it ordered:

> "To turn serious attention to the proper carrying out of Ukrainization, to ... disperse Petliurists and other bourgeois nationalist elements from the Party and

> "Soviet organizations, to painstakingly select and educate Ukrainian Bolshevik cadres, and to safeguard the Party's systematic leadership and control over the way Ukrainization is carried out." (exhibit P-3, tab 21)

The significance of this decree has to be seen in the light of the nationalities policy generally in the Soviet Union.

The question of nationalities was settled by compromise through the formation of the Union of Soviet Socialist Republics in 1922, as a union of formally sovereign national republics. The Ukrainian Soviet Socialist Republic was one of them, and Stalin, as Commissary for the Nationalities, played a leading part in their formation.

Dr. Ammende speaks about "the autonomous Soviet republics and districts which were set up along the frontier from Finland to the Black Sea for propaganda purposes ... appealing to the peoples and nationalities across the frontier," sometimes dubbed the "Irredenta Republics" (exhibit P-30, p 145). This nationalities policy evidently was not without success; Dr. Mace has testified to the fact that it "created, I think, substantial pro Soviet sentiment in western Ukraine, non-Soviet Ukraine (i.e. under Polish rule) in this period" (page 27). Behind this success lay a special policy of Ukrainization which was introduced and vigorously enforced in the Ukrainian SSR by Ukrainian Communists. It was a policy of state promotion of the Ukrainian language and culture, and it greatly stimulated the development of Ukrainian national consciousness (exhibit P-33, pp 56-57).

For such reasons, the background of the Postyshev decree is very much given by Dr. Mace's evidence relating to what was achieved during the era of Ukrainization.

> "Ukrainian schools were being opened. The Ukrainian language was being transformed into a vehicle of sophisticated literary and scientific expression. ... And there was also a tremendous outburst of literary,

> "scholarly creativity. The market was flooded with new books in Ukrainian. It seemed at some times that virtually every peasant wanted to be a poet. ... The leading Soviet Ukrainian writer, the one who was most read ... was Mikola Khvylovy. ... And Khvylovy, the most popular writer, said: 'Let's build a world-class Ukrainian culture. ... Let's have a Ukrainian culture that is on a par with French literature, with English literature, with German literature. The way to do this is to learn those literatures. ... We have to face Western Europe and interact directly with European culture; not through the medium of Russian cultures as we have hitherto done.'" (pp 27 - 29)

In this way, the nationalities policy proved a disappointment. Instead of appealing to the peoples and nationalities across the frontier, these pseudo-national regions along the western fringe of the Soviet Union tended to turn into centrifugal factors - a severe disappointment for Stalin (of exhibit P-30, p 145).

But the nationalities policy established by Stalin had a broader sweep than Ukraine in the big empire. From Dr. Mace's testimony it may be stated:

> "Ukrainization was the major expression of this policy, but it was accompanied by similar policies in other areas: Belorussianization, Tatarization, for the non-territorial Jewish minority Yiddishization. Ukrainization went much further than the others simply because 40% of all non-Russians in the USSR in this period were Ukrainians and they outnumbered the next largest group by 6.5 to 1. So the nationality problem was very largely a Ukrainian problem." (p 26)

The meaning of the Postyshev decree of December 14, 1932, has to be established in the same way as the other decree, by resorting to the speeches of the insiders. Dr. Ammende has followed this path:

> "We are indebted to Postyshev for enlightenment on the future policy of Moscow in Ukraine, as well as with regard to the various peoples and races settled in the various districts. In a speech delivered late in 1933 (Pravda Nov. 24, 1933: of Mace p 67) he stated that any attempt to harmonize proletarian internationalism with nationalism must make it an instrument of the nationalist counterrevolution and must therefore be most vigorously combated in future. He added that the reorganization of the form and methods of Bolshevik leadership in building up Ukrainian culture must consequently imply 'a vigorous and consistent struggle for the elimination of nationalist prejudices.' What is the meaning of Moscow's programme as set out by Postyshev? It means that Moscow has definitely adopted the new course with regard to the nationalities and has abandoned the 'rotten compromise' of the first period of Russian nationalism. ... The new programme means war to the knife on all the national movements, whether among the Ukrainians, the White Russians, the Caucasian peoples, the Germans, the Finns or the Jews." (exhibit P-30, pp 144-145)

We also have evidence from the 12th Congress of the Communist Party of Ukraine, which took place in January, 1934, about how Postyshev himself viewed his mandate and what he achieved. In his book "The Ukrainian Holocaust of 1933", Wasyl Hryshko quotes from Chervonyi shliakh (Kharkov). No. 2-3, 1934, Postyshev's own words as being that "1933 was the year of the overthrowal of the Ukrainian nationalist counterrevolution," and that in that year the party had conducted the "Herculean labour of liquidating nationalist elements in Ukraine". (exhibit P-33, p 13)

What this meant may be established from Postyshev's speech reproduced in Pravda, November 24, 1933. He said:

> "In the last 10 months, 1,340 comrades were sent to take over raion leadership posts. At the same time, 237 raion party committee

> "secretaries were replaced. 249 raion executive committee chairmen and 156 raion control commission chairmen were replaced by more tenacious workers. Under the leadership and with the help of the All Union Communist Party Central Committee, 643 machine tractor station political sections and 203 state farm political sections were organized in Ukraine where, in all, 3,000 leading workers were sent and played an exclusive role in integrating new farms and methods of leadership in socialist agriculture. Simultaneously at least 10,000 people were sent to the collective farms, including 3,000 sent for permanent work as collective farm chairmen or as secretaries of collective farm party cells and organizations. A great detachment of tenacious experienced Bolsheviks were sent to the villages as organizers of collective farm construction." (as per Mace testimony, p 67)

This is a purge and so it is generally described in normal literature. Postyshev carried out a thorough purge of the Ukrainian Government and the local Communist Party. The Chairman of the Council of the People's Commissars, Vlas Chubar, was removed from office; the People's Commissar for Education, Mykola Skrypnyk, one of Lenin's oldest comrades, was brought to suicide. (exhibit P-30, p 123) In his testimony, Dr. Mace summarized Postyshev's operation as follows:

> "His housecleaning was extremely thorough. By October 15th in those regions where the ongoing 1933 purge of the party had been completed, of 120,000 members and candidates of the Communist Party of Ukraine that had been verified, 27,500 had been purged as hostile, vacillating, dissolute elements. Postyshev also revealed later, in November, 1933, that he had brought in thousands of new appointees to Ukraine's districts and countrysides." (p 66)

Hryshko puts it this way:

> "This was also the year of the first great

> "purge of the Ukrainian cadres in the Communist Party of Ukraine for a 'Ukrainian national tendency' in connection with the ill-fated Ukrainization... (exhibit P-33, p 115).
> The Communist Party and the Komsomol ... experienced an enormous purge; 46% of party members and 49% of Komsomol members were excluded and otherwise repressed in those 'years of crisis'." (p 116 and reference to Entsyklopediia ukainoznavstva, vol. 3, p 1100)

Also the Ukrainian intelligentsia now fell victim to this type of purge. Hryshko maintains that "Ukrainian cultural cadres, above all writers, diminished by some 80% in the 1930s. Most of them were arrested, executed by firing squad, or exiled in 1933, in connection with Moscow's catastrophic change in its nationalities policy in Ukraine." (exhibit P-33, p 115). "The Ukrainian national intellegentsia, communist and non-communist, was virtually wiped out," is Dr. Mace's conclusion in his doctoral thesis (p 300).

Also on the institutional side did Postyshev put his mark. Dr. Ammende has addressed the measures which severely restricted Ukrainian autonomy in the legal sphere.

> "On July 21, 1933, a few days after Skrypnyk's death, a decree was issued appointing one public prosecutor for the whole Soviet Union - the coup de grace to the autonomy of the judicial system. ... by this decree the entire judicial system and even the fate of the individual Ukrainian state officials was made to depend directly on Moscow." (exhibit P-30, p 124)

Dr. Mace has addressed the teaching of history.

> "In November, 1934, a decree on the teaching of history was published. This decree condemned what had hitherto been the official interpretation of Russian history, that czarist Russia had been an empire which oppressed

> "its colonies, and a new ideology of Soviet patriotism was enunciated, rehabilitating Russian imperial history, czars and all." (exhibit P-37, p 11)

Dr. Ammende points to a decree issued in the later summer of 1935, signed by Molotov and Stalin, which took the school administration out of the hands of the autonomous Soviet republics, placing it under the control of the central authorities. It ordered, i.e., that curricula, school books, timetables, etc., must be standardized throughout the Soviet Union and that from January 1, 1936, a uniform - also identical throughout the Soviet Union - must be worn by all schoolchildren. (exhibit P-30, p 144, note 1)

Finally, mention should be made of the moving of the capital. In Soviet times, the capital of Ukraine had been Kharkov, an industrial city chosen as capital by the Bolsheviks in their first attempt to take Ukraine. On June 24, 1934, the capital was transferred back to Kiev, the historic capital of Ukraine dating from medieval times. This was understood to mark the triumph over Ukrainian nationalism. In an article in the Christian Science Monitor (Boston) of June 23, 1934, called "Separatism in Ukraine Suppressed", it was said:

> " 'Symbol of victory over the nationalist elements in Ukraine' is Izvestia's, the government's newspaper, description of tomorrow's official transfer of the Ukrainian capital from Kharkov to Kiev."

How Postyshev understood this may be concluded from his speech reported in the Visty (Kiev) March 6, 1935, in which he says to a party committee "that cultural life in the Ukraine must be 'Ukrainianized' in order to take the wind out of the sails of the Ukrainian nationalists and separatists who had won over the masses by declaring that Moscow was Russifying the Ukrainian Soviet Republic." (as per Ammende, exhibit P-30, p 145, note 1)

In my opinion, the Postyshev decrees should be seen together. They clearly link the famine and the reversal in nationality policy and, in my view, the latter element takes preponderance so that the reversal is not

incidental to the grain procurement but, rather, the other way around. The famine caused by the grain procurement has been instrumental in implementing the nationalities policy.

RESPONSIBILITY

28. Global Responsibility

The Terms of Reference invite us to enter into the field of responsibility.

My findings so far have identified a number of statutory instruments as well as administrative action and inaction as belonging to the causes of the famine. It is a classical position in international law that the government bears the responsibility for such legislation, action and inaction. The Soviet Union itself has since early times taken this position. It may suffice to refer to the Worowski Incident, 1923, in which the Soviet Government held the Government of Switzerland responsible for the assassination of Mr. Worowski, the Soviet envoy to the Lausanne Peace Conference, arguing that "the Swiss authorities completely neglected to take the most elementary precautionary measures to protect the Russian delegate and his colleagues." (telegram May 16, 1923) The position has received its classical formulation in the British Property in Spanish Morocco Case [2 R. Int'l Arb. Awards 615 (1925)] by the arbitrator, Dr. Max Huber, attempting to establish a broad jurisprudential theory. Identifying acts in which the participation of the state could be demonstrated, Dr. Huber observed that a state may "be responsible for what the authorities do or fail to do" and that, since the state "is obliged to exercise a certain vigilance," it may incur "responsibility for the action or inaction of the public authorities." (at p 622)

What then remains in order to establish the responsibility of the Soviet Government, from this point of view, is simply the question of control. It was asked whether Stalin really was in command or was he possibly governing an ungovernable system. In testimony, Dr. Mace offered the following answer:

> "If we look at the specific policies, at the specific actions of the police in this period ... we find that the Secret Police - obviously acting under Stalin's mandate or mandate of higher Party authorities - were arresting those minor officials who were found to have temporized in the struggle for bread. It's very clear that the pressure comes from the top down ... that the system from the higher level was coercing lower levels which then carried out policies which could only result in famine and which exacerbated that famine once it had begun." (pp 191-192)

Consequently, I have no difficulty in finding the Soviet Government responsible in a general sense for the famine and the suffering it inflicted upon its victims. But I think that is a bit beside the point, because at that time a rather sharp distinction was made between how a country treated foreigners and how it treated its own people. The Huber statement only concerns foreigners and says nothing about what kind of responsibility may arise in the equivalent circumstances vis-a-vis the country's own people. Saying something about the latter responsibility consequently requires some discussion.

29. General Discussion

In the course of the proceedings before the Commission, a number of different approaches to the issue of responsibility have been sketched, and I think it is useful to set out some of them.

The Petitioner has not been very specific about in what sense he is using the word "responsibility". General Counsel has advised us that even by merely setting the historical record straight by revealing the truth, the Commission would have provided an answer to the question of responsibility, at least in light of the maxim that history is the world's court of judgment.

Dr. Mace has advised us in his testimony that he is using the word "responsibility":

> "... in the sense that the massive loss of life which took place would not have taken place were it not for specific actions taken by those individuals." (p 123)

A number of theories as to "responsibility" have been advanced. The first theory is that the central authorities of the OGPU intentionally acted to destroy Ukrainian ethnicity and that was the main motivation of the famine. This theory thus assumes direct and uncomplicated intent on the part of the central authorities. The other theories assume that the famine was not directly intended, but a more or less accidental result of something else directly intended. Direct intent could focus on the implementation of a policy of rigid doctrinal collectivization of agriculture, or on industrial development which had to be financed by foreign exchange earned by exports of the grain taken out of Soviet agriculture. The famine would then have occurred as an unplanned consequence of an inept and even malicious administration of a misguided economic and social policy - an alternative that could be stretched into the famine being essentially a runaway fatal accident. Following this line of thinking, and with the evidence at hand (supra Nos. 24-26), it becomes necessary to make the distinction between creating - perhaps advertently or perhaps inadvertently - the conditions for the famine to occur as opposed to not taking or even allowing others to take measures to alleviate the famine.

In my opinion, the evidence about the missing relief is such that it precludes any speculation that the famine should have been an accidental result of something other directly intended. The famine, I have to conclude, was covered by the intent.

This also takes care of the theory that the famine was mainly the result of Ukraine's particular vulnerability, due to the structure of its peasantry and the farms, to some broad national policy implemented by Draconian measures.

A last theory to be mentioned is that, foreseeing the threat of a German attack on the USSR, it was found necessary to take even very costly pre-emptive measures to ensure the maximum capability of the Soviet Union to

deal with such an attack.

Analyzed in this way, the question of responsibility reduces itself to the question of intent and the question of defences.

CONVERSION INTO INDIVIDUAL RESPONSIBILITY

30. Corporate Responsibility and the Party State

In my opinion, our Terms of Reference do not allow staying on the generalities only, but require us to address also the matter of individual responsibility. This means that the global responsibility of the Soviet Government will have to be converted into the individual responsibility of a number of people who have been pointed out to us. Such conversion between corporate and individual responsibility is something mostly addressed in matters of corporate law dealing with civil and criminal liability. At the level of government with which we are concerned here, it is rare to find the issue addressed at all. Consequently, as a preliminary, a rather extensive general discussion will be necessary.

At the outset, it may be noted that the Convention on the Prevention and Punishment of the Crime of Genocide, which incidentally prohibits "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part," and which was approved by the U.N. General Assembly on December 9, 1948 (78 UNTS 277), anticipates individual responsibility for three categories: "constitutionally responsible rulers, public officials or private individuals". The International Convention on the Suppression and Punishment of the Crime of Apartheid, which was approved by the General Assembly on November 30, 1973 (1015 UNTS 243), anticipates individual responsibility applying, "irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State."

Incidentally, both Conventions have been ratified by the USSR and the Ukrainian SSR, the former on May 3, 1954 and November 15, 1954, respectively, and the latter on November 26, 1975 and November 10, 1975 respectively.

In the present context, the latter Convention is particularly interesting inasmuch as it aims at punishing individuals in a state for the official policies and practices of that state.

Not unnaturally, the matter has been given some thought in the Republic of South Africa. Professor H. Booysen has offered the following comment:

> "Representatives of the state are not defined in the convention. The term apparently includes the whole executive branch of the government which consists of people such as the State President, cabinet ministers, all civil servants, members of the police force and members of the defence force. Even members of Parliament may be punished according to the convention if they, for example, participate in or encourage legislation designed to divide the population along racial lines by the creation of separate reserves. ... The person himself must have committed or participated in the commission of the acts mentioned in the convention and he must have had the required intention, viz. to establish and maintain domination by one group over another."
> [2 South African Yearbook of International Law 56-96, at 62 (1976)]

Using these same principles, analogy-wise, when trying to convert the responsibility of the Soviet Union as such into individual responsibility, I find it important to identify the special structure of the Soviet Union as it was in the early 1930s. The evidence provided on this point is not complete, and I have relied also on my own previous research in the matter and on the writings of Professor Gray Dorsey - the distinguished colleague of Alexander Kerensky (the leader of the Provisional Government ousted by Lenin's Bolsheviks, 1917) at St. Louis - who has devoted particular attention to the implications of the Party State. The following quotes from his book "Beyond the United Nations" (University Press of America, 1986) would seem useful:

"When the Council of People's Commissars took power (i.e. November 8, 1917), the world's first Party State came into existence. The Party State organizes human activities in accordance with the fundamental beliefs of Marxism-Leninism. Reconstituting society in Russia on the basis of these beliefs presented the party with an extremely difficult problem. ...The problem was how to get the people to act in accordance with the decisions of the party. The people were believed to have only the consciousness of their material interests developed from their experience as exploited workers. Therefore, right and wrong, good or bad, for them was determined by whether or not an action would serve their material interests as they understood those interests. The party believed that the consciousness of the people was subjective and false. This justified the party's exclusion of the people from any participation in decision-making. But it left party and people in two different realms of consciousness.

The party could not honestly and in good faith explain to the people what kind of society the party intended to build, or persuade the people that such a society would be right and good. Above all, the party could not permit the people to act on the basis of their (false) consciousness (or the false consciousness of any foreign groups). Without being able to explain or persuade, how could the party cause the people to do acts necessary to the building of a Marxist society and refrain from acts that would obstruct or impede that effort?

-.

The new party state could not base measures to induce or prevent acts of the people upon culpability. The Marxist-Leninist material/conscious people could not know right and wrong as determined by the (objective) consciousness of the party. Therefore, no fault or delinquency could be ascribed to an act by the people which the party deemed to be socially detrimental. This

> "meant that deprivations and physical coercion used to induce or prevent acts could never appear to the people as appropriate and just responses to wilful wrongs. The deliberate infliction of deprivations or injuries without any relation to culpability is not punishment, but terror. Thus, terror became a distinguishing characteristic of the party state."
>
> Here, Dorsey adds the following footnote:
>
> "In 1922, Lenin urged the legalization of terror as a matter of 'revolutionary righteousness, and revolutionary conscience.'" (Solzhenitsyn, Gulag, p 353)

Dorsey proceeds with the philosophical explanation as follows:

> "According to Marxism-Leninism, creatures become human beings by participating in producing the material means of existence, and they acquire consciousness by the experience of that participation. Material/conscious human beings need not have conflicting material interests. A completely harmonious society is possible in which everyone freely chooses how he/she will participate in production. In such a society all human beings would have the same consciousness. However, throughout human history there has never been a voluntary, harmonious society. Some have always exploited others, and societies have always been composed of two classes - oppressors and oppressed. Members of the opposing classes do not have the same consciousness because their experience is different, but members of both classes are Marxist-Leninist human beings because they participate in producing the material means of existence. Nevertheless, Marxist-Leninist human beings do not owe the members of an opposing class sympathy, compassion or mercy because, having no consciousness in common, their enmity is absolute and can never be ended by cultural agreement, political

"compromise, economic composition or limited war.
In the Marxist-Leninist Party State, the oppressed class (workers) has overthrown the oppressor class (capitalists) under the guidance of the party. Party and working class people are not different classes. ... The party is the brain and the nervous system of the working people, guiding and moving them towards true freedom and social justice. Lenin's theory of this role for the party assumes that the consciousness of the people is false. Therefore, mere possession of false consciousness cannot constitute such a danger to the party state as to convert a material/ conscious human being into a non-being. However, an objective circumstance may increase the likelihood that a person will act on the basis of his/her false consciousness instead of submitting to the party's guidance and control.
The objective circumstance can be anything that seriously threatens the control of party consciousness over people's acts. This can include ... expressing scepticism about Party doctrine, ... being related to someone who was a large land owner before the revolution, belonging to an ethnic group whose values are strongly antithetical to the party's consciousness, seeking personal profit - the list is endless. ... Therefore, in order that the masses of the people can live in freedom, the party must create a 'free' society for them, that is, a society that is organized and planned in accordance with the objective laws of social development. ... The society was made completely harmonious by inducing acts and restraints in accordance with the decisions of party leaders by controlled information, pervasive surveillance and all necessary terror. ... The posthumous indictment of Stalin was not for using terror, but for using too much terror under the circumstances." (Dorsey, "Beyond the United Nations", pp 13-14, 15-16)

Some of the practical implications of this Party State were touched upon by Professor Chirovsky in his testimony:

> "The whole experiment with radical socialism which was supposed to lead to communism produced great many internal contradictions. Whatever contradictions developed, either the Presidium of the Supreme Soviet, or the Politburo tried to solve the problem, but solving that problem they were generating another one, growing to almost uncontrollable size. That is why the Soviet era is full of reorganization projects, new plans." (pp 75-76)

It is useful also to set out here what Professor Chirovsky, in his evidence, presented as his classroom description of the system of government in the USSR:

> "There are two governments over there. One constitutional one, as spelled out in the Constitution either from the early 1920s, or Stalin's Constitution of 1936, or later on. Constitutional government briefly: On the top there was the so-called Supreme Soviet or Council of the Soviet Union, the legislative body. Since that legislative body could not work continuously and permanently, they had, constitutionally, the so-called Presidium of the Supreme Council of the Soviet Union - a few men who even had the power to enact laws, which later on at the subsequent session of the Supreme Council were simply rubber-stamped. Then, under the Presidium there was an executive power, namely the Council of People's Commissar which later on was renamed into the People's Ministers. The framework, the extension and the power of that body was in constant flux: ministers were added, ministers were deducted, according to the needs as decided by the real government of the Soviet Union.
> The real government in the Soviet Union for decades was approximately of the following pattern: At the top there was the Politburo, or Political Bureau of the Communist Party of the Soviet Union - a few men, around 20-25,

"sometimes less. Real power in the Soviet Union has been wielded by the Politburo. The Politburo actually was selected by the Central Committee of the Communist Party of the Soviet Union (about 140-150 people). The Committee had their plenary sessions about every half-year or year.
The Central Committee of the party was above the Politburo. Actually, Politburo members were selected from the Central Committee. Factually, however, Politburo wielded the power, and Central Committee rubber-stamped the decisions for decades.
According to the statute of the Party, the supreme agency was the All-Union Congress of the Communist Party of Bolsheviks of the Soviet Union. That particular officially top agency of the Party met at the will of the Politburo, or, rather, the Secretary General of the Communist Party, sometimes every four years, sometimes more frequent. But at the point during Stalin's lifetime the General Committee did not assemble for 12 years, and the Politburo wielded the whole power.
Most members of the Politburo were at the same time either in the Presidium of the Supreme Council or were the members of the Council of People's Ministers. Therefore, it was a complete merge of these two agencies, namely constitutional government and real government. (pp 13 - 16)
There is ... no separation of powers in the Soviet Union, like in America or Canada or any Western democracy, between legislative, executive and judicial. The members of the Supreme Council of the Soviet Union - the parliament - are also ministers in the government of the Soviet Union, in the Council of Ministers. Also, the judges are members of the Supreme Council. (p 82)
As Secretary General of the Party, Stalin had deciding vote in whatever happened, or whatever was decided or agreed upon in the framework of the Politburo or the Central Committee of the Party or even the All-Union Party Congresses. Stalin managed to assume the

> "dictatorial power as all historical sources of that time do indicate. (p 16)
> (In the Politburo) starting from early 1920s or late 1920s, was Molotov, Lazar Kaganovich, his brother (Mikhail Kaganovich), Zinoviev, Trotsky, Kalinin, Radek, Mikoyan and many others. (p 16)
> The decisions were largely made by the Politburo. Stalin was advised and consulted but the final word was his. At the same time, the decisions made by the Politburo were transferred to the Presidium of the Supreme Council - the constitutional government - and the Council of Ministers. In this way the government agencies were involved in decision-making and taking responsibilities." (p 17)

Faced with the question whether the Politburo decision should be considered as a collective decision or as something to attribute to Stalin himself, Professor Chirovsky chose the formula to "attribute that to the entire Politburo where Stalin had the main voice" (p 64). Addressing the same issue, however, Dr. Conquest has added that:

> "There were members of the Politburo who were not really involved so much: Kirov in Leningrad and Krinitsky running industry. There were people whose responsibility was certainly not as great." (p 87)

Accepting this as the background - the Party State and its leadership - I must then focus on the dynamics that released the chain of events leading to the famine, looking at them with a view to individual responsibility.

The evidence before the Commission of Inquiry conveys the idea that it was the holding of land that was central to the thinking.

The background is sketched by Professor Chirovsky:

> "It was the tradition, until the early 20th century, definitely, (that) the Czar considered himself the owner of the whole land. But after the revolution of 1905, Minister Stolypin, in

> "order to save Russia from economic backwardness, introduced the so-called agricultural reform under which, slowly and gradually, land was turned over, officially and legally, to the peasants, taking the large real estates of the royalty and aristocracy - taking, dividing them, and giving the land to the peasants. ... 'Obshchina' was considered one of the transitionary steps towards turning land entirely to the peasants ... Special banks were established to help the farmers to buy the land, to take over the land, and so on. But then the first World War came, and actually the process was not fully completed although pretty advanced." (pp 90-91)

The advent of the Party State seems to have created a great deal of confusion. Professor Chirovsky testified:

> "Already in 1918, Lenin signed the decree - and he was not prime minister nor president - making all land in the Soviet Union the property of the state. And so it remains that way until the present day.
> However, during the New Economic Policy era, the rule was not enforced, practically speaking. The farmers, peasants, were allowed to deal with the land like they dealt before. They were granted freedom of action to some extent. ... So legally the land was still property of the state; only practically, the farmer had the right to deal more freely on that land, how the crops were used, whether sold or consumed, and so on." (p 20)

Confronted with the fact that the Commission had heard testimony from a number of survivors whose families had estates and land-holdings and who certainly had considered themselves the owners of those in the period through the 1920s and up until collectivization, Professor Chirovsky has insisted:

> "Doesn't matter. They simply did not hear about the decree. ... The populace who couldn't read and write - please don't forget

> "that at the time of the Revolution, 85% of the population was illiterate. ... Practically they acted like owners. They thought that the government gave it (the land) back to them because the government did not force them to go to collective farms, did not try to terrorize them or intimidate them, during the early part of NEP. It was only friendly persuasion." (pp 44-45)

It was this state of the peasantry that brought the actual confrontation with the imperatives of the Party State philosophy. Dr. Ammende explains it the following way (exhibit P-30):

> "It was Stalin who was the first to grasp that the existence of millions of peasant properties inevitably meant the fiasco of the Communist order in Russia. And it was he who alone had the courage and the almost inhuman ruthlessness to stick to his views and undertake the sudden transformation of the old type of peasant economy, despite the inevitability of sacrificing human lives in the process. ...(He) realized earlier and more clearly than others that the Soviet regime was faced by a crisis: the Lenin type of Socialism, implying collectivization at whatever risk, had to be carried into practice if Communism were to remain the foundation of the Soviet State. ... Other leaders of the Communist Opposition, headed by Trotsky, objected, because they were firmly convinced that the vast difficulties of agricultural communization and the attendant struggle with the peasantry would prove insurmountable in practice. ...(These) men's original protests were not inspired by fears of the consequences of agricultural collapse, famine and the like, but by apprehension that the Soviet system might not succeed in meeting such shocks.... (p 158)
> It may be admitted ... that nobody except Stalin would have had the courage and resolution to hold fast to his ideas and methods in his struggle with economic problems, even at the cost of sacrificing millions of innocent persons." (p 159)

The evidence of Dr. Conquest has been to the same effect:

> "Stalin was the spirit behind all the policies in the Ukraine. He had been approached by the Ukrainian leadership in July-August, 1932, to say that these quotas are too high, and then he was approached throughout the winter. And then by Terekhov who told him that the famine that they had predicted had resulted. He went on forcing through the decisions. ... Stalin was the dynamo behind all the policies from about 1930 to 1953."

31. Statute Responsibility

As compared to the weighing of influence which has been the subject of the previous section (No. 30), the "paper trail" is a great deal easier to handle. In section 21, a dozen decrees were identified as causes of the famine, the law August 7, 1932 on protecting Socialist property, the Speculation decree of August 22, 1932, and the Internal Passport decree of December 27, 1932, being perhaps the most important. These three were all signed by M. Kalinin as Chairman of the Central Executive Committee of the USSR, and by A. Yenckidze, Secretary of the same Committee. The first and the last of these three were also signed by V. Molotov in his capacity as Chairman of the Council of People's Commissars of the USSR; the Speculation decree was signed by V.V. Kuibyshev as Vice Chairman of the same Council. These people were all also members of the Politburo. Consequently, as signers of the supreme command in this chain of command, they all carry, in my opinion, individual responsibility for the famine.

The Black List decree of December 6, 1932, was signed by Vlas Chubar as Chairman of the Council of People's Commissars of the Ukrainian SSR, and by Stanislav Kossior as Secretary of the Central Committee of the Communist Party (Bolsheviks) of Ukraine. Both were also Politburo members. In the same capacity, Chubar also signed the decree of November 20, 1932, a follow-up decree to the law of August 7, 1932.

The secret blockading railway decree must be held

to have been issued by A.A. Andreyev in his capacity as People's Commissar of Transport. As to the Postyshev decrees, no evidence has been put to us showing who signed them, but their very nature and their implementation makes it natural to hold Pavel Postyshev responsible for them. He, too, was a member of the Politburo.

In this way, the paper trail identifies a whole set of Politburo members as being directly and individually responsible for the severity of the famine.

The investigation could, no doubt, be carried further along this avenue. But the evidence before us does not allow pointing out other individuals and here I will, therefore, go no further.

32. Intent

It follows from the introductory discussion that more than one aim is certainly involved in the decrees identified as part of the paper trail. The following aims may be suggested:

(1) securing the success of the grain procurement in order i.e. to finance industrialization;
(2) achieving dekulakization;
(3) achieving collectivization;
(4) destroying the Ukrainian nation.

In the Genocide Convention, an intent clause has been put into Article II. In its final formation, it proscribes "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." When the Convention was hammered out, the words "as such" were put in to replace a more elaborate list of various motives. What is required in matters of intent has thus to be learned from the words "as such" and that interpretation may in turn be influenced by the fact that the destruction of a political group was removed from the enumeration of destructions in the Article.

It has been maintained that the intent clause requires only that the acts have "a purposeful or deliberate" character as opposed to being accidental or

unintentional. When arguing the case of genocide being committed by the Khmer Rouge government in Cambodia - another major Communist operation destroying people - Hurst Hannum pleads the following approach:

> "It cannot be contended that the government ... intended every death that resulted from its Draconian social and economic policies. However, the consistency between internal memoranda and public pronouncements of the regime and what actually occurred throughout the country ... indicates the deliberate character of decisions taken at the highest levels of government. ["International Law and Cambodian Genocide", 11 Human Rights Quarterly 82--137, at 111 (1989].

In the case of multiple intent, the perpetrators may claim only a political motive, coupling this to the removal of the "political groups" from the protection of the Genocide Convention and claiming impunity on that basis. The answer to this has been that, nevertheless,

> "...the Convention as written protects racial, ethnic, national and religious groups from genocidal acts where the perpetrator claims only a political motive." [Le Blanc, 13 Yale J. Int'l L. 268, 290 (1988)]

This suggests that "intent" in Article II can, somehow, come to grips with also multiple purposes. The Cambodia genocide discussion has distinguished between two major cases. On the one hand there is <u>legitimate intent</u> or intent pursuing a "legitimate goal" (which would seem to correspond to permissible political motive). The enumeration of such goals includes: (a) self-defence and "legitimate requirements of national security"; (b) intent to "preserve a democratic government"; (c) "elimination of political opponents"; and (d) "a more equitable redistribution of wealth" or "reform of the socioeconomic structure of the country". On the other hand, <u>illegitimate intent</u> has been identified. It includes: intent "to eliminate groups which were ideologically unacceptable", "hatred of alleged social and ideological impurity", "hatred of religion, 'foreigners', and ideological deviance", "a

"desire to create a new Khmer nation and 'the wholesale remaking of the Khmer people according to a deliberately imposed vision'" [Hurst Hannum, 11 Human Rights Quarterly 11-12 (1989). The question then to be answered is: How come these "groups which were ideologically unacceptable" are not 'political groups' and consequently removed from the protection of the Convention? Hurst Hannum's answer is:

> "If the Genocide Convention means anything, it means that a state cannot destroy those parts of its own people that do not conform sufficiently to the government's own views of social, racial, or ideological purity." (p 112)

This argument is also buttressed with size and abuse. The exclusion of 'political groups' from the final text must mean something, but;

> "... it is not consistent with the purpose, wording or preparatory work of the Convention simply to define one-seventh to one-third of the population as 'political' and thus beyond the Convention's scope. Nor is it consistent with the purpose of the Convention to equate geographic residency, language, religion, race, ethnicity, social status, or occupation with membership in a political group, solely in order to avoid the Convention's proscriptions." (p 112)

I think that the way out of this dilemma may be found in the experience of the organs operating under the European Convention on Human Rights (213 UNTS 221), addressing the issue whether measures interfering with a protected human right pursue a purpose that is legitimate according to the Convention. In this connection a distinction has been found between the case of aims within aims, and the case of lateral aims, when facing possible multiple aims behind a statute.

If the possible aims are completely unconnected, it is a case of lateral aims - "killing two birds with one stone" as it has been put. When the possible aims are connected with each other in one or more ways, then the

case is one of aims within aims. In the former case, it will suffice if one of the several aims is legitimate to justify a finding that no human rights violation has taken place. In the latter case, however, it is necessary that all aims must be legitimate. In the following I will be applying to the case at hand this doctrine as formulated in the matter of unlawful discrimination. [Brita Sundberg-Weitman, 49 Nordisk Tidsskrift for International Ret, 31-58 (1980)]

To me, consequently, the basic question is whether the four possible aims, set out above, are connected with each other or not.

Having this in mind, it is time to look at the evidence again.

The Party-State philosophy goes very deep, as may be gathered from what has already been said (supra under No. 30). The evidence on which I will be basing my findings will be the one that has been put before the Commission of Inquiry with the addition of Georg von Rauch's book "A History of Soviet Russia" (5th ed. Praeger 1967).

> "The tenth anniversary of the October Revolution, celebrated with great pomp on November 7, 1927, provided a festive occasion for Stalin to outline his new program. ... (The) General Secretary proclaimed two paramount aims in the domestic field: radical collectivization of the peasants and creation of a powerful Russian industry. ... A month later the Fifteenth Party Congress of December 1927 sanctioned the draft program, thus initiating Russia a great agrarian revolution and forced industrialization, linked to Stalin's name. It was decided to launch the collectivization program and 'to pursue the offensive against the kulaks.' At the same time the State Planning Commission was entrusted with working out the first Five Year Plan for the entire economy of the Soviet Union." (von Rauch pp 177-178)

The Five Year Plan was accepted late in 1928.

> "A few days after the end of the (Fifteenth Party) congress, ... Stalin made a sudden sharp turn 'to the left' in agricultural policy. ... In late December Stalin sent out instructions for the application of extraordinary measures against the kulaks. ... (On) January 6, 1928, Stalin issued a new directive, extremely harsh in both tone and content, which ended with threats against local party leaders if they failed to achieve a decisive breakthrough in grain procurements within the shortest possible time. ... (The) extraordinary measures in the winter of 1927-1928 had been a declaration of war against the kulaks, the end of NEP in the countryside."

As explained by Roy Medvedev in his book "Let History Judge", (exhibit S-52, pp 218-219), this was the turning point. He continues:

> "A dangerous situation thus developed in the middle of 1929. The undeclared war with the better-off section of the peasantry threatened the Soviet Union with disorganization of its entire national economy, even with famine. Something had to be done ... Three possible solutions remained. ... The final possibility was to speed up the collective-farm movement in order to limit and ultimately destroy the kulaks' monopoly on marketable grain. As we know, the party chose the latter course. (pp 220-221)
> In December 1929 a special commission of the Politburo on collectivization as well as a subcommission specifically on the kulaks were formed. Stalin did not wait for recommendations from this subcommission. In a speech at a conference of Marxist students of the agrarian question at the end of December 1929, Stalin called for 'liquidation of the kulaks as a class' and stated that 'dekulakization' (dispossession of the kulaks) should be an essential aspect of the formation of the collective farms in carrying out complete collectivization. ... After Stalin's speech a campaign to dispossess the kulaks got under

"way almost everywhere." (pp 231-232)

Medvedev observes "that a decision of such importance should at least have been discussed at a Central Committee plenum" (p 232).

But collectivization, which philosophically meant replacing the land-owning peasantry on the countryside with an industrial proletariat employed by the state farms and the collective farms, must under such circumstances of necessity hit not only the agricultural population's ideas about their right to the land but everything that induces them to hold on to the older order. "The process of collectivization" - wrote Dr. Ammende, who naturally had a keen eye for questions of nationality - "meant a campaign against soil, nationhood and religion", adding:

> "It would be wrong if the impression were conveyed that this policy of destroying entire groups within the population were directed exclusively against the nationalities. The Moscow Government adopts similar measures against all those groups within Russia proper which resemble the nationalities in remaining loyal to the concepts of religion, family, nationhood etc." (exhibit P-30, p 183)

The intent behind the new attitude may be deduced from the speeches made at the Central Committee meeting early in 1933, i.e. by Kaganovich and Postyshev. These speeches included, as reported to the Commission by Dr. Conquest, the line: "We are hitting the kulak, because private property is the basis of nationalism, but also because they are kulak". (p 89) In a speech by Postyshev, delivered in late 1933 and reported by Ammende, he developed the idea further by stating:

> "... that any attempt to harmonize proletarian internationalism with nationalism must make it an instrument of the nationalist counter-revolution." (exhibit P-30, p 144)

The programme pursued by Postyshev as the main arm of Stalin therefore meant "war to the knife on all the national movements" (p 145).

Dr. Conquest, in his book (exhibit P-11, p 219), makes the following observation:

> "Stalin clearly understood that the essence of Ukrainian nationhood was contained in the intellegentsia who articulated it, but also in the peasant masses who had sustained it over the centuries. The 'decapitation' of the nation by removing its spokesmen was indeed essential - and was later evidently to be the motive for Katyn, and for the selective deportations from the Baltic States in 1940."

Testifying before the Commission of Inquiry, Dr. Conquest has elaborated this special phenomenon by calling attention to the fact that:

> "... during and after the war, Stalin deported certain small nations from Caucasus en bloc. ... And Khruschev tells us that he (i.e. Stalin) wished he could deport the Ukrainians, too; there were too many of them. The bad nation idea was strong in his mind. These were Chechens and Kalmyks, ..." (pp 88-89)

On the basis of this evidence I accept that industrialization, collectivization, dekulakization and suppression of nationalism were all essentially different sides of the one and same problem created by the particular philosophy of the Party State. It is thus a matter of aims within aims although they defy all attempts to put them in a hierarchical order.

On the basis of this reasoning I arrive at the conclusion that the statutory intent includes an intent to kill and that this intent covers also major groups of people. I feel inclined to accept the characterization by our expert witness, Mr. Wasyl Hryshko, when he writes in his book "The Ukrainian Holocaust of 1933" (exhibit P-33, pp 2-3) that such an intent:

> "... is implicit in the very goals proclaimed by the Communist ideological conception of 'building a new world of socialism and then communism' by means of revolutionary destruction

> "of the 'old world' and the elimination of private property and certain classes and social groups of people connected with it, considered by Communist theory as 'bourgeois' or 'petty bourgeois'. The latter are regarded as an obstacle on the path toward the 'classless socialist society'. Inasmuch as this also means the 'creation of a new man,' which involves the destruction and elimination of the 'old bourgeois and petty bourgeois' culture based on nationality and religious consciousness and traditions, it requires Communists to wage permanent war against those national and religious forces which, being embodied in certain groups of people, are considered to be inimical to Communist goals. In fact, since the ultimate goal in Communist theory is a unified world with centralized economic and political power and without national and religious divisions, the Communist struggle for this goal must assume an anti-national and anti-religious character and also call for the destruction of certain social groups."

On the strength of the same reasoning, I feel inclined to dismiss all objections to the effect that the individuals in question may have been unaware of the conditions that resulted from the grain requisitions; in particular, the massive mortality. I find Dr. Conquest's interpretation of the Terekhov incident fully convincing. Terekhov having told Stalin about the famine:

> "Stalin's tactic was, of course, to deny it. ...That didn't mean that he didn't know it and it didn't mean that others didn't know he knew it. It meant that this was his rhetorical or tactical method of dealing with it. ... Stalin was ... a very cunning operator. One of his characteristics was not forthright attacks on anybody. ... He was the master of indirection. I think in this case his affectation not to believe what he was told was indirection." (pp 93-94)

Finally, on the basis of the same reasoning I find

that the lethal intent was directed at the Ukrainian nation as such - as it was directed at other nations as such within the big multi-nation empire that was the USSR - because this targeting was an aim within the overriding aim of establishing a new world of Socialism/Communism.

34. Defences to be Anticipated

The fact that the famine was deliberately caused and the fact that certain individuals are imputed with lethal intent within the framework of the statutory instruments which contributed to the devastation of life that went with the famine does not, however, exhaust the matter. As a matter of responsibility, it is also necessary to consider the defences that could be set up in order to justify the action taken. For illustration it may be pointed to the situation during World War II when the German forces lay siege to Leningrad:

> "One condition for the survival of the city was the placid calculation by its leaders that approximately one-third of the population must succumb: so-called 'dependants' - nonemployable persons other than children - were placed in a rationing class where they could hardly be expected to survive." (as per Rosenblad, 7 International Lawyer 256)

Certainly, in such a wartime situation, it comes out pretty clearly that there are overriding justifications that may wipe out the illegality even from measures "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part", to use the phrase from the Genocide Convention. We are here faced with an overriding doctrine of unlawfulness which normally finds its place in the general part of the criminal law. It follows from my approach to the procedure applied that such doctrines will have to be taken into account. The ILA draft statute for an International Commission of Criminal Inquiry addresses the issue of grounds for defence or justification and requires the Commission to "apply the relevant rules of international law, and where no such rules exist, the national law of the state concerned ... if the latter is not in conflict with international law." [Art. 14(2)] The explanatory report adds the following

comment: "Such recourse to the general part of national law most definitely is indispensable as otherwise the Commission would have to create the lacking part of international criminal law."

One general defence can be dismissed easily: that those in charge in Moscow did not know about the famine. The evidence showing that the people in Moscow did know has been dealt with above under number No. 24(a), and I find it entirely convincing. Consequently, this cannot be a defence here.

The next general defence is different: that not going along with the policy pursued by Stalin would have exposed the individuals in question to personal risk. This is a consideration that cannot be dismissed. Of the eight people mentioned as carrying individual responsibility for having signed the statutory instruments in question, five lost their lives due to Stalin's purges during the next few years (Yenokidze, Kuibyshev, Chubar, Kossior, Postyshev). Professor Chirovsky testified that "Molotov was about three times almost liquidated but somehow he escaped the fate". Summing up, he did not think that there had been any effective means by which anybody in the Politburo could have opposed the decisions with respect to collectivization of agriculture (pp 59-60). Such considerations were, of course, even more important to people lower in the apparatus. Dr. Mace has testified that of 102 members of the Central Committee of the Communist Party of Ukraine, 100 were arrested in 1937 and subsequently executed (p 185). He has also reminded us:

> "... that top officials of the Communist Party of Ukraine could be, and indeed were, replaced if they were not sufficiently energetic in carrying out the grain procurement policies and quotas established by Moscow." (p 161)

On the basis of such considerations, I am inclined to agree with Dr. Mace that the most direct responsibility must be borne by Stalin himself and the group of officials around him who were not under substantial personal threat in the carrying-out of the policies which produced the famine. The only surviving one who fits into this category is Lazar Kaganovich.

The third general defence is very problematic and deeply philosophical. Not all grounds of impunity are set out in the penal codes of the Western countries. The case of the soldier who kills the enemy in wartime is not often set out. Nevertheless, numerically, these legalized homocides have played a much larger role than the criminal ones in Europe during the past century. So, the doctrine of justification has room for considerations of the broadest possible kind.

The fact that considerations of this kind permeate the political culture in the Party State must not be overlooked. Professor Dorsey reminds us that "the failure of Britain and the United States to realize the true nature of the Soviet Party State" has had tragic consequences, pointing to the fates of the millions of Soviet nationals within the British and American occupation zones after the second World War. They were sent back, to their deaths or to gulag slave labour, much to the surprise of those who sent them. (p 28) The views taken of prisoners of war have been equally radically different, due to philosophical differences, and equally surprising on the Western side. Allowing the individuals here held responsible to have their guilt assessed according to their own political culture consequently may entail surprises.

The evidence given by Dr. Mace has pointed to some facets of this problem.

> "What both Stalinism and Naziism had in common was the imposition of a trans-human or super-human ideology or morality, whereby it became moral to kill millions of people for a greater goal. ... In the Soviet Union under Stalin, the elimination of millions of peasants - class enemies, opponents of various natures - was seen as permissible in terms of the greater good of creating a society called for by the dictates of Marxism-Leninism." (p 163)

Dr. Ammende has pointed to the same phenomenon: the value set on human life:

> "It is the Bolshevist view that the one ultimate ideal is to lead mankind to the

> "earthly paradise, and that the way to realize it is to realize the Communist ideal of Society. So long as an economic order destined to last forever is achieved, the death of millions becomes insignificant. It follows from this general assumption that human life in Bolshevist eyes has little, if any, value: man is an economic factor, like labour in the abstract, and nothing more. ... This fundamental Bolshevist attitude to human life, this view which regards human beings as economic factors, implies a similar attitude to human suffering. Compared with the realization of the Communist ideal, the life and death of the individual is a matter of indifference; why, therefore, trouble about his personal conditions, diseases and sufferings?" (exhibit P-30, pp 150, 151)

That this is so has been made no secret among those believing in Communist society. "The Korean War made crystal clear", it was said in an American Congressional Report, "that when our nation was engaged in hostilities "with a Communist Far-Eastern country, the question of 'prisoners of war' presented new and unprecedented problems", (1969). "As POWs who were treated not as POWs but as common criminals, we sailed unchartered waters" wrote Admiral Stockdale (Naval War College Review 1975 p 3). On their side, the Socialist camp states have all made reservations to Article 85 in the Geneva Prisoners of War Convention and later developments have left the Soviet position unchanged. Seeing all governments as fundamentally the same is irreconcilable with the Marxist view that bases itself on the class essence of law. Professor Tunkin elucidates the matter in "Theory of International Law" (W. Butler transl. 1974, p 8):

> "A nation has the right to self-determination. But as a nation in a capitalist society has been divided into antagonistic classes waging a bitter struggle among themselves, realization of the self-determination of nations is not only an all-national, but also a class problem. Which class will stand at the head of the struggle for the self-determination of nations is of decisive significance. The content and

"the results of that struggle are dependent on this."

Anticipating the third general defence, it is no longer possible to rest satisfied with what Dorsey calls "an almost wilful ignorance of Marxism-Leninism" (p 29). Insisting upon the responsibility of the individual Communist leaders also means disregarding completely the philosophical canons of Communist society; but if you adapt to those canons you will come pretty close to the position of Hitler's Germany which "treated members of the Soviet armed forces as agents of a revolutionary movement instead of soldiers in a war of limited objectives" (Dorsey p 27)

GENOCIDE

35. Facts and Law Relating to Genocide

Mr. Sopinka, representing the Petitioner, has sought a declaration from the Commission of Inquiry that the famine constituted genocide as defined by the Convention on the Prevention and Punishment of the Crime of Genocide (p 7).

Mr. Liber, succeeding Mr. Sopinka as representative, has submitted on this count that the Commission has evidence here to make a finding that what occurred in 1932-1933 was an act of genocide. He has urged the Commission to make that finding (pp 97-98).

General Counsel has opposed this request, arguing:

"(1) That the Genocide Convention did not exist at the date of the events with which the Commission of Inquiry is concerned;
(2) Articles IV and VI of the Convention expressly limit the liability to persons, whether public officials or private individuals, and make no reference to States;
(3) Article VI defines a procedure for dealing with allegations of genocide but this procedure is not applicable to the Commission of Inquiry and consequently the Commission has no jurisdiction to make findings of

genocide;

"(4) That the evidence does not support a conclusion of genocide as defined in the Convention. More precisely: There is not evidence of an intention to destroy a national, ethnic, racial, or religious group. To the extent that what happened was a kind of war, it was a class war directed against an economic class - the peasants - and not against an ethnic or a racial group. Were it otherwise the famine would not have been confined to the Ukraine."

Under our Terms of Reference, the Commission of Inquiry is under a duty to consider the evidence and present its findings on a number of specific points. It is natural and indeed unavoidable that these findings have been dressed in general legal terminology. I find no difficulty in using the terminology of the Genocide Convention in relation to such findings.

My findings in the past are such as to coincide with what is called genocide in the Genocide Convention.

The purpose of the Inquiry, however, covered by the language "recommendations as to reponsibility" in our Terms of Reference, is to establish whether there is a case against one or more individuals as a result of our findings.

Whether or not there is a case against somebody is a consideration that goes beyond terminology. It suggests a legal responsibility.

I cannot find that there is a case against the individuals pointed out because:

(1) they are all dead today, except Lazar Kaganovich;
(2) under the Genocide Convention it is anyway up to the Soviet Union to prosecute under the procedure established by the Convention;
(3) and such prosecution would have to take the general defences into account, the most important of which perhaps would be that invoking the Genocide Convention would mean its retroactive application to a moment in Europe's history when no European

or American power was willing to intervene in favour of the victims of the famine, not even by relief on purely humanitarian grounds, much less by a forceful humanitarian intervention of the type that used to hit the Ottoman Empire.

SEPARATE STATEMENT OF PROFESSOR RICARDO LEVENE (hijo)

Introduction

This is undoubtedly one of the most unusual cases I have ever come across in my long career (46 years) in the legal profession. Apart from the fact that our formation, powers and functions are unusual in relation to our task, as are the procedures we follow and the scope of our decision-making, we come up against difficulties in fact only when they do or may arise in a case such as this.

I should like to highlight the following: the length of time that has elapsed since the events took place and the pronouncing of judgment; the consequential and logical disappearance of evidence; the witnesses who were either too young to understand what happened or who are too old now to remember it; the fear of making a statement; the superabundance of documentary evidence, which complicates the task of the judge, as does the inadequacy of such evidence, et cetera.

Moreover, the considerable time that has elapsed has served to change many things and to temper many attitudes. What is certain is that, after many years, mitres and Cardinals' hats have been seen again in the Kremlin; that the present-day media inform us of things in the world of international politics that some time ago would have seemed like a dream. Things such as the nationalist reawakening of former independent countries like Armenia, Lithuania, Georgia; and the new policies of Mikhail Gorbachev, with his programme of openness, come close to the standpoints of the different parties. Though they cannot erase the wounds that have been inflicted, and which constitute an irreversible past, they make it possible to look forward to a better future for humanity.

For centuries, the Ukraine was a country of privately-owned lands, passed on by the Ukrainian peasants from generation to generation. It achieved its independence from 1917 to 1921, but, in 1930, due to directives from Moscow, proceedings were instituted against the Union for the Liberation of the Ukraine in which 49 prominent Ukrainians were accused of conspiring to separate the Ukraine from Moscow and were given prison sentences.

Part of the material under consideration has been the evidence of two distinguished American historians,

who have shown a particular interest in these matters: Dr. James Mace and Dr. Robert Conquest. Other witnesses and survivors such as Oleksa Scaba, Irene Saplywa, et cetera, joined those appointed at the Brussels and New York meetings which included demographic analyses and map briefings which showed where the famine was concentrated. There was evidence from a collection of British documents concerning foreign relations; a list of decrees of the Soviet Government of that period; a large collection of newspapers of the time, from various countries.

We also have at hand some useful literature made up of some the following: "The Foreign Office and the Famine: British documents on the Ukraine and the great 'Famine' from 1932-1933"; "Famine in the Ukraine, 1932-1933" by Roman Serbyn and Budhan Krawchenko; "The Harvest of Sorrow" by Robert Conquest; "Investigation of the Ukraine Famine" report to Congress, Commission of the Ukraine Famine.

I have seen the documentary "The Harvest of Despair," produced in 1985 under the auspices of the Ukrainian Canadian Committee and the World Congress of Free Ukrainians, which demonstrates the tragic consequences of the struggle of the Ukrainian people for cultural and political autonomy.

Furthermore, the American Commission, with a concern to creating universal awareness of the Ukraine Famine, implemented a study on the basis of various public interviews conducted between 1986 and 1987. The study would also serve to increase awareness by the American people of the Soviet system, and has provided us with a wealth of material. To date, the American Commission interviewed 57 witnesses, producing major publications.

The existence and extent of the famine

The first point submitted for consideration relates to whether or not there was a famine in the Ukraine. If demographic numbers are taken into account, then the answer must be in the affirmative.

Indirectly, the same response emerged from the Soviet Union's reply dated 1st of March, 1988, when they were invited to attend the meetings of this International Commission. Their response acknowledged the grave food situation that existed not only in the Ukraine but in

various parts of the Soviet Union during the period 1932-1933.

It is difficult to determine the extent of the famine because, firstly, it has not been possible to rely on the material from the Soviet files. The most conservative estimates indicate that the number of deaths would be in the order of 5 to 7½ million. Moreover, some of the officials would put this figure at 10 million. One of the reasons for the famine was the lack of food due to the requisition of grain.

In 1932, for instance, out of an 18.3 million ton crop, the state asked for 7.7 million and harvested 7 million. On the other hand, in 1933, the crop totalled 14.4 million and the government demanded 6.6 million, out of which only 4.7 million could be harvested. In other words, the grain quotas demanded by the state were too high and impossible to meet. And whilst those producing the grain were denied it and were dying of hunger, some of it was exported to Italy and England. Furthermore, the ration-card price was doubled from 14 to 28 kopeks per kilo.

The figures of the economic experts, such as Nicholas Chirovsky, can be looked at in this connection both by the witnesses and experts - Conquest, Mace and Maksudov. As far as extent is concerned, there is the evidence of the geographical and linguistic expert, Lubomyr Luciuk, who handled the maps that were produced.

As to the extent of the famine, Muggeridge, in one of his articles for the Manchester Guardian, describes the poor conditions borne of hunger experienced in the Upper, Middle and Lower Volga districts, North Caucasus, and the Ukraine, with slightly better conditions in Western Siberia. But it should be noted that the concentration of population was greater in the area of the Ukraine. The regions where starvation was at its worst were the most fertile and prosperous ones - good farms, fertile black soil - such as the provinces of Kiev, Poltava, the North Caucasus and the German Volga region.

Hunger was not just confined to the Soviet Ukraine, but was also to be found in Kuban, the North Caucasus, Central Golgotha and Kazakhstan. Russia and Central Russia in particular was experiencing material difficulties but not "famine". People might have had to

go without a meal but they were not dying of hunger as they were in the Ukraine. There was also a famine in the south of Belorussia.

The New York Times, Figaro (3/4/32), the Winnipeg Free (2/9/33), and others reported that the whole of Russia was experiencing food shortages. Successive issues of these papers were making known how the famine in the south of Russia was spreading, with cases of cannibalism being reported such as that of a mother accused of eating her four children (27/8/33) (Ammende, "Human Life in Russia".)

Dr. Conquest declared that a quarter of the rural population had died; half of them were under eighteen. He adds that the famine was not confined solely to the Ukraine, but that it was the centre of it, particularly in the grain areas, the North Caucasus, the Kuban, which at the time were Ukrainian in language, education and culture. (See evidence of Dr. Robert Conquest, volume 1 of the proceedings, p.p. 82 to 87.)

In "Human Life in Russia," Dr. Edward Ammende calculated the population of the Ukraine before the great famine and reached the conclusion that the victims of the famine totalled 7½ million. ("Introduction" VI). Coincidentally, various decrees fixed grain quotas that served to enable the government to deprive the Ukrainian villages of all food, as these quotas were raised each time the government could establish that a farmer had more than he needed.

The decrees of August 22, 1932, and December 2, 1932, forbade any private trading in grain or bread. Although bread could be bought in another village or town, it wasn't possible to transport it to one's own village.

Agricultural production fell disastrously because the villagers preferred not to produce anything, as they couldn't keep their own produce.

In 1929, Stalin implemented a double programme: the collectivization of the land and the dekulakization of the well-to-do villages.

"collectivization" meant that a villager was no longer the owner of his own land, nor did he have control of his own crops. "dekulakization" meant that a great

number of villagers - between 1.6 and 1.8 of the population - around 25 million families, were deported to the Arctic. A horse, a couple of cows and 20 to 30 acres of land were all a villager possessed.

The decrees of December 27, 1932, January 1, 1933 and January 14, 1933, established a system of internal passports that gave the police of the internal state - the GPU - total control over the accesses to the urban and industrialized areas. In this way, the government excluded starving villagers from areas in which it was possible to obtain food. The decree of March 17, 1933, completed the work of the previous decrees on the system of internal passports in such a way that the collective farmers could expel any villager who abandoned the farm in search of food for his family, or of work elsewhere, without the government's agreement. Under this system, the villagers laid themselves open to expulsion and deportation. They could not go to the towns or urban areas, nor could they leave their collective farms. The food distributed to the workers was done so under government control. The decree of January 1, 1932, gave the factory managers arbitrary powers to remove workers from their posts. One day's absence was sufficient cause for expulsion.

In short, although there may have been a famine in other parts of Russia as well as the Ukraine, this in no way detracted from the existence of a famine in the Ukraine. What must be emphasized here is the fact that this famine was used in the Ukraine, as we have just seen, as a means of putting pain to the population of that region. On the other hand, just how much does it matter whether or not there was starvation there and why? What matters is that there was a famine, and for the reasons that we are about to record under the next heading. Furthermore, there may have been starvation all over Russia, but they did not take such harsh measures against the population as those adopted in the Ukraine.

The cause or causes of the famine

When studying the causes of the famine, one can refer to Edward Ammende's "Human Life in Russia". By the beginning of 1933, the government was reporting that 61% of the labourers' farms had been socialized; 220,000 as collective farms and 5,000 as state farms for grain and livestock. But one factor was overlooked, which caused the experiment to fail: the human factor. Exports were

promoted and restrictions were put on unnecessary imports. It was a particularly critical year for food supply in the Soviet Union (p. 46). Despite this, 1.8 million tons of grain were exported. These exports were on the increase. They were being shipped out from the Black Sea ports whilst millions of people were dying of starvation in the Ukraine - the exact number of which Mace estimates as being 7½ million. Moreover, agriculture was in decline due to the great number of exports.

The villages and communities lost their natural leaders. The ambition to achieve 100% mechanization in Soviet agriculture only succeeded in accelerating its ruin. Machinery was introduced without due preparation; horses and oxen were regarded as obsolete and to be replaced by tractors. The Russian peasant was prepared to be put to work tilling the land with horses and oxen but not with tractors and machinery.

Professor W. Kosyk describes the kulaks as prosperous labourers. The process of collectivization was gradually on the increase. In 1928, only 2.5% of the villages were collectivized; in 1929, 5.6% - a number that increased in 1930 and, which by the end of the year, stood at 32.5%. Moscow established the requisitions and quotas of bread and grain that had to be handed over. The villages were cut off from the towns and from the railway stations. Later on, the Ukraine was cut off from other regions and, in the end, from the rest of the world. Everything was aimed at destroying the social base of the Ukrainians: agriculture. Its destruction, by collectivization, was the Russian objective.

The kulaks, as a class, were destroyed, and this gave way to the collective farms. We have not managed to learn the plans used to control the quotas and the amount of same, nor have we come across any actual decree by Stalin organizing a famine. But there do exist various decrees preparing for it and implementing it, some of which we shall take a look at further on.

Internal passports needed by anyone going from the Ukraine to any other Soviet republic were also produced; special licences were required by people leaving the villages to go and live in the city. Grain and foodstuffs that found their way out of the Ukraine and back into it were confiscated.

According to the official statistics of 1931, 3 million tons of grain were exported; 1.7 million in 1932 and a further 1.7 million in 1933 at very reduced prices. In 1933, when the people were dying of hunger en masse, foodstuffs made up 20% of all exports from the Soviet Union. In addition to grain, the Soviet Union was exporting tons of meat, butter and fish in 1933. We maintain that the famine originated under the policy of dekulakization, the collectivization of agriculture; the shortage of food due to excessive sequestration of grain and the amount demanded in quotas. Thus, for instance, in 1931, out of a crop of 16.3 million tons, the state took 7.7 million tons, the amount demanded by it. The economics expert, Nicholas Chirovsky, informs us that the grain crops were: in 1926, 17 million tons; in 1930, 23 million; in 1931, 18.3 million; in 1932, 19 million. Out of these, the amounts handed over were 21, 33, 42 and 34% respectively.

Another economist, Vsevolod Holubnychy, wrote an article on the famine in "Vpered", entitled "The Causes of the 1932/33 Famine", which stresses that a disproportionate amount of grain from the Ukraine was set aside for export and that the Ukrainian farms produced 23.1 million tons of grain in 1930, with the government taking 7.7 million. In 1931, the crop fell to 18.3 million tons, in spite of which the government requisitioned 7.7 million. In 1932, it grew to between 13.4 million and 14.6 million tons, 40% of which was lost during the harvest, and the government requisitioned 6.6 million tons. The author maintains that the famine was not used to settle the farmers on collective farms, but that it broke out when 75% of the Ukraine had already been collectivized. He lists several decrees of 1932 which deliberately imposed the famine on the collective farms.

We can cite as other causes of the famine the first long-term plan to industrialize Russia, approved in April, 1929, which turned out not to be a genuine plan at all but rather an improvization in the hands of inexperienced people - the price crisis, the 55% rise in tractor prices, the export quotas rising steadily between 1929 and 1932, but falling sharply in 1933-1934.

As regards motive, it is maintained that the measures taken against the Ukraine were aimed at breaking the spirit of the most recalcitrant villagers who were opposed to collectivization. This was accompanied by

measures that were taken against Ukrainian nationalism, its intellectuals and the Church.

Professor Vladimir Timoshenko maintained that, in some parts of the Ukraine, 80% and sometimes 100% of all the grain was requisitioned; anyone who ate it laid themselves open to the death penalty; and that at least 8 million people died in the famine.

The Soviet citizenry found itself compelled to resolve the problem presented by transport, which was causing the loss of a great deal of food during the famine. In addition, there was the need to export grain in order to obtain foreign exchange.

The grain harvesting was completed with brutality; thousands of labourers were exiled and had their property taken from them. Entire villages were uprooted to the north for forced labour; many made the journey guarded by soldiers. The camps were empty; there was no livestock to be seen in them. The people were dying in despair, and tried to emigrate to the cities, but once there they were evicted and left to die. The grain taken from them was set aside for industry, the cities and the export market.

This campaign was accompanied by persecution of the Church and the appearance of cannibalism cases. The churches were first abandoned and then destroyed. The intelligentsia was destroyed, as were all arts centres. There had already been a great famine in 1921, but then help was sought from abroad. There had also been famines in 1891, 1906 and 1911, but none had been as serious as the one in 1932-33. This was completed with the help of government measures, such as the positioning of troops on the Ukrainian frontier so that people could not leave; the ban on talk of famine, which had to be denied; the ban on allowing food into the Ukraine from other parts of Russia, as also on bread rations established in the cities but not in the villages.

The stages of the famine were as follows:

(1) Dekulakization, which amounted to deporting millions of labourers.
(2) Collectivization, which amounted to interning the remainder in collective farms.
(3) The famine referred to is the epilogue to the foregoing and the compulsory requisition of grain.

Without a doubt, the main cause of the famine was the excessive seizure of grain which was taken from the labourers, leaving them without anything to eat. Searches were also conducted for hidden grain, to make sure that the labourers had nothing to eat.

Everything combined - the attack on the Ukrainian intellectuals, the destruction of the Orthodox Church, the liquidation of the kulaks and, finally, the famine.

There were decrees that forbade private trading in grain or bread. The villagers could not buy bread, and, even if they did so in another town or village, they could not bring it back to their own villages.

In spite of everything, the harvests were good but they were not sufficient for the forced exports. The army occupied the camps, and those who wanted to keep any supplies for themselves were shot without compunction. Whilst exports increased, the farmers had to live off the bark of the trees and their leaves. Epidemics were declared, and there were millions of deaths. The over-exploited land lost its value. (Ammende).

In 1927, the Communist Party Congress issued directives for the first Five Year Plan for Soviet agriculture, which was implemented in 1928, coinciding with the establishment and increase in the number of people in concentration camps in Russia. This increase was from 6,000 to 7,800 in 1936. At the same time, Moscow increased its control over the Ukraine, attacking its nationalism and its aspirations for independence. And so Ukrainian nationalism was hailed as being the principal enemy of the Socialist State.

In addition, as has been stated, the intelligentsia fell victim to this policy. In 1929, 70 members of the Ukrainian Academy were arrested or exiled. The next to be attacked were the rural areas; between 1.5 and 2 million kulaks were deported or exiled and between 300,000 and 500,000 died, mostly during the dekulakization period. But the main attack on the Ukraine was the death by starvation that took place between the spring of 1932 and autumn of 1933.

The conclusion reached unanimously was that the excessively high grain requisitions were the main cause of the famine. Minimum rations of bread were established

for the towns but not for the villages. Grain was acquired in negotiations, but not for the villagers. Barricades were set up so as not to allow the entry of food into the Ukraine.

One of the main decrees of the Russian Government connected with this matter was that of August 7, 1932, relating to a law protecting the possessions of state enterprises, collective farms and cooperatives and the safeguarding of communal property. It virtually declared all food and seeds as belonging to the state and established the death penalty or a minimum prison sentence of 10 years and total confiscation of property as a punishment for anyone stealing. The villagers had to choose between death by starvation or execution. All property, in short, belonged to the state: livestock, grain, other farm produce. This led to the courts in Kharkov pronouncing over 1500 death sentences in one month for the theft of food and grain, regarding the perpetrators of these deeds as enemies.

The effect it produced on the Ukraine and its people

The government initiated campaigns to search for grain hidden by the labourers, to make sure that they went without food altogether, and it provided minimum rations of bread for the towns but not for the villages. All of this meant that when the first census was conducted, after the 1936 census, the officials responsible for disclosing discrimination against the population were executed. A full census was conducted recently after the 1959 famine.

The Russian decrees of this period were published in three official newspapers: Pravda, Izvestia and Visti. Other decrees fixed grain quotas that had to be handed over to the Russian Government, and were taken from the labourers. Sometimes additional quotas were demanded from the local officials when they discovered they still had grain.

Other decrees of October and November, 1932, banned the distribution of grain or the setting up of collective farms with grain reserves; they also provided for the handing over of grain, bread and the imposition of the death penalty on anyone found to conceal food.

The decrees of August 22, 1932, and December 2,

1932, banned trading in grain and bread and the purchase of bread by farmers. Even if they could buy it in a different town or city, they could not bring it back to their own villages. The decree of December 10, 1932, ordained the search for and confiscation of all food.

Although food was in evidence in urban and industrialized centres, the government placed the sources of food out of reach of the labourers and farmers, restricting their access to urban areas by the use of internal passports. Anyone who left their farm to go in search of food for their family risked expulsion and deportation, according to the decree of March 17, 1933. One day's absence from the factories without sufficient grounds allowed for the dismissal of workers from their posts, according to the decree of March 17, 1933.

The black-list decrees of December 6, 1932, and December 13, 1932, established a total blockade under which food and foodstuffs were taken, leaving the population defenceless in the face of hunger. They were given the alternative of handing over all their grain to complete the quotas imposed by the government, and any other goods imposed by the black-list measures. Either way meant death.

The requisitions of grain and foodstuffs, the isolation of the villages from the towns, the isolation of the Ukraine from other Soviet republics and from the rest of the world, the harsh penalties for the theft of food, the setting up of a system of internal passports to impede the movement of the Ukrainian population - so that in 1933, whilst millions of Ukrainians were dying, they were exporting 1,700,000 tons of grain, 7,900 millions tons of foodstuffs, 37,200 tons of butter, 29,200 tons of fish, 38,400 tons of sugar, et cetera - all of which contributed towards the great famine.

At the same time, the farming areas were being collectivized; and in 1932, 70% of them had been collectivized. Moreover, the government sent native Russians into the villages, which had remained empty due to the inhabitants having died of starvation. Statements made by a certain foreign counsel came to light, according to which the famine was instituted to teach the Ukrainian labourers a lesson and to alter the ethnography, as those who still lived in the Ukraine could not be converted to Communism, and as the Russians had to constitute the majority of the population.

According to various sources, it is calculated that in 1926 the Ukrainian population had reached 29.5 million, but by 1939 it was no more than 31 million, in spite of natural growth.

Whilst in 1926 there were only 3 million Russians within the borders of the Ukraine, by 1939 there were between 5 and 6 million.

In 1926, there were 23,800,000 labourers in the Ukraine. In 1939, there were only 20,100,000. Allowing for normal growth, there should have been 30,500,000. The shortfall in the village population was roughly 10 million, caused by deportations, the withdrawal of Ukrainians beyond the borders of the Ukraine and the change of nationality of Ukrainians to Russians - although these are not sufficient reasons to account for the large number of disappearances. Some of the inhabitants were deported and executed.

Others managed to get to the towns and work. But, whilst in 1926 there were 29,500,000 and in 1939, 31,800,000, the Ukrainian population in the last year referred to should have been in the order of 31 to 41 million inhabitants. In other words, it fell by 9.9%, leaving aside nationality changes and migrations. It can be taken that between 5 and 6 million Ukrainians died of hunger; others were deported; yet others executed.

First they ate the cats, then the dogs, rats and mice; and, lastly, the people died of hunger. There were villages in which the whole population perished; others where a third of the houses were empty. There was no one to bury the dead, as no one had the strength to do it.

According to the "Encyclopaedia of the Ukraine", the number of horses fell from 5,300,000 in 1928 to 2,600,000 in 1933; the number of cattle from 8,600,000 to 4,400,000; the number of sheep from 8,100,000 to 2 million; and the number of goats from 7 million to 2 million. Some statistics inform us that, whilst the population in Russia between 1926 and 1939 increased by 15%, and in Belorussia by 11.3%, in the Ukraine it fell by 9.9%.

Another consequence, though fortunately one that was not widespread, was that of cannibalism. There was a secret decree dated May 27, 1933, which laid down that, as no provision had been made for punishing anyone found

guilty of cannibalism, all such cases would have to be dealt with and referred to the internal police bodies of the OGPU. Where cannibalism was preceded by homicide, in accordance with article 142 of the Penal Code, these cases would also have to be taken out of the hands of the Court and investigative bodies of the Peoples Justice Commissariat and referred to the OGPU in Moscow.

A recent publication of Marco Carynnyk, Drs. Lubomyr Luciuk and Bohdan Kordan, entitled "The Foreign Office and the Famine, a British Documentary on the Ukraine and the Great Famine of 1932/33", provides an excellent source of information from which it emerges that the famine was a major catastrophe involving enormous loss of human life; that the Soviet Government continued to export grain, despite the famine; that it was not possible to obtain news of this; that it was regarded as Nazi propaganda; that the famine was not to be regarded as a natural catastrophe but rather as an artificial one caused by the policy of the Soviet Government. There are a great number of papers that deal with this subject: Der Bund, Neue Zuricher Zeitung, and Gazette de Lausanne.

The cases of death were due to starvation, dystrophy and gastric illnesses, particularly amongst the elderly and young children. The villages remained deserted and there were no stocks of food left in the towns.

As demands for grain requisitions increased, the villagers no longer had any incentive to produce, and so the level of production fell, leaving the labourers with less and less to eat. There were regions of the Ukraine where 80% of the seeds were taken. The worst period was from October, 1932, until May, 1933. The worst months were March and April, 1933.

THE OFFENCE OF GENOCIDE?

Historical Perspective

Calamities that defied any apparent explanation and could not be checked ended up being attributed to the Jews. In Mainz and other Rhenish cities, the masses got so worked up that they accused the Jews of poisoning the water in order to destroy the Christians. Jews were killed in great numbers, as if fanatical ignorance was seeking to rival the ravages of the plague. The wave of killings extended throughout Germany and reached as far as Spain, to the point where Pope Clement VI felt obliged

to threaten excommunication to anyone who killed or mistreated the Children of Israel.

It was less than half a century later when the Jews in Spain were confronted with slaughter which could only be regarded as a plan to wipe them out completely. The year was 1391. Seville, Cordoba, Jaen, Cuenca, Toledo, Barcelona - in short, all the Christian kingdoms - were transformed into scenarios of the most frightful killings; the extermination of their settlers, the burning of their synagogues, pillaging and robbery.

It would be a mistake to suppose that the Israelites were or are the only victims of outrages against humanity. We need only call to mind the martyring of the Christians in Rome from Nero up to Constantine.

The first crusade against the Albigensians ordered by Pope Innocent tells of the sacking and burning of Beziers (1201) followed by the slaughter of its 60,000 inhabitants, upon the orders of Simon de Montfort, without any discrimination between heretics and Catholics.

Around 1382, when the church bells sounded for Vespers in Palermo, the French subjects of Charles of Anjou were put to the sword. The "Sicilian Vespers" accounted for 8,000 victims, amongst whom were a fair number of priests dispatched in churches and monasteries; the bodies, dismembered for the most part, remained unburied. Thus the Anjou dynasty, allied to the Papacy, came to an end, and that of the Aragon princes began.

The extermination of the Anabaptists, led by Munzen and Pfeiffer (1525) and then by John of Leyden, led, amongst other things, to the sacrificing of two-thirds of the population of Munster in Westphalia (1535). 10 years later, the Waldenlans were punished, for the assembly at Aix-la-Chapelle; the French towns of Merindol and Cabrieres were set fire, and several thousand inhabitants perished.

Another tragic night that signalled the apex of a horrendous death-toll was that of August 24, 1572, St. Bartholomew's Day. The massacre, ordered by Catherine de Medici - mother of Charles IX - of all the French Huguenots, irrespective of sex or age, resulted in tens of thousands of victims.

Christians and Jews, Catholics and Protestants, whites and blacks, yellow and brown races, subjects of every separate nation, all have suffered at some time - to a greater or lesser extent - this kind of barbarity, or have dealt it out to their neighbour.

Meanwhile, the list of international crimes was gradually increasing, through the conferences and conventions. Piracy and the slave trade were followed by damage to telegraph cables, the slave traffic in whites, women and children, the traffic in opium and other narcotics.

The forging of the London Agreement of August 8, 1945, concluded between the United States, Russia, England and France, in compliance with the declarations made in Yalta at the beginning of this year by Roosevelt, Churchill and Stalin, set up an international tribunal designed to try the major war criminals who had committed crimes "devoid of geographical localization". This tribunal was the one that completed its task in Nuremberg.

The most serious crimes that had to be judged irrespective of where they took place - or, in other words, over and above national jurisdictions - were classified under three types: a) crimes against peace (war of aggression or in violation of international treaties, et cetera), b) war crimes (violation of laws and customs in time of war), and c) crimes against humanity.

The contents of the section, crimes against humanity, is important as it provides the first dogmatic outline of genocide. Although it is not yet given this name, the concept of it begins to take shape, with a distinction being made on the one hand between it and crimes against peace, and on the other hand between it and war crimes.

According to the London Agreement, crimes against humanity consist of, in particular: "assassination, extermination, subjection to slavery, deportation and any other inhuman acts committed against any civil population before or during a war or persecutions of a political, racial or religious order, (in exception of, or in connection with crimes coming within the jurisdiction of the tribunal), whether or not they are in violation "of the laws of the country in which they were perpetrated."

(Maurice Travers "International Criminal Law and Implementation in Peace Time and in War Time," Paris 1920, p. 77).

The second dogmatic record pertains to national legislation. Poland opted, through a decree of June 13, 1946, for what was called the Small Penal Code. Articles 29 to 35 of this body of laws sanction, inter alia, offences against the corporate honour or inviolability of a group of persons or of an individual on the grounds of nationality, religion or race. The concept of genocide was thereby greatly extended, and at the same time set apart from any decision concerning war crimes. Rafael Lemkin developed the idea and suggested a name for it as early as 1944, although the way would be opened later.

The Nuremberg trials demonstrated the tragic reality of the death camps of Dachau - which I had the sad privilege of visiting - Auschwitz, Buchenweld, Belsen, Rovno, Warsaw and others, which facilitated the extermination of one-third of the Polish population and of 6 million Jews living in Europe.

The term invented by Lemkin has gone on leaving its mark on the doctrine, the laws and the resolutions and votes of international bodies. The word "genocide" appeared for the first time in his work, "Axis Rule in Occupied Europe," published by the Carnegie Trust in Washington in 1944. But Lemkin had already upheld these ideas at the 5th International Conference on the Unification of Criminal Law held in Madrid in 1933, at which he showed himself in favour of the destruction of racial, religious or social communities being declared crimes "iuris gentium."

The idea of an international penal jurisdiction of international tribunals for the judgment of crimes against humanity, and the need to catalogue them in an international penal code, was gaining ground just as the idea of the international liability of the state was advancing, with the gradual acceptance of the liability of officials, including Heads of State. This process, which is speeding up all the time, has gained maximum importance since the London Declaration and Charter of 1945 and the Nuremberg trials, right up to the Genocide Convention of December 9, 1948, and the Universal Declaration of Human Rights of December 10, 1948 - the latter taking place, in other words, 24 hours later.

However, it would not be fair to overlook the work undertaken in this direction by the Interparliamentary Union with its meetings in Washington (1925), London (1930) and Geneva (1932), which acknowledged the criminal liability of the state; the International Law Association, which at its meeting in Vienna in 1926 approved a draft Statute of the International Criminal Court, which was also upheld by the International Association of Criminal Law, the International Bureau for the Application of Criminal Law, and other bodies.

Finally, the General Secretariat of the United Nations, through the Social Economic Council, entrusted a commission made up of three eminent specialists in International Criminal Law: Donnedieu de Vabres, a French expert in Criminal Law; Vespasien V. Pella, a Romanian expert in International Law; and Rafael Lemkin, a Polish expert in Criminal Law, with the preparation of a proposed International Convention on Genocide. The proposal was approved by the United Nations General Assembly on December 9, 1948.

In actual fact, the fact of a Convention on Genocide having been approved did not imply calling a halt to the tasks that were undertaken in this field. So, there followed the attempts at codifying the criminal law which were not restricted just to genocide but which also took on board, as far as possible, most of the crimes against humanity. In article 6 of a proposal drawn up by the International Law Commission, these crimes included: the assassination, extermination, slavery, deportation and any inhuman act committed against the population before or during a war as also by way of persecutions or on political, racial or religious grounds.

The concept was extended to embrace crimes committed during, before or after a war and in peace time.

Proceeding with this task, the International Law Commission prepared a draft Code of International Crimes aimed at codifying all these separate regulations that made up the body of international criminal law, and aimed at being able to deal with all the relevant regulations with the backing of an International Criminal Court that had the full jurisdiction required to take up any violations of its regulations and possessed the executive agencies needed to impose its legal effectiveness.

What is certain is that since Lemkin handed to us a definition of the crime of genocide, there has been an extraordinary advance with regard to the existence of international tribunals for the judgment of crimes against humanity, the cataloguing of all possible offences that might result from these crimes against humanity, and culminating in an International Penal Code and the London Charter of 1945 through the Nuremberg trials right up to the Declaration of Human Rights. With regard to national legislations, I should like to stress that the Penal Code proposed for Argentina in 1953, that we drew up with Dr. Horacio Maldonado and Francisco Laplaza, classifies crimes according to the legal good protected as follows: crimes against the person, the family, society, the nation, and communities of nations. It is amongst the latter that genocide appears (article 423) drafted as follows:

> "Who, with the aim of destroying totally or partially national communities or those of a religious, racial or political kind, was to commit crimes against the life of one of its members, shall, in respect of such crimes, have imposed on him a prison term of between 25 and 30 years or life imprisonment.
> If, with the same aim, he were to damage their corporal integrity or health, the term imposed shall be between five and 15 years."

Reference is made to the Convention on Genocide approved by the United Nations General Assembly on December 9, 1948. It is now appropriate to decide whether: 1) the acts previously enumerated take the form of genocide; 2) whether the legal regulations instituted by the aforementioned Convention on Genocide are applicable to the case.

As regards the first point; all the obtained and listed evidence affirmatively answers the formulated question, as the means employed were sufficiently appropriate for the destruction of the Ukrainian people.

As far as the second point is concerned, the following must be taken into consideration: the events being investigated occurred in 1932-33, mostly in the spring of the latter year. The Convention which instituted the crime of genocide was approved by the United Nations Assembly on December 9, 1948, and for its part declared, amongst other things, as the crime of genocide:

"the deliberate imposition on a group - national, ethnic, racial or religious - or living conditions calculated to cause its total or partial physical "destruction." (article 11. par. c.)

In its turn, the Universal Declaration of Human Rights of December 10, 1948 states:

"No one shall be convicted of acts or omissions that, at the time they were committed, were not criminal acts, according to national and international law. Nor shall there be imposed a sentence heavier than that applicable at the time the crime was committed." (article 11. par.2)

This represents the practical application of the maxim: "nullum crimen sine lege" and "nulla poena sine lege."

There has been much discussion on what is the legal value of the Declaration of Human Rights. If it is not a law, whether it is an act of faith or a moral statement. Its general principles have been taken as elements of a new international law, but its ethical/political value is or may be more important than the discussions on the legal aspect of it. (Boris Mirkin-Gutzevitch, "The U.N.O. and the Modern Doctrine of Human Rights," in the "General Review of Public International Law," 3rd series, volume XXII, Paris 1951.)

The value and importance of the norm contained in the Universal Declaration of Human Rights is endorsed by the case that I shall now take a quick look at. In accordance with article 28 of the Treaty of Versailles, a special tribunal was set up to try the former Kaiser who had taken refuge in Holland at the end of the First World War. The Allied powers asked for his extradition. The Netherlands responded on January 22, 1920, with a flat refusal. In one of the paragraphs of their note, they refer to the events classed as crimes and punishable by a law prior to their perpetration.

Thus, we are back to the principle: "nullum crimen, nulla poena sine lege" accepted by the whole body of national and international law, the latter in time, which makes it necessary to distinguish in advance acts directed against the law and the security of humanity. As stated by Vespasien V. Pella, the expert in international law, (see note 1.), as also to provide for penalties, as otherwise uncertainty is maintained and we

drift into arbitrariness, since the international order can only be maintained and guaranteed by written law.

In short, the Convention on Genocide is not applicable to the case under consideration, with retroactive effect insofar as the events forming the case occurred 15 years before the convention was sanctioned.

Finally, and although we have reached "ut supra" the conclusion as stated, we cannot avoid stating our opinion as to whether it would have been possible to try and, where appropriate, convict someone for the crime of genocide or other crimes, and we shall do so now. In order to do so, I must draw attention to the substantial and reliable documentation of the final allegations of Ian Hunter and William Liber, published in separate volumes.

(1.) "Codification of International Criminal Law" in the "General Review of Public International Law" 3rd series, volume XXXII and IVI, page 367, Paris 1952.

Responsibility for the famine: extent of the findings of the International Commission

We have restricted ourselves to establishing the facts of the matter, not who was responsible, as we have had no defendants, nor can we have them in absentia. The other side have not been given a hearing; the Russian Government have only been invited to attend and to collaborate with the investigations, but not formally to make any statement or to allow themselves to be indicted. In other words, we have not passed judgment on it or on the Communist system.

The perpetrators of the deeds under investigation have not been pinpointed. Throughout weeks of hearings, I have heard very few actual names of persons responsible; all the talk has been of acts, policies and events. Very rarely did it become personal. This is not a tribunal of trial and conviction, but of investigation within the confines that have been laid down. But, although we may not be speaking of an international or criminal tribunal, what is certain is that there has taken place an investigation relating to deeds that may be criminal. What we have not had is the presence of defendants or any indictments against specific persons;

these deeds have not been cast in a legal mould; they have not been criminally classified. There has been no prosecution and no defence. They have not been given a hearing. There has been no due legal trial. All this limits the scope of this commission, tribunal, or whatever we care to call it. But, if a reproach of a generic or unnamed kind can be made by this tribunal, it is a reproach that implies both a denunciation and an indictment, if the perpetrators of these deeds are to be notioned; in general, not personalized, for the most part. This is in order to satisfy, albeit partially, the sentiments of a people who saw millions of their own die, disappear and suffer to the point of being wiped off the face of the earth.

We shall therefore refer the conclusions of this tribunal to the judgment of public opinion.