

# Judiciary as Continuation of Warfare: How the West Uses Srebrenica to Implement Thought-crime Legislation

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*[The battle over Srebrenica](#) in the 1990s was part of the Bosnian civil war, which had been brutally waged from both the Serb and the Muslim side. To use the definition of genocide exclusively for the killing that took place in July 1995 distorts the perception of reality and continues the enemy image towards Serbs. Independently of the unidentified chain of command during the killing and the evidence provided by the UN-troops in the vicinity, the atrocities around the old mine town cannot be defined as "genocide."*

Such an evaluation could easily have the author indicted and even convicted of "genocide denial" by an EU European court, since the European Union has introduced special laws calling for punishing of individuals for their opinions. This is a step towards an authoritarian system, based in part on how the destruction of Yugoslavia, with its civil wars, and the 1990s NATO's intervention is perceived in the West.

What happened in Srebrenica?

War is not fought and won only on the battlefield, but also with the help of media and political manipulation of views that help influence reality. Therefore, it is not astonishing that, still today, there are two narratives on the events surrounding the case of Srebrenica. Both the Muslim and the Serb narrative agree on the cruelty of the battles and admit mass-killings. But they differ deeply in the contextualization and the definition of the event.

The Muslim narrative on Srebrenica begins, more or less, in early July 1995 and tells of the mass-execution of 8000 Muslims, from July 11 to 21, 1995. Whereas the men, fit for military service were murdered, the women and children had been evacuated. This narrative clearly labels the murder "genocide," deliberately executed by the (Bosnian-) Serb army under the command of Ratko Mladić, because of the victims' Muslim origin. Twenty-two years later, Mladić was found guilty of the crime of genocide by the "International Criminal Tribunal for the former Yugoslavia" (ICTY) in The Hague. The "International Court of Justice" (ICJ) rejecting the lawsuit brought by Bosnia against Serbia in 2007, petitioning to declare Serbia responsible for the murders in Srebrenica, did however rule that the killing in Srebrenica constituted genocide. Western mainstream media and politicians upheld and continue to uphold this Muslim narrative.

The Serb narrative begins prior to 1995. To draw a specific conclusion from a historical

episode, the starting point in history is always important. To give an example: if one commences the narrative concerning the expulsion of up to 12 million Germans from Bohemia, Moravia, Poland and other Eastern European regions in the summer and fall of 1945, when it happened, the decision as to who is to blame for it, will be different from when the starting point of the narrative is in September 1938 and September 1939, when the Nazi Third Reich occupied large areas of Czechoslovakia (1938) and launched the war on Poland (1939). From the former perspective, one would probably exclusively blame the Czechs (and Poles) for the Germans' expulsion, regardless of their individual guilt. From the latter perspective, the analysis of the expulsion would include the fact that the large majority of Germans in Bohemia, Moravia and Poland had not only accepted the privileges of German citizenship but had supported the Nazi regime, been in favor of the systematic persecution of Slavic populations and the war waged against them and their countries since 1938/1939.

The mainstream German narrative has its starting point in the summer of 1945 and blames exclusively the Czechs and Poles for what they call the "Vertreibung" (expulsion) of millions of Germans. The Czech narrative, on the other hand, begins in the year 1938, and justifies the "expulsion" as a direct result of the Nazi's war and calls it by another name: "odsun" (something between deportation and evacuation). However, all Germans were treated on an equal basis, regardless of whether they had been active supporters of the Nazi regime or not.

The Serb narrative on what happened in Srebrenica also has its starting point earlier than that of the Bosnian Muslims', namely in 1992, when ethnic tensions turned into civil war. Since autumn 1992, the Muslim commander of Srebrenica – a town with a large Muslim majority already prior to the war – had harassed the town's Serb minority and attacked Serb villages surrounding Srebrenica. BBC-journalist Misha Glenny reported about 1000 murders of Serbs in the area around the town and the destruction of up to 50 Serb villages in the fall and winter of 1992/1993, under the responsibility of Naser Orić, the Srebrenica commander. The Serb's analysis of the atrocities in Bosnia also includes similar cases in other regions of the Yugoslav civil wars, because Srebrenica was not the first UN-protected area to come under attack (in July 1995 by Mladić). This had happened earlier, when, in May 1995, the Croatian army attacked the so-called Sector West in Slavonia, which had been established as a UN safe haven for Serb refugees.

Finally, the Serb narrative in the case of Srebrenica also criticizes the fact that the ICTY based its legal decisions pertaining to the Srebrenica case on a single witness, Dražen Erdemović.

Erdemović' dubious biography has been described quite often. In his book "Srebrenica," the journalist Germinal Civikov describes the relationship between Erdemović and the ICTY. His plea bargain with the court was highly questionable and immoral. Erdemović had confessed to having been personally responsible for the murder of 120 Muslim men at the Pilica farm near Srebrenica, where 1200 Muslims were executed on the afternoon of July 17, 1995. However, he was sentenced merely to three years in prison; thereafter he was furnished a new identity, a safe residence in a foreign country and served as the ICTY's key prosecution witness in the Srebrenica trials that followed. When, however, Erdemović was asked in The Hague by Slobodan Milošević during cross-examination, whether the mass killings at the Pilica farm had possibly taken place not under the command of the Bosnian-Serb army, but rather were carried out due to the intervention of a foreign (French) intelligence service – the presiding judge immediately stopped the cross-examination.

Hans Couzy, the local commander of the UN-peacekeepers, backed, to a certain extent, the Serb narrative and rejects the term “genocide” for what took place in Srebrenica. Russian officials, historians and media also concur with the Serb version, which does not deny mass-murder, but refuses to label it “genocide.”

This Serb narrative is supported by various aspects. First among them is the fact that genocide, by definition, includes the killing etc. to be “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” This is questionable not only in this case. In the midst of a civil war – as well as in other wars – hatred of the enemy is widespread and, to some extent, a side effect of every war. It nourishes a feeling for revenge, which dominates particularly in cases, where combatants have lost family members and personally knew who was responsible for their deaths.

Why should the Bosnian narrative be more plausible than that of the Serbs? This is especially disputable, because Bosnian and Western interests in the 1990s were congruent. In September 1993, US-president Bill Clinton met with the Bosnian Muslim leader, Alija Izetbegovic, and French president François Mitterrand visited Sarajevo to meet with Izetbegovic already in June 1992, while the civil war was raging, and thereby showed their support for the Muslim side. These circumstances make it clear, why Western politicians and media follow the Muslim narrative. They were on the Muslim side from the very beginning of the conflict that destroyed Yugoslavia.

The Western side had continued its anti-Serb bias throughout the 1990s and has shown their support militarily by intervening on behalf of the Muslims and Albanians. NATO’s attack on Yugoslavia, in March 1999, had not been the first US-led air raid against the Serbs. The first air raid was on August 30, 1995, when 60 NATO warplanes, leaving from Aviano military base in Italy and the aircraft carrier “Theodore Roosevelt,” bombed the Bosnian-Serb town of Pale and its nearby villages. This operation, named “Deliberate Force”, was NATO’s first out-of-area combat activity in its history.

Two days earlier, grenades had exploded in the Markale marketplace, in downtown Sarajevo. The American Assistant Secretary of State, Richard Holbrooke, immediately blamed the atrocity on Serbs and took action. In his memoirs “To End a War” he boasts of how the first foreign military attack on Yugoslavia since 1945 was organized. In the evening of August 29, 1995, one day after grenades had killed 41 people in Markale – and one day before NATO-warplanes dropped bombs on Pale – Holbrooke had been invited by Pamela Harriman, US-ambassador in Paris, to meet with Alija Izetbegović, General Wesley Clark, who later became US Supreme Allied Commander Europe of NATO, and with French philosopher Bernard-Henri Lévy. Holbrooke ordered the attack following that meeting. To circumvent a veto by UN-Secretary General Boutros Boutros-Ghali, who, like many others, was not convinced of Serb guilt – US-Secretary of State Madeleine Albright did not inform Boutros-Ghali, but rather his little-known deputy at the time, Kofi Annan, who gave the green light for US warplanes from New York ... and thereby launched a great international career.

The European Union instrumentalizes Srebrenica for new jurisdiction over “wrong opinions”

The destruction of Yugoslavia was carried out with the help of Western powers by dynamizing domestic conflicts to be able to intervene for their own geopolitical (USA) and economic (Germany) interests. Once the ground operations were completed, the Western powers continued their anti-Serb politics in the field of the judiciary. The most visible

organization, in this respect, was the ICTY, a UN tribunal established in 1993, a time when Russia's presence in global affairs was inexistent. Russia's weakness permitted the core Western countries to instrumentalize the UN for their purposes. After the war, the ICTY became the means Western powers used to shore up their anti-Serb narrative by judicial means, thereby justifying their own illegal military interventions in what had been Yugoslavia.

Moreover, the European Union also used the case of Srebrenica to introduce penal measures against "wrong opinions." This new direction in penal legislation coincides with the slow shift from international law to human rights "law," in other words: from a codified and generally recognized international law, to non-codified declarations of human rights with high risk of interpretation and instrumentalization to fit the interests of the mightiest powers. This shift is a reflection of the perceptions in mainstream media and most political parties of Western Europe and North America. It also provided the possibility for avoiding having to consider the Yugoslav conflicts and their entanglements with foreign interests on the basis of international law. Instead, conflicts are now being handled on the basis of human rights, which are neither binding nor have a mutually accepted form but depend rather on how the various parties interpret them in a given situation. In this framework, NATO's military interventions could and can be presented as the "necessary" means for implementing a Western interpretation of human rights (for example, to a so-called national right of self-determination). Thus, a discussion of this aggression being in violation of international law would be avoided. This is not only valid in the case of Yugoslavia but could also be used in future conflicts.

How does the new EU-jurisdiction to prosecute "wrong opinions" work? Denial of genocide became a criminal act. The new legislation does not aim at acts that effectively were committed, but at thoughts indicating certain opinions. Jurisdiction thereby becomes a political instrument. The power which is able to declare mass-murder as "genocide" will dominate the discussion and define reality, post factum. Questioning genocide provokes – and in scholarly terms even should provoke – a controversial debate about its definition.

Officially the definition of genocide is based on the UN-Genocide Convention of 1951. There genocide is defined as acts of killing etc. to be "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group." Nevertheless, the question remains: who judges whether an aggression is aimed against a nation, an ethnic or religious group or whether it is an aspect of "normal" warfare? If no one openly declares an intention to destroy a people because of their ethnic or religious identity, it will be difficult to prove a concrete genocidal intention.

The European Union's legislation found another way to define genocide. If an international court has ruled a killing to be genocide, that judgment is binding on all national jurisdictions. In other words: instead of a political or scholarly determination of the matter at hand, the entire discussion has been transferred to the judiciary ... with the effect, that as soon as an international court defines some atrocity to be "genocide," all political and scholarly discussion of the matter will have to cease, because politicians and scholars must fear criminal proceedings, including risk of incarceration. The consequence is to make the question taboo. This was Brussels' intention when passing its legislation in 2008.

The model taken for this new legislation is the criminalization of Holocaust denial, as it exists in countries such as Germany, Austria and others. Until recently Holocaust denial was the only thought-crime being prosecuted in many Western European nations. It was argued

that this was due to the singularity of the crime committed against Jews during the Nazi regime with its industrialized extermination. Even though voices of historians, such as Henry Rousso, were raised pleading not to persecute denial even of a crime like the Holocaust, because collective memory must be fought for in debates and not implemented by laws, the singularity of that crime was thought to justify this legislation. With new thought-crimes entering the social area this singularity has faded. Atrocities such as the mass-murders of Bosnian Muslims in Srebrenica, of Armenians in the Ottoman Empire, of Sudanese peasants in Darfur etc. now seem to take on the same weight as the extinction of Jews in Nazi Germany, if they too are declared genocide. The denials of all these killings became equally punishable.

There is one more model for the widening of the EU legislation criminalizing denials of genocide. We speak of a Bosnian specialty, which was invented after the Dayton Agreement by introducing the position of a colonial-like EU High Representative, who stands above the national – the Bosnia-Herzegovinian federal and the Serb (Republika Srpska) – legislation. On July 30, 2004 this High Representative of the so-called international community, Lord Paddy Ashdown, executed a decree on 59 high-ranking Serb politicians and media employees, removing them from office. Dragan Kalinić, the president of the parliament, was among them. What were their “crimes”? The official charge was that they had “fostered a culture of silence.” In other words: they had not cooperated with the High Representative on several issues, for example in helping to apprehend Radovan Karadžić or they continued to espouse the Serb narrative on the case of Srebrenica.

How did the case of Srebrenica come to influence EU legislation?

It was German pressure within the European Union that led to new legislation for thought punishment, especially “genocide denial.” After years of preparations, the German Minister of Justice, Brigitte Zypries, succeeded in imposing thought-crimes on all national legislations within the European Union. On November 28, 2008, the so-called Framework Decision (No 2008/913) obliged all member states to pass such legislation within five years. In this Framework Decision criminalizing the denial of genocide and war crimes was cleverly hidden within anti-racist and anti-xenophobic rhetoric, so that, at first sight, the reader fails to notice the hidden agenda. Zypries argued: “We do not want to wait until criminal acts are carried out, to then prosecute and judge the criminals. Instead, we want to take preventive measures, in advance, to make sure that criminal acts do not happen.” That may be comprehensible for the prevention of “common law crimes” – however it is dangerous, and has a totally different meaning, when used as a method for defining (geo)political views and opinions. In this new legislation, denial of genocide or war crimes is seen as a sort of prelude to genocide. What makes the new legislation so dangerous is that it interferes – legally and judicially – in the necessary political or scholarly discussion.

France had already had a few thought-crimes prior to the EU Framework Decision. There, it is forbidden to deny the crime of the French slave trade in the 18<sup>th</sup> century or to deny the 1793/1794 genocide in the Vendée. Recently, an addition to these so-called “lois mémorielles” was discussed in Paris. It was suggested to include criminalization of a denial of the Armenian genocide during the Ottoman Empire in 1915.

In Germany and elsewhere in the European Union, police and the judiciary, in the meantime, are preparing themselves to enforce these new thought-laws. A conference to instruct police and judicial personnel was held for the first time in September 2010. It is documented by



Laura Birkenstock, a professor of the German Police Academy. At this conference, legal experts explained how to enforce the new field of thought-crimes. They took two examples for teaching police and judicial personnel. One was a booklet published by the “International Committee for the Defense of Slobodan Milosevic” (ICDSM) and the other example, an interview with the US-economist Edward Herman in a German left-wing newspaper, entitled: “There was no genocide in Bosnia.” Both cases, the police instructors concluded, had the potential for being fined, in accordance with the EU-Framework Decision on genocide denial. The Police Academy closed its conference with the following comment: The law against the denial of genocide serves to “reduce the legal options for non-violent extremists.” In other words, to be able to punish without a crime having been committed.

Austria has changed its respective laws to make similar punishments possible. In § 283 – entitled “Incitement” of the penal code – stipulating: “Those, who publicly deny, approve, or trivialize crimes, which are named in § 321 (genocide), and ruled as such by a national or international court (...) and have done so in a manner likely to incite violence or hatred against such a group (...) shall be punishable by imprisonment of up to two years.” The question of when and under which circumstances a denial of genocide is “inciting hatred,” as is stipulated in many of these new laws throughout the European Union and Switzerland, cannot be clearly answered. It is up to the discretion of the court to rule that whether a denial of genocide is “inciting” others or not.

At the moment, the new EU-European legislation hangs like a sword of Damocles over the heads of those criticizing the Bosnian-Muslim narrative on what happened in Srebrenica in the summer of 1995. In another case of genocide denial, a Swiss court had punished the Turkish nationalist and former chairman of the “Worker’s Party”, Dogu Perlincek, for denying the Armenian genocide. After years of trials the European Court of Human Rights in October 2015 ruled in favor of Perlincek, arguing in favor of his right to freedom of speech. This ruling gives hope that possibly similar cases could have a similar outcome, when it comes to an indictment involving Srebrenica. On the other hand, there are many so-called human rights NGOs, mostly financed by US, British or German governmental bodies that are working hard to have the Bosnian-Muslim narrative of what happened in Srebrenica implemented at the judicial level, thereby legitimizing NATO’s interventions in Yugoslavia.

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