МЕЂУНАРОДНИ НАУЧНИ СКУП

„ИЗАЗОВИ И ПЕРСПЕКТИВЕ РАЗВОЈА ПРАВНИХ СИСТЕМА У XXI ВИЈЕКУ”

ЗБОРНИК РАДОВА

MEĐUNARODNI NAUČNI SKUP

„IZAZOVI I PERSPEKTIVE RAZVOJA PRAVNIH SISTEMA U XXI VIJEKU”

ZBORNIK RADOVA

INTERNATIONAL SCIENTIFIC CONFERENCE

“CHALLENGES AND PERSPECTIVES OF THE DEVELOPMENT OF LEGAL SYSTEMS IN THE XXI CENTURY”

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POLITICAL INSTRUMENTALISATION OF GENOCIDE

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***Summary**: As a group crime, genocide belongs to the darkest pages in the history of humanity, which are, unfortunately, still being written. It is the crime of all crimes, not only because of the massive number of victims, but also because of the reason they suffer, which does not lie in any subjective fault, but in the objective circumstances of them belonging to a certain race, nation and/or religion. The UN Convention on the Prevention and Punishment of the Crime of Genocide offers a legal framework for the prosecution of genocide, while the very process of its creation already gave us first indications of obfuscation of justice for the sake of fulfilling geopolitical interests. From then to this day international relations development has played an important role in shaping the perception of genocide, often neglecting or arbitrarily interpreting the norms of international law. Such practise resulted in the assumption that law is very often politically instrumentalised when interpreting the crime of genocide. Starting from the assumption formulated in this way, the purpose of this paper is to establish clear indicators of the manifestation of political instrumentalization of the crime of genocide in the international practice so far. In the first part of the paper, normative-dogmatic and historical methods, linguistic, logical and systematic interpretation of the international legal norms are all used to analyse legally formulated criteria that has to be fulfilled for an action to be qualified as genocide. In the continuation, the most typical examples of the subject of this work, from both distant and recent past, are analysed using the historical and comparative methods, as well as the abstraction method, which is how two basic forms of politization are distinguished – political obstruction and political construction of genocide, which confirms the initial assumption.*

***Keywords**: International law, politics, political construction of genocide, political obstruction of genocide, war crime*

1. INTRODUCTION

The crime of genocide fills the darkest pages of human history, not only because of its massiveness and brutality, but also because of the motive for its execution, which is not initiated by the subjective guilt of the victims, but by the objective circumstance that they belong to a certain race, nation, ethnic group or religion. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide provides a legal framework for the prosecution of genocide, but

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its very creation was marked by disagreements over the establishment of rigorous criteria for the qualification and prosecution of this crime. The result of those disagreements are compromise solutions that led to a narrowed legal definition of genocide, which together with the necessity of proving genocidal intent, *dolus specialis*, represents a significant challenge for international courts.

Bearing that in mind, this paper investigates how international practice has developed in which some states, especially great powers, use their influence, potentially reshaping the interpretations and implementation of the Convention on the Prevention and Punishment of the Crime of Genocide, with the aim of fulfilling their own geopolitical interests. Starting from the assumption that the political instrumentalization of the crime of genocide stems from the limitations produced by its definition, as well as from the difficulties of proving genocidal intent, this research aims to identify specific indicators and cases of such instrumentalisation in international practice to date.

In the first part of the work, applying the normative-dogmatic and historical method, linguistic, logical and systemic interpretation of the norms of international law, the legally formulated criteria that must be met in order to classify certain actions as genocide are analyzed. In the following, by analyzing the most characteristic examples of the subject of the work, in the distant and recent past, using the historical and comparative method, as well as the method of abstraction, the two basic forms of politicization, political obstruction and the political construction of genocide, are clarified to show how genocide is politically obstructed and constructed.

The aim of this paper is to provide a scientific contribution to the understanding of the intertwining of politics and law in the international arena, especially in terms of crimes over crimes, genocide. Also, the purpose of this work is to emphasize the importance of preserving scientific freedom and open scientific discussions on such sensitive issues, in order to prevent the relativization or neglect of scientific perspectives in relation to certain interpretations as prevailing or state-sanctioned truths.

2. LEGAL FRAMEWORK (LEGAL OBSTACLES)

The legal framework for the crime of genocide is primarily established by international law, and the basic platform is the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the United Nations General Assembly in 1948. This convention entered into force in 1951, after numerous tensions during the process of its formation, caused by different geopolitical interests. It could be said that it was a specific geopolitical landscape of the emerging Cold War tensions between the United States of America (USA) and the Soviet Union (USSR), as well as the movement for decolonization and the realization of new national sovereignties. The result, as it turned out, of irreconcilable geopolitical interests is, as many consider, the narrow definition of genocide in Article 2 of the Convention, as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group (UN General Assembly, 1948):

(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.

The term genocide is a coinage derived from the combination of the Greek word *genos* (race or tribe) and the Latin suffix *-cide* (killing), which was coined in 1944 by Raphael Lemkin in his book "Axis Rule in Occupied Europe" (United States Holocaust Memorial Museum [USHMM], 2024). Lemkin's definition included only national groups, while the Convention expanded it to include ethnic, racial and religious groups. Extending it to political groups as well was a proposal of the Chinese delegation during the drafting of the Convention, but it was opposed by the Soviet Union, with the support of Brazil, Venezuela and Egypt. The argument insisted on by the delegations of these countries was the instability of political groups and their transience, which makes it difficult to recognize this social phenomenon, and the delegate of Iran even expressed the view that, unlike national and religious groups, political groups are not necessary for people. From such views, they concluded that the inclusion of political groups in this Convention would represent a risk for the United Nations to be dragged into internal political conflicts. In addition, as the representative of Venezuela pointed out, if political groups were protected by this convention, states could be prevented from taking legal measures against the subversive activities of such groups. The initial position that behind all mass crimes in principle lie political reasons, the USA corrected for the sake of compromise, proposing to include the word "economic" between the words "religious" and "political group". After Brazil's opposition, the USA withdrew that amendment and finally accepted that the category of political groups be omitted from the convention in order to compromise with the USSR and improve the conditions for the Convention to be accepted by as many countries as possible (Avramov, 1992, pp. 76–78).

Lemkin also proposed a broader concept of genocide, so that it would include "cultural genocide through the destruction of the cultural preconditions of life", which was not accepted (Kress, 2006, p. 466). According to Lemkin (1944), genocide has two phases - in the first, the national pattern of the oppressed group is destroyed, and in the second, the "national pattern of the oppressor" is imposed, which can be interpreted so that "even if the oppressed group would not was physically eliminated" it was genocide. The US delegation advocated for the exclusion of "cultural" from the draft Convention on the Prevention and Punishment of the Crime of Genocide under the pretext that cultural genocide is less important than physical genocide, while the real motive was actually to prevent its application to the forcible assimilation of American Indians (Moses et al., 2022, p. 64). The consent of others was another act of political compromise. Cultural genocide is being debated in scientific circles, especially with regard to the rights of indigenous peoples. Lawrence Davidson (2012) sees the necessity of introducing cultural genocide into legal frameworks in the fact that there are circumstances in which some people hate the values of other people, which they have never even met before, and these situations "repeat and continue to manifest" in continuity. As examples of the misunderstanding of the "universal phenomenon of natural locality", as the theoretical background of the approach to cultural genocide, he takes the cultural genocide committed against the American Indians, the efforts of the Russian emperors to destroy the Jewish culture and the same attitude of the Jews towards the Palestinians, as well as the efforts of the Chinese authorities to "assimilate the Tibetans to the Chinese nation". However, opponents of the idea of protecting cultural values from genocide point to the complexity of the issue, which makes such

an expansion of the legal definition of the crime of genocide unfeasible. First of all, they indicate the problem of defining cultural genocide, because the destruction of cultural artifacts or language, or the prohibition of cultural practices can be interpreted subjectively, which makes it difficult to establish a clear legal standard. If there is no clear legal standard then it is practically impossible to establish an international consensus on what acts constitute cultural genocide and, consequently, to gather valid evidence. It also points to the overlap with the violation of human rights, for which there are already appropriate international instruments, which could divert the focus from the more important issues of physical or biological genocide. There are also objections to expanding the Convention by introducing cultural genocide, with concern expressed that the Convention would be politicized in this way, because state governments could use such an expanded concept of genocide for manipulation in order to accuse political opponents.

The next disagreement, extremely important for the research problem of this paper, is the concern expressed by some countries that the convention could provide a basis for international surveillance and interventions, which would violate national sovereignty. The basis of this concern lies in the language of the convention which emphasizes „intention" and „in part", which can present a problem in proving. Proving a special intent (dolus specialis) to destroy, „in whole or in part, a national, ethnic, racial or religious group" represents one of the greatest challenges of prosecuting the crime of genocide. In order to prove the existence of such a special intention, it is necessary to prove that the destruction of these groups was a conscious goal of the perpetrators, which can be a great challenge in situations when genocidal acts are masked by some other military or political goals (Schabas, 2009). Due to the impossibility of obtaining direct evidence of genocidal intent, ad hoc international courts have relied on inferential evidence, such as the systematic nature of atrocities, developing jurisprudence that allows proving this special intent from patterns of behavior (The Prosecutor v. Akayesu, ICTR-96-4-T). Similarly, some authors believe that a special genocidal intent can be derived from the scope and organized nature of genocidal acts – wide distribution and systematic implementation against a certain group lead to the conclusion of the existence of genocidal intent (Jones, 2023). It is often pointed out the necessity of observing the wider context of the conflict or a specific event, in order to better understand the actions interpreted as genocidal, and opponents of such demands warn that this leads to a subjective interpretation (Moses, 2021).

Therefore, the drafting of the Convention itself was influenced by numerous political compromises. The great powers, the USA and the USSR, were not comfortable accepting any international framework that would be the basis for criticism of their policies, not only internationally but also internally. European colonial powers were concerned about the application of this convention to their actions in the colonies, which influenced their views during the process of drafting the convention. In practice, after the entry into force of the Convention up to the present day, there have been various situations in which the objections made in the process of drafting its draft came to the fore. However, numerous discussions and initiatives aimed at resolving disputed restrictions did not result in formal amendments, but were limited to publication in various forms of scientific papers.

3. POLITICAL ASPECTS OF GENOCIDE

The political compromises that were made during the drafting of the Convention on the Prevention and Punishment of the Crime of Genocide were a hint of the attitude of the international community towards this crime in practice that would follow. Many states build their attitude towards genocidal situations in the same spirit - guided by geopolitical interests and the logic that their own state sovereignty is more important than humanitarian issues. Reluctance to delegate authority to international institutions hinders the establishment of mechanisms for the implementation of the Convention on the Prevention and Punishment of the Crime of Genocide, which in practice often leads to a slow and inadequate reaction of the international community to genocidal situations. This is the case with the genocide in Rwanda. On the other hand, the designation of some crimes as genocide, even when it is not the case, is the result of the geopolitical coordination of the allies, which is reflected through the influence of major powers in international bodies such as the UN Security Council. Great powers demonstrate their power to shape responses to alleged genocides by vetoing initiatives in the Security Council, which are not in line with their interests, or statements about genocide, the purpose of which is to create justification for military intervention. The international media plays a big role in this, which constructs the narrative about the crimes, often under the influence of the political climate in the great powers. According to the type of reaction that is driven by political interests, we can recognize two forms of political instrumentalization of genocide – political obstruction and political construction of genocide.

3.1. Political obstruction of genocide

Political obstruction of genocide implies the inactivity primarly of state governments, especially major powers, or international bodies, which practically prevents any actions from being taken, from recognizing and calling the crime by its proper name to interventions on the ground. States may prioritize their own interests – political, economic or military – over the humanitarian needs of the threatened "group", which will result in missing of the intervention, even when such passivity is inconsistent with national interests or harms strategic alliances.

Great powers have priorities in their positioning in international relations, especially considering the right of veto in the Security Council. That is why they are able to obstruct the recognition of the existence of genocide in a specific case, and in that way to obstruct the intervention of the international community. They are primarily driven by political and strategic interests, and in addition to these reasons for obstructing the pointing out of the crime and labeling it as genocide, there are also economic interests. Admittedly, economic interests are more important in political construction of genocide than in its obstruction, but in no case can they be ignored, because it is not easy to separate them from political and strategic interests. This is especially so if it is taken into account that the recognition of genocide imposes a legal and moral obligation to intervene, and also both military and purely humanitarian interventions produce costs that states would like to avoid. Also, economic interests may be integrated into strategic interests when crimes occur in regions rich in resources or key to military strategy. Armed conflicts around the world are evaluated from the point of view of national interests and geopolitical alliances, and all foreign policy decisions are made accordingly, including the attitude towards a massacre in some part of the world.

Using the instruments of soft power, states can demand from dependent states, as well as from their allies, to refrain from labeling some crimes as genocide, as well as from taking any measures in that direction. And when they indicate the existence of genocide, states can insist that other countries or international organizations take responsibility for concrete actions in terms of preventing further escalation and taking repressive measures against the perpetrators of the crime. In this way, direct involvement is avoided when political and strategic interests dictate it. In addition, the so-called bureaucratic inertia also appears as a problem. Complex bureaucratic processes slow down the taking of concrete measures, because during decision-making debates can be prolonged and delayed due to requests for additional evidences.

It is clear from the above that obstruction has several faces, two of which are the most obvious. First, it is shown as a delay, a delay in making a decision to mark a crime as genocide or a decision to take specific actions to prevent the crime of genocide, both before they are committed or after they are committed to prevent further commissions as well as to remediate the consequences. It is now safe to say that there was hesitation and delay in labeling the 1994 Rwandan massacre as genocide. According to Samantha Power (2002), the reluctance of the US government and others in the international community was partly "a consequence of political calculations and lack of strategic interest", and the media also played a significant negative role. The killing of about 800,000 Tutsis lasted about 100 days, and despite clear warnings and reports of what was happening, especially on a huge scale, the international community, including the major powers and the United Nations, reacted very slowly. During the civil war in Bosnia and Herzegovina, despite numerous evidences of crimes committed by all sides in the conflict, due to political divisions within the United Nations and NATO, with BiH's sovereignty being a priority strategic goal, no decisive and impartial actions were taken to prevent crimes and ensure the rapid establishment of lasting peace. Mass killings, displacements and other crimes, especially against non-Arab ethnic groups in Darfur (2003–ongoing) have been classified as genocide (UN News, 2024), and gruesome crimes are still being committed, according to the latest reports from Human Rights Watch (2024, May 9). However, a strong international intervention has been absent due to political obstruction by key international actors, which is motivated by concerns about Sudanese territorial sovereignty, taking into account the complexity of politics in the region and the existence of strategic alliances.

Another facet of the political obstruction of genocide manifests itself as a reluctance or refusal to label certain crimes as genocide, despite the existence of very relevant evidence and/or scientific consensus about it. The most famous example is the Armenian genocide, which was reflected in the mass murders and deportations of Armenians by the Ottoman Empire in the period from 1915 to 1923. Although there is a very broad consensus among historians and scientists about the nature of these crimes, political reasons have led some countries to avoid using the term genocide in this case. Turkey, as the successor of the Ottoman Empire, is particularly resisting and exerting diplomatic pressure in this regard. The next example of a similar scale is the genocide of Serbs in the Independent State of Croatia during the Second World War, which was carried out with a clear genocidal intention expressed and implemented on the ground with a strategy – to kill a third (Serbs), expel a third, and convert a third to Catholicism. Over 700,000 Serbs, Jews and Roma were killed in the concentration camp alone, with Serbs being by far the most numerous victims. The independent state of Croatia (original Croatian abbreviation: NDH) was the only one during the Second World War to have a concentration camp for children, who were also Serbs, Jews and Roma. The crimes of the Ustasha regime in the NDH are well documented

and described by eminent scholars in the context of genocidal intent, referring to the policies and statements of the Ustasha leaders that clearly indicated that the goal was the destruction and expulsion of these groups. After the end of the Second World War, the communist government in Yugoslavia, under the leadership of Josip Broz Tito, suppressed open discussions about Ustasha war crimes under the pretext of reducing ethnic tensions in order to maintain internal cohesion and stability. In the interests of different political arrangements with Josip Broz Tito, no one in the international community wanted to initiate discussions on this issue. The expulsion of Serbs from Croatia during the civil war in the 1990s, along with numerous crimes and acts of violence in general, which occurred on both sides but not on the same scale, is difficult to extract it from the context of genocide whose officialization is still politically obstructed. As an example of similar political obstruction in the recent past, the events in Myanmar can be cited. Many human rights organizations and some governments, as well as numerous scientists, label the systematic violence, murder, rape and displacement that has been carried out against the Rohingya Muslim minority in Myanmar since 2017 as genocide. Political and strategic interests, which have been mentioned several times, caused the reluctance of the relevant international factors to officially recognize these events as genocide and, accordingly, take the necessary actions.

3.2. Political construction of genocide

The political construction of genocide is a form of political instrumentalization of the crime of genocide through which states or political actors, in order to achieve their own interests, can use the term and its legal and moral weight even when its existence is debatable. Those interests can be political or economic in nature, and most often they are strategic, uniting all interests into one of strategic importance. Potential motives and interests of such abuse can be: justification and support for political pressure on regimes that resist control and patronage, including punishment through various types of sanctions; justification and support for the deployment of military forces in a certain region or for direct military intervention; delegitimization or destabilization of "disobedient" regimes through their moral satanization and initiation of internal turmoil; obtaining military support and assistance in material means (weapons); receiving humanitarian aid; guiding future legal definitions and responses with the aim of influencing international law and international politics as a whole.

The media can play a significant role in this political instrumentalization of the concept of genocide. This is achieved by targeted shaping of narratives, in order to influence public opinion so that it accepts and adopts media representations as undoubtedly true and correct. Thus, existing conflicts can be given the desired dimension by emphasizing certain aspects in the media, such as the sufferings of a certain group by omitting the wider context. Certain contents can be repeated, in order to highlight their priority and increase the pressure on public opinion in a certain direction. By focusing on allegations of genocide, the media can pressure governments and international bodies to act even though the existing information is incomplete or even highly biased. Therefore, the goal of media interference is to create or reinforce wrong ideas or oversimplify the legal concept of genocide in accordance with the geopolitical interests that such media reporting serves. Media influence is the first step, followed by other mechanisms of soft and hard power, including resolutions, political and economic sanctions, as well as threats of impunity for war crimes and

genocide. When a targeted state faces a combination of public condemnation, diplomatic isolation, economic pressures, and legal consequences, it may be forced to negotiate or make concessions on issues on which it has held a hard line. These can be territorial disputes, compliance with international norms or improvement of human rights.

A characteristic example is the case of Srebrenica. Media coverage of the civil war in Bosnia and Herzegovina in the early 1990s developed a narrative about the crimes of one side in the conflict, while the crimes of other sides were minimized or hushed up. This narrative continues. Some studies have shown that from the very beginning of the conflict in the territory of the former Yugoslavia, 55.8–63% of media reports from the European Union (12 countries) put the pro-Yugoslav (Serbian) forces in a predominantly negative context, while the value of the positive context was below 4% (ICSR, 2020, p. 832). With a one-sided approach, which has been reflected in the silence or minimization of the crimes committed against the Serbian civilian population and emphasizing the suffering of the Muslim population, the leading world media have aligned their narratives with the narratives of the Muslim side in this civil war, contributing in such way to the creation of a distorted picture of the nature and extent of the crimes committed by different parties. Christiane Amanpour, who reported on the civil war in Bosnia and Herzegovina for CNN, was accused by viewers and critics of being biased in favor of Bosnian Muslims, to which she once replied that there are situations in which one cannot be neutral and be objective does not mean treating both sides equally, but listening to them (Schmitt, 1996). In the opinion of this journalist of British citizenship, whose father is a Muslim from Iran, the role of the media is to listen to all sides and make a judgment about what is "truth". Therefore, according to this understanding, the role of the media is not to inform public opinion about the objective circumstances of an event, but about its own judgment about those events. In the judgment of the Appeals Chamber in the case Prosecutor v. Radoslav Krstić (2004), when considering the definition of the part of the group for which "there is an intention to destroy", it is stated that the condition for fulfilling this requirement is that "that part must be significant enough to affect that group as a whole". As the Appeals Chamber states in the verdict, the protected group is "defined as the national group of Bosnian Muslims", about 40,000 Muslims in Srebrenica who "made up a relatively small percentage of the total population in Bosnia and Herzegovina at that time". At the same time, the ICTY determined numerical indicators of the scale of this crime using selective evidence. The outcomes of these determinations do not align with basic mathematical calculations, which are easily derived when using the evidentiary material available to both the Trial and Appeal Chambers. According to the data from both verdicts, as stated by Škorić (2013, pp. 13–24), about 40,000 Muslims lived in Srebrenica at the critical time, and according to the data of the World Health Organization and the then government formed in Sarajevo, 35,632 people escaped from Srebrenica. Data on the number of dead Muslim soldiers during the breakthrough attempt vary - from 3,000 (UN. Secretary-General, 1999), over 1,500 (Brunborg et al., 2003, p. 237) to 1,000 (2nd Corps of the Army of the Republic of BiH [2.K A RBiH]). In addition, the ICTY documentation contains data on: the number of exchanged prisoners – from 171 (exhibit D228) to 255 (exhibit P1733); 542 male persons of Muslim nationality who fled to other countries or were repatriated to Sarajevo (Tribunal number 03625406); 300-400 Muslim soldiers who fled to Žepa, from where they were later evacuated, as well as 5,000 soldiers of the 28th Division A of the RbiH, whom General Delic stated broke through the encirclement of the Serbian forces and joined the 2.K A of the RBiH (Škorić, 2013, p. 24). It is obvious that the result is a far smaller number of victims of the crime committed by shooting compared to the one

dealt with in the verdict, and to this day, both by various officials and the media, the figure exceeds 8000. At the same time, they soon began to appear evidence that the list of the executed includes living people as well as those who died in combat operations in other places and in another time period (ICSR, 2003, pp. 367–386). In spite of the fact that the case file against Radislav Krstić has evidence from which accurate numerical data can be derived, the court panels relied on the opinion of a military expert, American Sergeant Richard Butler, who did not offer any specific information, but on each crime scene stated descriptively: "several hundreds", "about a thousand", "several trucks" and the like. The appeals panel considered that the number of victims mentioned in the verdict (more than 7,000) certainly does not meet the necessary condition for the designation "significant part". Calculating with the number of victims, either in the direction of decreasing or increasing, is not moral, but the exact determination of their number is legally relevant. Since that condition was not met, the Appeals Chamber states that the numerical size of the group is not the basic criterion, but the importance of the group in some other sense, and on this occasion it refers to the media importance of Srebrenica, because "it was talked about a lot in the international media", as well as the strategic importance of Srebrenica in relation to the military objectives of the Serbian side in this civil war. The strategic importance for the Serbian side was reflected in the preservation of the compactness of the territory under its control, and the complete opposite for the side represented by the Bosnian Muslims. For international negotiators, the political and strategic importance of Srebrenica was reflected in the fact that it was the biggest stumbling block in the negotiations regarding territorial allocations between the warring parties. Therefore, it was necessary to find a way to pressure one side into concessions.

The broader historical context and specific circumstances of the crime can be very helpful when there are difficulties in proving genocidal intent. In order to build a comprehensive understanding of the motives and circumstances that potentially point to genocidal intent, courts can look at the historical contexts that preceded the crime. This may include examining the nature of previous conflicts, if any, the possible existence of long-standing discriminatory practices or the historical relationship between the perpetrators and the victim group. In order not to go beyond the scope of this paper, we will dwell only on the immediate circumstances. Namely, under the command of Naser Orić, the Territorial Defense of Srebrenica (later renamed to the United Armed Forces of the Srebrenica subregion) raided more than 50 villages in the vicinity of Srebrenica and Bratunac, and on that occasion committed horrific crimes against Serbian civilians. In just one attack on the Serbian Christmas on the village of Kravice and 11 surrounding villages, 51 civilians were killed, including members of the village guard, the villages were burned and the surviving Serbian population was expelled. Nine days later, with the same forces (4-5 thousand fighters), Naser Orić attacked the Serbian village of Skelane, from where the population was driven across the Drina river to neighboring Serbia, and on that occasion 57 civilians were killed, and the youngest victims were 5 and 12 years old. they were killed by sniper fire from Muslim forces (ICSR, 2020, p. 940). Even after the UN declared Srebrenica a protected zone (UN Secretary Council, 1993), with the promise that everyone in it would be disarmed, Naser Orić and his men still went out of the protected zone and attacked Serbian soldiers, and then returned safely into the protected zone. There are testimonies that say that among the Serbian fighters when they entered Srebrenica, there were many whose family members were killed by the soldiers of Naser Orić. This is important to know, as it may indicate a motivation for revenge for personal reasons. Since genocidal intent is dolus specialis, which is different from other war crimes and crimes against humanity, the Appeals Chamber

in the case against Radislav Krstić sought alternative solutions, because it did not have enough concrete evidence, bearing in mind the specificity of that intent, but the necessity of its existence. Namely, the Appeals Chamber supported the conclusion of the Trial Chamber that genocide was committed even though the genocidal intent was not attributed to "any specific official in the Main Staff of the Army of the Republic of Srpska". The logical conclusion is that if genocidal intent has not been attributed to anyone, then the existence of the crime of genocide has not been proven. However, as stated in the WikiLeaks dispatch (04THEHAGUE1033_a, April 23, 2004), political reasons dictated that a way must be found for the genocide to be confirmed independently of the determination of the perpetrators (genocidal intent). Thus, the Appeals Chamber states that "the killing of men, Bosnian Muslims", "together with other steps taken by the General Staff to ensure the physical destruction of that community, represent a sufficient factual basis for the conclusion that there was a specific genocidal intent". This fits with a comment from the WikiLeaks cable (04THEHAGUE1033_a, 2004). Continuing the explanation of its verdict, the Appeals Chamber states the "seriousness of the genocide" by asserting that the Bosnian Serb forces "aimed at the extermination of forty thousand Bosnian Muslims who lived in Srebrenica, a group that symbolically represented Bosnian Muslims in general". Despite the fact that over 35,000 people escaped and that Serbian military forces also participated in the organization of the evacuation of civilians, mostly women, children and the elderly. Having concluded that "the Trial Chamber clearly did not provide adequate evidence that Radislav Krstić possessed genocidal intent", the Appeals Chamber introduces the famous "joint criminal enterprise" into the verdict. This concept is not provided for by the Statute of the International Criminal Tribunal for the former Yugoslavia, but was constructed at the suggestion of the Prosecutor's Office in the judgment of the Appeals Chamber in the Tadić case. That concept proved to be a saving solution for the Prosecutor's Office in cases where it is difficult to prove the responsibility of a superior. In contrast to the usual practice in criminal procedural law to apply the principle of in dubio pro reo where the evidence for attributing criminal responsibility is not at the level of at least a high probability, based on the concept of joint criminal enterprise, the assumption that "some person could foresee the unwanted, unplanned actions of another participant from which the crime was born" (Marković, 2013, p. 137).

Confident in its claims that the crime of genocide in Srebrenica was politically constructed, in 2018 the Government of Republika Srpska formed an independent commission consisting of eminent experts chosen on the basis of their expertise, from nine different countries, headed by Gideon Greif (president of the commission) from Israel and Yuki Osa (Vice President) from Japan. In the Report, which was prepared in 2020, the Commission indicates that their work was impartial and independent, with the aim of "objectively investigating and presenting the suffering of all peoples in the Srebrenica region" (ICSR, 2020, p. 6). The conclusion of this commission is that in the period between July 11 and 16, 1995, Serbian forces committed mass murders of prisoners of war in several places. The Commission notes that the number of missing/victims in the events in Srebrenica, which according to the ICRC and Prosecutor's Office databases is 7,692, is wrongly represented as the number of those shot. According to the results of the investigation carried out by this commission, „the minimum number of captured and later shot is between 1,500-2,000 people, while the maximum number is between 2,500 and 3,000 people (ICSR, 2020, p. 956). During the investigation, it was noticed that the list of those who were shot included persons who were later registered as applicants for the issuance of personal documents, as well as persons who died in combat much earlier, some of them during 1993. In this case, the Commission criticized the ICTY

Prosecutor's Office for failings in the investigation, especially when counting the victims, which did not distinguish between those who died in battle and those who were shot prisoners of war. Also, it was observed that the Bosniak side delayed for an unreasonably long time (a year and a half) in delivering to the Prosecutor's Office of the ICTY the transcripts of radio communications of the Army of the Republika Srpska, which were intercepted by the Army of the Republic of BiH during this military operation. The trial panels accepted these transcripts as sources of high reliability, without checking whether the content had been changed, even though the Bosniak side "was motivated to present its interpretation of events". Along with numerous other remarks, significant for the final assessment, the Commission determined that in no case did the judges of the ICTY discuss "any other motive for murder, except for genocide". Also, the ICTY panels did not even discuss the historical context (genocide of Serbs during World War II by Croats with the help of Muslims, as well as brutal attacks and ethnic cleansing by Muslim forces in more than 150 settlements in and around the Srebrenica region in 1992 and 1993. Taking into account all the results of its research work, the Commission concludes that "the term 'genocide' cannot be used to describe" the suffering of the Muslim side in the tragic events of 1995 (ICSR, 2020, pp. 967–972).

The director of the "Simon Wiesenthal" Center, Efraim Zuroff, one of the greatest experts on genocide issues, opposes the political constructions of genocide, believing that in this way the importance of that term is relativized. He, like the famous historian prof. Yehuda Bauer, believes that what happened in Srebrenica was not genocide, and that if the Serbs had wanted to commit genocide, they would not have spared the woman and children, that is, "they would have killed all the Bosnian Muslims gathered in Srebrenica" (Zuroff, 2024). Ignoring the opinions of the scientific community, when they do not correspond to the interpretations of the prevailing or state-sanctioned truths, strengthens the assumptions that it is about political instrumentalization. Because, if the evidence is objectively derived and legally based, without the need to "reinforce" judgments with resolutions that have political overtones, they are strong enough to face attempts to challenge them. Therefore, sanctioning a different opinion should not go beyond the scope of preventing hate speech.

4. CONCLUSION

The Convention on the Prevention and Punishment of the Crime of Genocide established the concept of genocide, which proved to be narrow in practice. By the consensus of the political and strategic interests of the states, primarily the great powers, the legal concept of genocide has been narrowed down to a level that diminishes the fear that a wider scope could be used in the future to review the internal policies of the states. This fear, as practice later has showed us, led to states giving more importance to issues of state sovereignty than to humanitarian issues. In practice, there is no uniform, impartial reaction of the international community to the same or similar crimes, and there are recognizable indicators that this reaction is conditioned by geopolitical interests. Being guided by motives that are the product of geopolitical interests creates the possibility to manipulate the concept of genocide in complex ways, which reflect the intertwining of legal, ethical and political dimensions.

In addition to the narrowness of the concept of genocide, a significant challenge in classifying a crime as genocide, and a potential area for misuse of such a classification, is the proof

of genocidal intent, or dolus specialis. This intent is a necessary criterion; without it, the crime cannot be classified as genocide, but as an other crime. Precisely because of this, the insistence on the qualification of genocide by presenting circumstantial evidence, i.e. pointing to genocidal intent based on the broader context of the conflict or a specific event, raises the suspicion that it may be the political instrumentalization of this crime with some more or less hidden political or strategic interest.

Analyzing crimes committed in different parts of the world and in different periods of time, about whose legal qualification there are serious disputes of a legal and political nature, one can see the uneven reaction of the international community to mass crimes. That analysis was developed through two concepts of political instrumentalization of the crime of genocide, the concept of political obstruction and the concept of political construction of genocide. These concepts provide useful frameworks for understanding how the international community, and particularly the great powers, respond to mass crimes.

The selectivity of recognition of the existence of genocide, that is, the designation of mass crimes as genocide, is a product of the political, economic and generally geostrategic interests of major powers, which have various opportunities to impose their views on other subjects of international relations, including the veto power in the UN Security Council. Support for accusations of genocide is also achieved in the same way, the purpose of which is to exert pressure on opponents or justify military intervention for strategic gain. This often leads to a narrative that politically constructs the genocide, in which the international media under the influence of a great power whose interests are at stake play a significant role.

Eminent scholars in the field of international law, particularly those with expertise in the concept of genocide and the Holocaust such as Efraim Zuroff and Yehuda Bauer, have warned that the political construction of genocide dilutes the integrity of this concept. By reducing its importance in this way, the importance of the Holocaust and the role of those who carried it out are relativized. By reducing its importance in this way, the importance of the Holocaust and the role of those who carried it out are relativized. This is especially so considering that precisely those who are the creators and practical implementers of the Holocaust are now in the first ranks of those who, on the wave of interests of large military and economic alliances, would throw their criminal past into the background. This is not the path that leads to the establishment of fairness and international justice, as a condition for reconciliation, which is probably the most important part of the process of establishing international peace.

Disparate treatment creates an image of selective moral outrage that produces a perception of injustice, especially if crimes with comparable evidence are given disparate attention and legal treatment. Such inconsistencies revive historical wounds and produce narratives of historical justice and collective memory, all of which move away from reconciliation. Therefore, in addition to open dialogue, a significant contribution to solving both past crimes and today's perceptions of fairness and justice in international relations can be provided by academic research, which is not possible if there are no academic freedoms. Laws against crime denial must be carefully crafted to distinguish between hate speech or the deliberate distortion of historical facts and legitimate scientific research or criticism. The effect of such laws should protect against the harmful effects of denial without suppressing necessary scientific debate. By critically examining the legal and, especially, political processes involved, academic researchers can offer policymakers a better understanding

of the limitations of current international legal frameworks and the need for consistent, impartial approaches to the prevention and response to genocide crimes.

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ПОЛИТИЧКА ИНСТРУМЕНТАЛИЗАЦИЈА ГЕНОЦИДА

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***Сажетак**: Као групни злочин, геноцид припада најмрачнијим страницама историје човечанства које се, нажалост, и даље исписују. То је злочин над злочинима, не само због масовности жртава него и због разлога њиховог страдања, који не лежи ни у каквој субјективној кривици, већ у објективној околности да припадају одређеној раси, нацији и/или вери. Конвенција УН о спречавању и кажњавању злочина геноцида даје правни оквир кривичном гоњењу геноцида, а већ и сам процес њеног обликовања дао је прве назнаке замагљивљања правде ради испуњавања геополитичких интереса. Развој међународних односа од тада до данас игра важну улогу у обликовању перцепције геноцида, врло често занемаривањем или произвољним тумачењем норми међународног права. Из такве праксе се развила претпоставка да је при тумачењу злочина геноцида право врло често политички инструментализовано. Полазећи од тако формулисане претпоставке, сврха овог рада јесте утврђивање јасних показатеља испољавања политичке инструментализације злочина геноцида у досадашњој међународној пракси. У првом делу рада, применом нормативно-догматског и историјског метода, језичким, логичким и системским тумачењем норми међународног права, анализирају се правно формулисани критеријуми који морају бити испуњени да би се одређене радње класификовале као геноцид. У наставку, анализом најкарактеристичнијих примера предмета рада, у даљој и ближој прошлости, применом историјског и компаративног метода, као и метода апстракције, разобличавају се две основне форме политизације, политичка опструкција и политичка конструкција геноцида, чиме се потврђује почетна претпоставка.*

***Кључне речи**: Међународно право, политика, политичка конструкција геноцида, политичка опструкција геноцида, ратни злочин*

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