

2-2019

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Recommended Citation

Mahmutćehajić, Rusmir (2019) "Supporting a Canadian Proposal to Declare Srebrenica Genocide Denial Illegal," *Occasional Papers on Religion in Eastern Europe*: Vol. 39 : Iss. 1 , Article 6.

Available at: <https://digitalcommons.georgefox.edu/ree/vol39/iss1/6>

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SUPPORTING A CANADIAN PROPOSAL TO DECLARE SREBRENICA GENOCIDE DENIAL ILLEGAL¹

I am writing to express my support for the petition currently before the Canadian federal parliament to make denial of the genocide at Srebrenica illegal. Denial of the Srebrenica genocide is a major problem for several reasons.

Firstly, it is immoral in itself. This is not, however, a sufficient reason for it to be illegal.

Secondly, it causes emotional pain for the survivors and relatives of those killed in the genocide, and it is intended to do so. Generally speaking, the justifications for denial also involve arguments and untrue statements that amount to slander or libel of the victims, survivors, and their ethnic fellows. They knowingly and maliciously misrepresent what happened (in terms of scale, scope, events and causes), and attempt to place the responsibility for causing the sequence of events on the victims themselves or their ethnic fellows. Even when not explicitly made, such arguments are implied or logically entailed by the explicit statements made. They form part of a universe of discourse, and more-or-less, the only reason for denying the genocide in the first place.

The argument, in this case, may, of course, be made so there is no need to make Srebrenica genocide denial illegal. Those so inclined can prosecute under the existing libel and hate speech laws, including those that specifically make the denial of genocide (without specification) a form of hate speech if intended to cause harm.

¹ A letter written by the author, Dr. Rusmir Mahmutćehajić, at the request of Professor Ramić in support of a petition currently before the Canadian federal parliament to make denial of the genocide at Srebrenica illegal.

This leads us to our third point. Unfortunately, genocide is the hardest of all crimes to prove and to enforce, especially as it involves implication of a government apparatus and command structure. A verdict of genocide only really counts if passed by an International Criminal Tribunal or the International Court of Justice in the Hague. The burden of proof is extremely and unrealistically high. Even when a verdict has been passed down, it has few consequences other than recognition of the nature of the crime in question. If that too is optional, then what does a verdict of genocide mean? It simply becomes a contested symbol that serves to ensure the continued division of the societies in question. Moreover, it loses all efficacy as a deterrent. Why should the threat of a genocide prosecution or conviction deter, when it is clear it can no longer be enforced? It is clear such a verdict can itself become a contested symbol in the continuation of genocide, after the fact, through public discourse based upon hate speech aimed at reinforcing social polarization.

As suggested above, the second and third points are connected. In the case of Srebrenica, the crime of genocide has been proven. The Canadian parliament has voted a national day of commemoration for the genocide at Srebrenica. What is the point of having done so, if each individual case of Srebrenica genocide denial must be litigated afresh, at considerable expense and with insecure results? Recent examples related to Holocaust denial make clear the dilemma involved. By forcing a legal process on the merits in every case, one is playing directly into the hands of the deniers. They are not good faith questioners of the historical record and the evidence for it, and they do not believe in their denial. They believe the genocide was justified and that it is precisely by denying it they can express their commitment to the goals for which it was carried out in the first place—the longer-term project of which it was a part. Their intention is, therefore, to instrumentalize their denial in an ongoing process of social polarization and

conflict. The very process of forcing debate and, if possible, a trial serves their goal. It gives them legitimacy, publicity, and victim status, and it allows them to indulge in extended slander of their target community. Recognizing a crime of Srebrenica genocide denial would, in a simple and effective way, prevent them from exploiting and instrumentalizing hate speech by pretending it is free speech, without chilling their right to actual free speech. Let them admit the internationally recognized nature of the crimes at Srebrenica, and then let them argue that they were justified, if they care to, in ways that are demonstrably not hate speech or intended to cause harm. After all, the nature of the crimes at Srebrenica has been established by an international tribunal and confirmed by the Canadian Federal Parliament. What legitimate reason can there be for denying it?

Our fourth point follows from this, namely that Srebrenica genocide denial is a deliberate political act, with clear and intended results. It is not merely a bad-faith denial of what happened at Srebrenica, but an inversion intended to blame the victims and their ethnic group for what happened. This reinforces divisions, promotes social fission, and entrenches the position of the perpetrators within their own communities who are thereby recruited as accomplices after the fact. While very few individuals with command responsibility have been convicted of genocide, and only a few more found guilty of war crimes and crimes against humanity, the vast majority of those involved in either the culminating genocide at Srebrenica or the mass of war crimes and crimes against humanity that led up to it have faced no legal or social consequences. They have continued to live as respected and active members of their communities who are still aware of their actions. Moreover, even those accused of genocide, like Radovan Karadžić and Ratko Mladić, have been sheltered and celebrated by those communities for decades which fought their extradition for trial tooth and nail. Those tried and convicted of the most severe war crimes, like

Biljana Plavšić, Momčilo Krajšnik, and Vojislav Šešelj, have, on release, been received as heroes and lionized by the political and cultural elites of the Republika Srpska and Serbia. They have consistently used coded language to “deny” the genocidal nature of the crimes, while at the same time justifying and claiming credit for them. These actions have incited their followers to defend their legacy, even to the point of committing new crimes. Their statements are not good-faith expressions of opinion, however misguided, but conscious interventions in political and public life with malicious intent to harm. They succeed in their intention, with terrible and long-lasting consequences. Not least amongst these consequences is they make a mockery of the court that tried them and found them guilty. There is a concerted campaign that goes back to the establishment of the court to undermine its authority and to render it, not merely toothless, but contemptible. They and their fellow-travelers are in the most literal sense in contempt of court and lead others into the same position.

As the above argument makes clear, the denial of a genocide is an integral part of the genocidal process itself. This has been true of the Srebrenica genocide from the beginning and continues to be the case today. The genocide in Srebrenica was a major factor in ensuring the Dayton peace agreement. However, that peace was not based on the clear victory of any one side, rather, it was a compromise. Moreover, it could not include recognition of the genocide at Srebrenica for the simple reason that the international courts had not yet ruled on the matter. The compromise at Dayton meant that the area where genocide was committed remained under the control of successor structures to those that committed the genocide. It does so to this day. Consequently, the complicit political elites in the Republika Srpska and their sponsors in Serbia continue to deny recognition of the rulings of the international courts, and they deny the scope, scale and genocidal nature of what happened at Srebrenica. Not merely do they deny the

genocide in Srebrenica, but they justify the actions taken against the Bosnian Muslims of Srebrenica by the armed forces of the Republika Srpska and their paramilitary helpers from Serbia on grounds of self-defense. This inverted narrative, whereby the victims of genocide are characterized as themselves genocidal criminals, is dominant in the media of the Republika Srpska and Serbia, in their public and political discourse, and even in their schools. The combination of denial and inversion of the truth has the desired effect of those who promote it, namely, continued polarization of the populations of the region based on contested symbolic representations of the past and responsibility for it. This is the mechanism which converts a crime against the people who were killed at Srebrenica more than twenty years ago into an ongoing crime. Denial is not just a refusal to recognize a terrible act. It is an instrumentalization of the act to ensure its continued efficacy and to foster the conditions under which either side may find itself carrying out renewed acts of inter-communal violence that rise to the level of genocide. Individual acts of Srebrenica genocide denial cannot be isolated from the divisive and genocidal political project of which they are a part.

It is for the above reasons that I support making the denial of the Srebrenica genocide illegal. Markers must be put down against the constant and deliberate muddying of the waters, the intentional presentation of false information, and the strategic deployment of hate speech under the cover of free speech. The dignity of genocide verdicts must be maintained, their truth defended, particularly given the extremely high bar for the issuing of such a verdict in the first place. Those who wish to contest them should be forced to find respectful ways to do so. People have a right to their opinions and to express them, so long as they are not willfully harmful of others and contemptuous of truths established in court. No one has a right to continue the project

of physical genocide by symbolic means, or in the hope of securing its goals and, in the worst of cases, of actually reviving it.

Yours sincerely,

Rusmir Mahmutćehajić

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