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Genocide in international criminal law with reference to Srebrenica – prevention and challenges

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Abstract

In 2025 will be 30 years since the end of the war in Bosnia and Herzegovina (BiH). In May 2024, the United Nations adopted a resolution to establish 11 July as *International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica*. The author focuses in this article on the crime of genocide, which is often referred to in the literature as the "crime of crimes" with a special reference to Bosnia and Herzegovina, i.e. the Srebrenica genocide. The analysis of this issue is based on the convention concept of genocide arising from the legal construction defined in the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948. The most important segments of the text are: examination of the genocide crime through the prism of the general legal and social context, the convention concept of genocide with reference to the misuse of the concept of genocide, as well as to the negation or denial of the crime, the glorification of the persons legally convicted of committing genocide and other war crimes. The genocide committed in Srebrenica in July 1995, where between 7000 and 8000 people were killed, must be a warning to humanity with a clear preventive message that genocide will never and nowhere be repeated, and that the international community will take all necessary actions to provide adequate protection. The essential problem in establishing or proving the existence of genocide is primarily related to the complexity of establishing the specific genocidal intent of the perpetrator as a specific and unique feature of this crime. The crime of genocide is precisely recognisable by specific genocidal intent as the subjective component of this crime, which distinguishes it from other related international crimes. Additionally, the intention of the author is to point out the importance of establishing judicial truth, general prevention, affirmation and promotion of the universal human values, on which the civilised world rest, in order to reconcile, coexist and ensure peace, security, human rights and freedom, the rule of law, the culture of dialogue, humanity and so on. The article also emphasises the inability of the

international community to find effective enforcement mechanisms aimed at the timely detection and prevention of risky behaviour that may escalate into a crime. For this reason, the author appeals for strengthening international cooperation in criminal matters and using the full potential of criminal law as a preventive instrument.
Keywords: genocide, Bosnia and Herzegovina, genocidal intent, human rights in Europe, prevention.

Ludobójstwo w międzynarodowym prawie karnym w kontekście Srebrenicy – zapobieganie i bariery

Streszczenie

W 2025 roku minie 30 lat od zakończenia wojny w Bośni i Hercegowinie. W maju 2024 roku ONZ przyjęła rezolucję ustanawiającą 11 lipca *Międzynarodowym Dniem Refleksji i Upamiętnienia Ludobójstwa w Srebrenicy w 1995 roku*. W związku z tym, autor skupia się w niniejszym artykule na zjawisku ludobójstwa, które w literaturze często określane jest jako „zbrodnia zbrodni" ze szczególnym uwzględnieniem Bośni i Hercegowiny, tj. ludobójstwa w Srebrenicy. Analiza omawianego zjawiska opiera się na normatywnej definicji ludobójstwa wynikającej z *Konwencji o zapobieganiu i karaniu zbrodni ludobójstwa* z 1948 roku. Główne segmenty tekstu obejmują analizę ludobójstwa w kontekście prawnym i społecznym, przedstawienie koncepcji ludobójstwa i problemu niewłaściwego użycia tego pojęcia, a także kwestię negowania ludobójstwa, zaprzeczania zbrodniom oraz gloryfikowania osób prawomocnie skazanych za ludobójcze lub inne zbrodnie wojenne. Ludobójstwo popełnione w Srebrenicy w lipcu 1995 r., w którym zginęło od 7000 do 8000 osób, powinno być ostrzeżeniem dla ludzkości z jasnym przekazem zapobiegawczym, że ludobójstwo nigdy i nigdzie nie powinno się powtórzyć, a społeczność międzynarodowa podejmie wszelkie niezbędne działania w celu zapewnienia odpowiedniej ochrony. Znaczącą trudność w ustaleniu lub udowodnieniu istnienia ludobójstwa stanowi identyfikacja konkretnego ludobójczego zamiaru sprawcy jako unikalnej cechy tej zbrodni. Zbrodnia ludobójstwa jest rozpoznawalna po konkretnym ludobójczym zamiarze, będącym subiektywnym elementem tej zbrodni, co odróżnia ją od innych pokrewnych zbrodni międzynarodowych. Ponadto, intencją autora jest wskazanie znaczenia ustalania prawdy sądowej, ogólnej prewencji, potwierdzenia i promowania uniwersalnych wartości ludzkich, na których opiera się cywilizowany świat, w celu pojednania, współistnienia i zapewnienia pokoju, bezpieczeństwa, praw człowieka i wolności, rządów prawa, kultury dialogu, ludzkości itd. Artykuł wskazuje również na niezdolność społeczności międzynarodowej do znalezienia skutecznych mechanizmów egzekwowania prawa, których celem byłoby terminowe wykrywanie i zapobieganie ryzykownym zachowaniom, które mogą przerodzić się w przestępstwo. Z tego względu autor apeluje o wzmocnienie międzynarodowej współpracy w sprawach karnych i wykorzystanie pełnego potencjału prawa karnego jako instrumentu prewencji.
Słowa kluczowe: ludobójstwo, Bośnia i Hercegowina, zamiar ludobójczy, prawa człowieka w Europie, zapobieganie ludobójstwu

Genocide – social and legal context

The crime of genocide, by its nature, method of execution, destructive consequences and some other specifics (heinousness, brutality, cruelty, etc.), causes special attention of the scientific, professional and general public in the world. By its destructiveness directed against conventionally protected groups and the existence of specific genocidal intent as a subjective component of the perpetrator, this crime constitutes an autonomous and independent international crime, that is, a crime against humanity and values protected by international law. Therefore, genocide is specifically distinguished from other international crimes (crimes against humanity, war crimes, crimes against peace – aggression), and for good reason is often referred to in the literature of international criminal law and the practice of international justice as the "crime of crimes". The drafting and adoption of the *Convention on the Prevention and Punishment of the Crime of Genocide* in 1948, after the Second World War, represents a particularly significant international legal document. Genocide is not only a crime under general international law but is also the subject of an international legal prohibition imposed on States (Kreß 2006: p. 468).

The milestone that expresses the clear commitment of the international community to prevent this crime and to punish the perpetrators irrespective of their political, military, economic or other status or position in a particular country. The Convention also foresees the responsibility of the state parties for genocide, and the possibility that states, as subjects of public international law, initiate a dispute against each other before the International Court of Justice in order to determine responsibility for this crime (Gurda 2015: p. 37).

Particularly for this reason, this international legal document also contains a very important preventive message, since high-ranking political, military, police or other officials are not exempt from criminal prosecution, when there is a justified suspicion that they participated or contributed in any way to the commission of the crime of genocide (execution, complicity, order, command responsibility). "One of the most important issues of international criminal law is the principle of individual criminal liability, according to which those who commit international crimes are personally liable for them, regardless of their position or function" (Czeszejko-Sochacka 2022: p. 98).

The atrocities of World War II were the ultimate alarm, when the international community had to undertake certain activities in terms of drafting and adopting one such document (convention) that would send an important preventive but also repressive message (punishment) to the world. However, the Genocide Convention has certain shortcomings and omissions and the most noticeable are: the definition of genocide does not include cultural and economic genocide, does not include extermination on political grounds; no criteria have been established to define conventionally protected human groups; and the enforcement mechanism provided for in the Convention is not effective (Cassese 2005: p. 110–111).

The term genocide is attributed to the Polish jurist Raphael Lemkin who coined the term by combining the Greek word "genos", meaning race, people, or tribe, with the Latin

term "cide" (*caedere, occidere*) meaning to kill (Lemkin 1944: p. 79). This concept was originally much broader. Due to the lack of one voice and consensus on certain issues, it is narrowly limited to only certain genocidal acts, with the existence of genocidal intent directed against certain human groups, but not all human groups, since some other human groups (cultural, sexual, economic, political or other), are omitted from the list of protected human groups.

Even today, both theory and practice, recognises numerous questions, different understandings, attitudes and dilemmas that require adequate answers and solutions in order to properly understand and interpret the legal nature of the crime of genocide. Especially, when it comes to defining this crime, distinguishing it from other international crimes, determining the protected convention group and proving the existence of a subjective intention of the perpetrator (genocidal intent) by which this crime is recognizable. The common characteristics of international crimes sometimes lead to unnecessary comparisons, which is wrong from a legal aspect and causes numerous dilemmas and conflicts, when understanding the legal elements (Karović 2012a: p. 792). Despite all the efforts and dedication of the international community and the civilised world after the Second World War to prevent this crime, we have witnessed its repetition in an even more destructive form (Rwanda, Bosnia and Herzegovina – Srebrenica), which requires a critical review of the preventive-repressive capabilities, capacities and resources for the prevention of this crime. War destruction, systematicity, its organisation and the number of people killed, especially children and civilians, in the Gaza Strip (Palestine) clearly demonstrate that human destruction is on the increase, that crimes are still part of our daily lives and that they require an adequate response from the international community in terms of prevention and adequate punishment. It is quite clear that certain economic sanctions, political and diplomatic appeals or certain warnings are not adequate and proportionate. Therefore, the international community must demonstrate determination at the implementation level, in order to achieve the purpose of the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948, as well as the purpose of numerous other international instruments guaranteeing the protection of the fundamental human rights and freedom of every individual irrespective of his or her national, ethnic, religious or racial affiliation or other personal characteristics.

This means that the implementation plan must establish adequate preventive protection mechanisms aimed at the timely prevention of genocide, it is necessary to identify at an early stage all risky behaviors that, by their nature and destruction, can 'develop' into the crime of genocide. The area of criminal etiology requires special attention, i.e. causation, with the intention of eliminating or at least reducing etiological (causal) factors that directly or indirectly contribute to the occurrence of the crime of genocide. On the other hand, attention and reaction occurs mainly when on the social "scene", i.e. in practice, we have very harmful and destructive consequences, when the conflict escalates in full capacity, which is completely wrong because in that case it is much more difficult to stop and bring certain destructive processes and events under control.

Conventional concept: defining genocide – (mis)use of the term

(a) Defining the term genocide

A correct understanding and interpretation of the definition, i.e. the conventional concept of genocide, is of the utmost importance for the correct legal qualification of certain events in the world, given that the concept of genocide is very often misused for certain political, ideological or other purposes, neglecting or ignoring its legal nature and definition. With the drafting and adoption of the *Convention on the Prevention and Punishment of the Crime of Genocide* of 1948, this crime acquired its autonomy and independence as a specific international crime, since this convention determined the objective and subjective elements that constitute the legal construction of this crime. Prior to the drafting and adoption of the *Convention on the Prevention and Punishment of the Crime of Genocide* in 1948, the crime of genocide existed as a subset of the crime against humanity. Genocide is the deliberate act of certain actions against members of a national, ethnic, racial or religious group with the aim of its complete or partial physical or biological destruction (Fabijanić Gagro, Škorić 2008: p. 1388).The crime of genocide consists of undertaking various actions with the aim of the total or partial destruction of a national, ethnic, racial or religious group (Babić 2011: p. 136). Considering its content, the feature of a passive subject and above all, the subjective component – the genocidal (destructive) intention of the perpetrator, genocide is often referred to as "the crime of crimes, or the most serious, so-called "capital crime" (Škulić 2020: p. 240). From the aforementioned definitions of genocide, which are identical in content, we note that they include the same determinants that make up the definition, namely: certain acts of execution, genocidal intent (total or partial destruction of a certain human group) and certain protected human groups as the object of this crime (national, ethical, religious or racial group). It is very important to emphasise a clear differentiation or distinction between genocide and other international crimes in order to avoid the misidentification of genocide with other crimes. In scientific and professional debates, there are different opinions and understandings regarding the legal qualification of certain events, especially in the part related to the standards of proof, the determination of the protected group, the determination of the subjective component (genocidal intent) of the perpetrator and other specificities of this crime.

The practice of international justice in specific criminal cases has established high standards of proof of the crime of genocide, in order to ensure the specificity of this crime in relation to other international crimes. Recognising that the *Convention on the Prevention and Punishment of the Crime of Genocide* is generic, and that it has not prescribed more precisely and clearly certain concepts relevant to a proper understanding of genocide, the practice of international justice has offered certain answers of a practical nature and has removed certain dilemmas and ambiguities.

The relatedness and certain similarities of the crimes against humanity and the values protected by international law (genocide, crimes against humanity, war crime, crime against peace – aggression) may be the cause of misclassification of the above-

mentioned crimes, i.e. international crimes. In addition, in certain cases political and ideological bias and partiality make it very difficult to call a crime by its proper name and to define and qualify it properly. In practice, it is common for a party that participated, assisted or in any other way directly or indirectly participated in the organisation, planning or execution of genocide to deny or deny genocide with the clearly expressed intention of minimising a particular crime, concealing the real situation and not calling it by its proper name – genocide. The misuse of the term genocide in political circles often carries a strong emotional and political charge, in order to achieve certain political or ideological goals. The notion of genocide must be free of all political, ideological or any other prejudices, in order for certain events to be properly formulated, that is, legally qualified.

The correct legal formulation, i.e. the qualification of a certain event as genocide is of crucial importance, which means that in each specific case, two constitutive cumulative elements must be satisfied: objective element (act of execution) and subjective element (genocidal intent on the part of the perpetrator – *dolus specialis*).

The prescribed execution actions of this crime under the objective element are the following: „(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" (Article II of the *Convention on the Prevention and Punishment of the Crime of Genocide* 1948).

„The following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to commit genocide; (e) complicity in genocide" (Article III of the *Convention on the Prevention and Punishment of the Crime of Genocide* 1948). The acts of execution are prescribed alternatively and for the criminal existence of this crime it is enough for the perpetrator to take one of the five prescribed acts, in addition to fulfilling the existence of a subjective element of the perpetrator that is manifested through the specific intention of total or partial destruction of a protected human group (Karović 2013: p. 96). The claim that the intended destruction must always be physical or biological is well supported in special literature.[1] The Genocide Convention prescribes five alternatively defined acts of execution as an objective element of the crime of genocide, which clearly and unequivocally confirms that the acts we call cultural genocide and ethnic cleansing do not constitute acts of execution of this crime.

It is also important to emphasise the mass, systematic rape in war, often mentioned in the context of a possible act of genocide, since it leaves negative consequences for biological reproduction, but the conventional concept of genocide does not allow the extension of the existing definition. In addition to the above, another important victimological issue is the children of war rape in BiH, who deserve special attention in relation to

[1] For example, in the Judgement of the Appeals Chamber in the Radislav Krstić case, par. 48 (case: IT-98-33-A).

the provision of adequate status. Regardless of the place of conflict, children are born as a result of war rape and experience stigmatisation in the form of social exclusion from the beginning of their birth (Czeszejko-Sochacka 2023: p. 93). Considering the above, there is a real need to reconsider the expansion of the catalog of genocidal acts, in order to prescribe systematic rape as an act, that is, the act of committing the crime of genocide. Through comparative analysis, we note that the crime of genocide is defined in the same way, as prescribed by the Genocide Convention, in Article 2 of the *Statute of the International Criminal Tribunal for Rwanda*, in Article 4 of the *Statute of the International Criminal Tribunal for the former Yugoslavia*, as well as in Article 6 of the *Statute of the International Criminal Court*.

Therefore, it is very important to establish a clear line of differentiation, i.e. of demarcation, between the crime of genocide and other related crimes against humanity and the values protected by international law, above all crimes against humanity, to understand properly the legal nature and the conventional concept of genocide.

The practice of international justice in its work has made a significant contribution to the proper understanding of the objective-subjective component of the crime of genocide, in order to avoid misinterpretations and understandings of this crime, especially when it comes to the act of execution (objective element), then the subjective component that manifests itself in the existence of genocidal intent on the part of the perpetrator, the determination of a protected human group for which criminal protection is prescribed (national, ethnic, religious or racial group) and other important issues that depend on the correct determination, i.e. the legal qualification of the crime of genocide.

The work and practice of the international judiciary has provided concrete answers to the aforementioned questions, given that these crucial or essential issues are very often discussed in the scientific and professional community, and there are conflicting or different opinions and positions, especially when it comes to proving the existence of a specific genocidal intention on the part of the perpetrator of this crime. Unfortunately, in Bosnia and Herzegovina, as well as in the countries of the former Yugoslavia, we very often observe biased attitudes and opinions aimed at achieving certain ideological or political goals.

(b) Denial of genocide and glorification of convicted persons

One of the concrete examples of the wrong approach and abuse of the term genocide is the denial of the crime of genocide in Srebrenica, which was committed in July 1995, a genocide committed in the heart of Europe, even though Srebrenica had a special and protected status by the United Nations. The youngest victim was Fatima Muhić, the baby-girl born on 13 July 1995, two days old (Dimitrijević 2021: p. 36). The abomination, brutality and cruelty of the Bosnian Serb army's treatment of innocent civilians is now well known and documented.[2] Bosniak women, children and old

[2] For example, in the Judgement of the Appeals Chamber in the case of Radislav Krstić, par. 2 (Case: IT-98-33-A); Judgment of the Trial Chamber in the case of Radislav Krstić, par. 6 (available at www.icty.org).

people were taken from the enclave,[3] and 7000 to 8000 Bosnian Muslim men were systematically killed.[4]

In addition to the foregoing, the facts and judgments of the *International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991* confirming that genocide, the 'crime of crimes', was committed in Srebrenica, are knowingly and deliberately ignored or disregarded.

Denying the crime in Srebrenica certainly has very negative consequences, viewed from the aspect of general prevention but also reconciliation in the future, and the affirmation and promotion of universal human values, on which the civilised world rests (peace, security, culture of dialogue, human rights and freedoms, rule of law, etc.), especially bearing in mind that even certain individuals who have been legally convicted for committing international crimes are glorified (e.g. Ratko Mladić, Radovan Karadžić, etc.). In connection with Decision of the High Representative Valentin Inzko, No: 26/21 of 22.07.2021, the *Law on Amendment to the Criminal Code of Bosnia and Herzegovina*[5] was adopted, more precisely the amendment of Article 145a, and new paragraphs (2) to (6) are added, which criminalise acts of denial of genocide or other international crimes and the glorification of persons legally convicted for the said crimes. The intention and purpose of passing the aforementioned law is of a preventive and repressive nature, i.e. to prevent the aforementioned activities or to sanction the persons who commit them in accordance with the prescribed procedure. It is worrying that young people, particularly in BiH, but also in surrounding region, on which the future and prosperity rest, are being imposed or 'served' with retrograde and anti-civilisational values such as denial of crimes and glorification of those convicted of international crimes.

It is well known that Ratko Mladić and Radovan Karadžić, as two most important high-ranking military and political figures, hid in Serbia for a long time, which certainly clearly expresses their real (non)commitment in terms of criminal prosecution and prosecution of persons suspected of committing genocide and other war crimes. The foregoing makes it quite clear that it is necessary to establish a culture of dialogue and to promote the process of reconciliation, but also to investigate consistently all cases of war crimes, so that all persons who are suspected of having committed a certain crime are prosecuted, regardless of their status, social position or any other characteristic. Therefore, when investigating, documenting and prosecuting persons who are suspected of having committed a certain crime, it is necessary to approach professionally, expertly, impartially and responsibly, from which it follows that a "supportive" relationship on the part of the general public is unacceptable. I note that I personally witnessed it several times, while passing through the municipality of Gacko, small Bosnian town in the Republic of Srpska

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3 See more in the Judgement of the Trial Chamber in the case of Radislav Krstić, par. 52; Judgment of the Appeals Chamber in the case of Radislav Krstić, par. 2 (available at www.icty.org).

4 See more in the Judgement of the Trial Chamber in the case of Radislav Krstić, par. 84; Judgment of the Appeals Chamber in the case of Radislav Krstić, par. 2 (available at www.icty.org).

5 Official Gazette of Bosnia and Herzegovina, no. 46/21.

entity, I noticed a mural with the figure of Ratko Mladic on the facade of the building, so at that moment I was just thinking about how the returnees to this place who suffered the horrors of war in the period 1992–1995 felt. Likewise, in other municipalities in the Republic of Srpska entity, graffiti or murals with the image of a legally convicted person were written in public places (Prijedor, Nevesinje, Kalinovik, Gradiška, Foča, etc.).

In this context, the Resolution on Srebrenica Genocide adopted on 23 May 2024 by the United Nations General Assembly also deserves special attention to several key aspects, namely:

- declares 11 July as the *International Day of Reflection and Commemoration of the 1995 Genocide in Srebrenica* to be commemorated annually;
- condemns „any denial of the Srebrenica genocide as a historical event and actions that glorify those convicted of war crimes, crimes against humanity and genocide by international courts", including those responsible for the Srebrenica genocide" (United Nations 2024);
- emphasises "the importance of completing the process of finding and identifying the remaining victims of the Srebrenica genocide" (United Nations 2024);
- calls on all states to fully comply with their obligations under the *Convention on the Prevention and Punishment of the Crime of Genocide*;
- requests the Secretary-General to establish informational programme entitled *The Srebrenica Genocide and the United Nations*;
- calls on all UN Member States, "international and regional organizations and civil society, including non-governmental organizations, academic institutions and other relevant stakeholders to mark the International Day, including special commemorations and activities to commemorate and honor the victims of the Srebrenica genocide in 1995, as well as appropriate education and public awareness activities" (Borić 2024; see also: United Nations 2024).

(In)ability to prove the existence of specific genocidal intent

One of the fundamentally important issues when determining, or proving the existence of genocide, is determining or proving the existence of a subjective component that manifests itself in the existence of a specific genocidal intent on the part of the perpetrator of this crime. In addition to the act of execution, it is necessary to establish the existence of another subjective element of the crime of genocide, which is the specific genocidal intent, manifested in the intent of the perpetrator to destroy, completely or partially, a certain convention-protected human group. Usually, the crime was executed as a quite overt facet of State policy, particularly within the context of war or colonial conquest (Schabas 2000: p. 1). Theoretically, the situation is quite clear, but in practice, we have a number of questions and problems related to the complexity of establishing or proving the existence of genocidal intent on the part of the perpetrator. Therefore, it is necessary to prove in criminal (evidential) proceedings that the perpetrator, by undertaking a specific act, the perpetrator had the intention to destroy, in whole or in part, a specific protected group of people. When proving, it is very important to determine

whether the perpetrator committed the act of execution against a specific person or persons as individuals or had the intention to destroy, completely or partially, a specific human group by undertaking these genocidal acts. The essential problem, when proving genocidal intent, is the impossibility of obtaining convincing evidence (e.g. orders, minutes of meetings, directives, activity plans, schedules, dispatches, etc.) which beyond reasonable doubt confirm the existence of a specific genocidal intent on the part of the perpetrator. The evidence obtained must be convincing, that is, it must confirm the existence of genocidal intent. In cases where the existence of specific genocidal intent by the perpetrator cannot be established or proven beyond a reasonable doubt, a legal reclassification from genocide to another crime, most commonly a crime against humanity is carried out. Thus, in the crime of genocide, the ultimate victim is a protected group (the object of attack) in accordance with the Convention, while in crimes against humanity the victims of the crime are individuals (Karović 2012b: p. 92).

The genocidal intent of the perpetrator as a subjective component makes the crime of genocide special, recognizable and unique compared to other international crimes. Precisely because of the existence of genocidal intent of the perpetrator, the crime of genocide, often referred to, in the literature as "the crime of crimes", but at the same time, high requirements are prescribed in terms of meeting the standards of proof, so that a certain crime can be called, or legally qualified as genocide. Given that in certain criminal cases, it is impossible to provide or obtain direct evidence that directly confirms the existence of genocidal intent on the part of the perpetrator, the practice of international justice is to approach the proof of genocidal intent by indirect means. Before the *International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, in the cases Krstić, Jelisić, Sikirica, Nikolić, circumstances were identified, on the basis of which it is possible to draw a conclusion about the existence of genocidal intent: general context; criminal acts systematically directed against the same group; number of committed crimes; systematic targeting of civilians due to their membership in a protected group; repetition of destructive and discriminatory acts; the breadth and distribution of crimes committed; general political doctrine, from which the existence of genocidal intent can be established; the extent of destruction achieved or attempted; methodical in planning the killing; systematic killing and removal of corpses; discriminatory nature of the act (destruction or attacks on property, cultural, religious objects and other symbols belonging to members of the group); discriminatory intent of the accused, genocidal plan or policy (Karović 2014: p. 126).

When it comes to the genocide in Srebrenica, the genocidal intent was directed at the Bosnian Muslims as a conventionally protected human group whereby in July 1995, 7000 to 8000 male Bosnian Muslims were systematically killed. Therefore, in this case too, three essentially important elements are met: the act of execution (killing of male Bosnian Muslims), the genocidal intent and the protected group of people (Bosnian Muslims). The Appeals Chamber declares with full conviction that justice condemns, in appropriate wording, the enormous and lasting harm that has been done and calls the

Srebrenica massacre by its true name: genocide (Judgement of the Appeals Chamber 2004: par. 37). Of particular concern is the fact that Srebrenica was publicly known as a "protected zone" of the United Nations Security Council, which certainly points to the responsibility of the international community that did not use all available capacities, resources and took all adequate actions to prevent or at least stop the act of genocide. The Security Council resolution declaring Srebrenica a protected zone states that it is a "zone which may not be attacked by armed force or subjected to any other hostile act" (UN Security Council 1993). However, despite the status of a protected zone, genocide was committed in Srebrenica, in the heart of Europe, at the end of the 20th century, with unfathomable human consequences that will forever remain the dark side of human history and the evidence of obvious weakness of humanity to oppose human evil – the crime of genocide. The inability of the international community to prevent international crimes (genocide, crime against humanity, war crime, crime against peace – aggression) is unfortunately still a key problem on the world stage with highly complex international relations. Considering the above, the key question is how to find and ensure adequate and effective enforcement mechanisms to implement international legal instruments (conventions, resolutions, etc.) and to ensure in practice adequate protection of human rights and freedoms of every individual, and to prevent the commission of international crimes in a timely manner. In addition to determining the individual criminal responsibility, the crime of genocide in BiH was also prosecuted before the International Court of Justice, in proceedings initiated in 1993 by BiH against Serbia and Montenegro on the basis of Article IX of the *Convention on the Prevention and Punishment of the Crime of Genocide*, which was completed on 26 August 1993. In February 2007, Serbia and Montenegro were declared guilty of failing to prevent and punish the crimes of genocide in the area of Srebrenica, committed by the police and army of the Republic of Srpska against the Muslim population of Srebrenica.[6]

The foregoing actualizes a very important issue, which is the preventive role and obligation of the state in terms of timely recognition of risky behaviors and undertaking preventive – protective activities. The essential problem refers to the unwillingness of a certain state to react in a timely manner and use all available capacities and resources to prevent crimes in situations, where the state directly or indirectly supports certain destructive processes and activities. In practice, there are no adequate enforcement mechanisms that can impose on a particular state to respond in a timely manner and to comply consistently with its obligation to prevent the commission of international crimes.

Conclusions

Prevention of international crimes, i.e. crimes against humanity and international law, is an imperative of the civilised world. Drafting and adoption of international legal documents (conventions, resolutions, etc.) represents a significant step in the prevention

[6] See more in the Judgment of the International Court of Justice in the case *Bosnia and Herzegovina v. Serbia and Montenegro* from 26 February 2007, par. 438 and 450.

plan, but the international community must find and provide adequate preventive and protective mechanisms at the implementation or executive level, in order to ensure the implementation and enforcement of the aforementioned documents in practice. The genocide in Srebrenica, the "crime of crimes" committed in July 1995, in the heart of Europe, in which between 7000 and 8000 people were killed, Bosnian Muslims as a conventionally protected human group, warns of the inability of the international community to react in a timely manner and take adequate measures and actions, and prevent the crimes. In addition to genocide, numerous war crimes and crimes against humanity have been committed in BiH, characterised by brutality, cruelty, abomination and human destruction.

If adequate enforcement mechanisms are not provided, then we conclude that many international legal instruments that affirm and promote the protection of human rights and freedoms of each individual have no practical application, and as such are not purposeful. Unfortunately, international crimes (genocide, crimes against humanity, war crimes, and crimes against peace) are repeated in even more destructive forms, targeting the most important goods and values (life, etc.). The international community has demonstrated its commitment to the protection of human rights and freedoms of every individual regardless of their national, ethnic, religious or racial affiliation but it is necessary in practice, in our daily lives, to implement the prescribed standards and at the executive level to show full consistency in terms of practical application.

Of particular concern is the fact that the crime of genocide is most often carried out under the direct or indirect action or participation of the state (support, assistance, etc.), which clearly confirms that in addition to individual criminal responsibility there is also the responsibility of the state. On the other hand, in modern criminal law, collective responsibility has been overcome and rejected. It is very important to emphasise that the meaning of the term genocide is misused in order to achieve certain political, ideological and other destructive goals. The concept of genocide must be understood in the context of the restrictive conditions prescribed by the *Convention on the Prevention and Punishment of the Crime of Genocide* from 1948, but it is also necessary to consider the possibility of redefining this concept in terms of expanding the catalog of genocidal acts as well as providing criminal legal protection to some other human groups (cultural, economic, sexual, etc.).

In accordance with the above-mentioned arguments, it is necessary to emphasise several key preventive guidelines:

1) developing the concept of raising awareness about the harmfulness of international crimes, especially genocide,
2) implementing public media campaigns that promote the protection of fundamental human rights and freedoms, especially minority human groups,
3) implementing educational seminars and workshops in schools and other educational institutions that promote universal human values and the prevention of genocide,

4) introducing the subject "Prevention of Genocide" into the educational system of Bosnia and Herzegovina,
5) affirming and promoting fundamental human rights and freedoms and protecting every individual, regardless of their national, ethnic, religious or racial affiliation.

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