



ECIA Policy Paper 2013-1

Caroline I. Fournet

Remembrance and Anti-Denial Legislation



EUROPEAN
CENTRE FOR
INTERNATIONAL
AFFAIRS

ECIA POLICY PAPER 2103-1

Remembrance and Anti-Denial Legislation

by Caroline I. Fournet

ECIA Fellow

European Centre for International Affairs

Policy Paper 2013-1
April 2013

Publisher: European Centre for International Affairs

The Policy Paper is available at
www.european-centre.org

The opinions expressed in this report are those of the author and are not necessarily shared by ECIA, its staff, associates or Council. ECIA is independent and owes no allegiance to any government or to any political body.

This document is issued on the understanding that if any extract is used, the author(s)/ speaker(s) and European Centre for International Affairs should be credited, preferably with the date of the publication or details of the event.

Where this document refers to or reports statements made by speakers at an event every effort has been made to provide a fair representation of their views and opinions, but the ultimate responsibility for accuracy lies with this document's author(s).

Preface

In 2012, the European Parliament adopted a Written Declaration supporting the establishment of a European Day of Remembrance for the Righteous, a legislative initiative which once again stresses the importance of remembrance and which therefore constitutes a welcome addition to the existing apparatus of steps taken to ensure the memory of past atrocities on one hand and a means to counter deniers' claims on the other. How to efficiently put a halt to the denial of mass atrocities in general, and of genocide in particular, indeed remains highly on the agenda, possibly because the issue is still unsolved.

In his recently written preface to *Genocide Denials and the Law*, Professor Schabas concisely explained the dilemma generated by attempting to confront genocide denial:

My own views on this complex issue have evolved over the years. They may change in the future, too. Sometimes, I find myself sharing the opinion of the last persuasive person with whom I have spoken, my perspective tilting in one direction or another. I find myself torn between the militant anti-racism of punishing denial and a latent libertarianism that bristles at any attempt to muzzle expression. I think that at various times in my life, I have argued for both extremes on these issues. Now, I find myself somewhere in the middle. My preferable compass, international human rights law, seems to have two needles that point in opposite directions (Schabas, William (2011), 'Preface' in Hennebel, Ludovic and Hochmann, Thomas (eds), *Genocide Denials and the Law* (Oxford: Oxford University Press), p. xiii).

The European Centre for International Affairs (ECIA) is an independent, non-profit, policy think tank. Its core mission is to provide innovative analyses of global issues from a European perspective. On key issues, ECIA supports policymakers in searching for, and evaluating viable policy alternatives, reconciling European values and interests.

About the author



Caroline I. Fournet

ECIA Fellow

European Centre for International Affairs

Caroline Fournet, Fellow at the ECIA, is Associate Professor and Rosalind Franklin Fellow in the Department of Criminal Law and Criminology at the University of Groningen. She has a Master Degree from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund, a DEA from the Institute of Higher European Studies in Strasbourg and a PhD in Public International Law from the University of Leicester. Prof. Fournet previously held a Senior Lectureship at Exeter School of Law. She is a member of the Editorial Committee of Studies in International and Comparative Criminal Law (Hart Publishing) and of the *Corpses of Mass Violence and Genocide Review* and book series' (Manchester University Press). Her research focuses on comparative and international criminal law. Her current research includes an ERC funded interdisciplinary project on corpses of mass violence and genocide as well as several comparative works on international criminal law and justice. She is the author of three monographs: *International Crimes – Theories, Practice and Evolution* (Cameron May, 2006); *The Crime of Destruction and The Law of Genocide: Their Impact on Collective Memory* (Ashgate, 2007); *Genocide and Crimes Against Humanity: Misconceptions and Confusion in French Law and Practice* (Hart, 2013).

Table of contents

1. Genocide denial: a violation of human rights law?
2. Genocide denial: A valid exception to freedom of expression?
3. Genocide denial: a genocidal act?
4. The European efforts

Executive summary

Although mass violence and genocide have both been the object of legal concern in the post-Nuremberg era, as largely exemplified by the ever-increasing adoption of United Nations Resolutions, declarations, treaties and conventions, the issue of how to ensure the remembrance of such atrocities so as to prevent their repetition in the future however remains unsolved. Not a legal concept as such, remembrance has nonetheless penetrated the legal discourse – particularly in the scholarly and legislative debates and discussions on anti-denial legislation.

Yet, the degree of controversy generated by these legislative steps is so high that it now seems that advocating for the adoption of a legislation which is never going to happen or which is going to be so controversial that it will never be implemented in practice might well be defeating the ultimate aim of efficiently discrediting denier's claims and perverse discourse. '[D]eniers misstate, misquote, falsify statistics, and falsely attribute conclusions to reliable sources' (Lipstadt, Deborah (1994), *Denying the Holocaust – The Growing Assault on Truth and Memory* (Penguin Books), p. 111). They falsify history and distort the truth to trigger debates on an issue where precisely there is no debate or, in the words of Deborah Lipstadt, no 'other side' (Ibid.): denying genocide is not an opinion, it is a lie. Can a lie be effectively countered by a legal prohibition? This is precisely the question which the following thoughts will try to address.

There are several problems linked to the legal prohibition of genocide denial, both theoretical and practical – probably all stemming from the fact that genocide denial remains an undefined and diffuse concept under international law. This lack of clarity has impeded any clear and explicit prohibition of genocide denial at the international level, which was not without consequence on the European and domestic levels respectively. As a result, genocide denial, ‘attempt of extermination on paper’,¹ remains a legally undefined notion. So far definitions have been vague, prohibitions disparate and judicial findings contested. There is no existing definition in international law, efforts made at the European level are remaining fruitless and, if some States did take the matter into their own hands, recent developments tend to indicate that the effective adjudication of genocide denial is not without raising serious controversy.

The following analysis will thus reflect on the legal qualification of genocide denial and will raise more questions than offer answers. Ultimately, the inability to provide a legal answer to this question might be symptomatic of the fact that law, unable to grasp this notion, might not be the right tool to effectively combat the perversity of genocide denial.

1. Genocide denial: a violation of human rights law?

Does genocide denial amount to hate speech and thus to a violation of human rights law? This question is crucial in terms of ensuring the effective prevention of mass violence. Since Julius Streicher’s famous condemnation by the International Military Tribunal at Nuremberg for his writings in the abhorrent *Der Stürmer*,² much has been written on hate propaganda and hate speech as weapons of mass violence. More recently, ruling on the power of the media to incite the masses through the transmission of hate messages and fuel conflict and genocide, the International Tribunal for Rwanda (ICTR) stressed that, if the attack on Rwandan President Habyarimana on 6 April 1994

‘served as a trigger for the events that followed. [and] if the downing of the plane was the trigger, then RTLM, Kangura and CDR were the bullets in the gun. The trigger had such a deadly impact because the gun was loaded. The Chamber therefore considers the killing of Tutsi civilians can be said to have resulted, at least in part, from the message of ethnic targeting for death that was clearly and effectively disseminated through RTLM, Kangura and CDR, before and after 6 April 1994.’³

Several international norms already in force address the questions of hate speech and incitement to racial hatred without however expressly mentioning or including genocide denial. For instance, Article 20, paragraph 2, of the International Covenant on Civil and Political Rights (ICCPR), expressly requires states parties to prohibit ‘[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’. Article 4, sub a, of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) requires states parties to proscribe ‘all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against

¹ Vidal-Naquet, Pierre (1987), *Les Assassins de la Mémoire – “Un Eichmann de Papier” et Autres Essais sur le Révisionnisme* (Paris: La Découverte), p.40. Translation by the author. The original version reads as follows : ‘tentative d’extermination sur le papier’.

² Trial of the Major War Criminals Before the International Military Tribunal, Volume XXII, Nuremberg 1948, p. 547-549.

³ ICTR, Judgment and Sentence, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, para. 953

any race or group of persons of another colour or ethnic origin'. From a more practical viewpoint, the fact that the prohibition of hate speech – or hate propaganda – is a human rights law norm means that it can potentially be a proscribed conduct under domestic law. Yet, as it does not cover genocide denial, nothing within the international human rights law system requires states to prohibit genocide denial – although they do remain free to do so.

2. Genocide denial: a valid exception to freedom of expression?

Or is the prohibition of genocide denial a valid exception to another human rights law norm namely, freedom of expression? The European Court of Human Rights has regularly interpreted Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on freedom of expression as prohibiting both hate speech and genocide denial. It has notably ruled that the families of survivors of the Holocaust continue to be entitled to a protection of their parents' memory.⁴

The question of balancing genocide denial and freedom of expression is arguably at the heart of the debates and controversies surrounding the issue. Recent developments, in both Spain and France, tend to demonstrate that domestic legislative attempts to prohibit and criminalise genocide denial are bound to fail.

As suggested above, nothing prevents states from proscribing genocide denial in their national penal codes. Further, the absence of any express international prohibition of genocide denial does not constitute an obstacle for states to do so in their own domestic systems. Yet, domestic legislation regarding genocide denial remains fairly scarce although it is noteworthy that Austria,⁵ Belgium,⁶ France,⁷ Germany,⁸ Israel,⁹ Luxemburg,¹⁰ Spain,¹¹ and Switzerland¹² all have adopted specific legislation punishing genocide denial. In all these different states, the legislation on genocide denial entered into force between 1990 and 1997, with France as the pioneer with the adoption of the loi Gayssot,¹³ which specifically created a new incrimination aimed at punishing

⁴ *Request 9777/82 v. Belgium*, Decision of 14 July 1983. Nevertheless, the position of the European Court of Human Rights in *Lehideux et Isorni v. France* (No. 55/1997/839/1045, 23 September 1998) is very questionable. The Court stated that the actions of Maréchal Pétain during the Second World War were still subject to debate among historians. It also went as far as to rule that, forty years after the facts, the same severity should not apply, thus implying that the passing of time may diminish crimes of collaboration with Nazi Germany.

⁵ Austrian Law N° 148 : Federal Law – Amendment of the Prohibition Law, 1992.

⁶ Law of 23 March 1995 for the Repression of the denial of the genocide committed by the German National-Socialist regime during the Second World War.

⁷ French Law n° 90–615 of 13 July 1990 Concerning the Suppression of all Racist, Anti-Semitic or Xenophobic Acts.

⁸ Articles 130 (incitement to hatred), 131 (instigation of race hatred) and 185 (insult) of the West German Criminal Code.

⁹ Denial of Holocaust (Prohibition) Law 5746-1986.

¹⁰ Article 457-3 of the Penal Code as amended by the Act of 19 July 1997.

¹¹ Article 607 of the Penal Code. However in a judgment in 2007, the Spanish constitutional Court considered that criminalising genocide denial was incompatible with freedom of speech.

¹² Article 261b of the Penal Code.

¹³ 'Il est ainsi inséré, après l'article 24 de la Loi du 29 juillet 1881 sur la liberté de la presse, un article 24bis ainsi rédigé:

Art. 24bis. – Seront punis des peines prévues par le sixième alinéa de l'article 24 ceux qui auront contesté, par un des moyens énoncés à l'article 23, l'existence d'un ou plusieurs crimes contre l'humanité tels qu'ils sont définis par l'article 6 du Statut du tribunal militaire international annexé à l'accord de Londres du 8 août 1945 et qui ont été commis soit

certain intolerable forms of falsification of contemporaneous history.¹⁴ French law made again the news headlines decades later first with its legislative recognition of the Armenian Genocide,¹⁵ followed by a highly mediated – failed – attempt to punish its denial.¹⁶

The French memorial laws have generated heated debates and controversies, notably regarding the inapt intrusion of the law into the domain of history and the dangers of a possible judicially-made truth. If this argument is to be taken into account, a close look at the relevant case law rapidly shows that the dangers of a sacralised version of history by judges are fairly minimal. As pointed out by Denis Salas, rather than trying to impose a particular historical truth, French courts have sanctioned the confusion between historical knowledge and a messianic, propagandist discourse,¹⁷ merely imposing on historians ‘obligations of prudence, objective caution and intellectual neutrality’¹⁸ – and this even before the adoption of any memorial laws. Already in 1981, in the Faurisson case, the Tribunal de Grande Instance of Paris had condemned

‘The historian who concludes that the genocide of the Jews, as well as the existence of the gas chambers, constitute one whole lie which has allowed for a gigantic political and financial swindle [has breached] the obligations of prudence, objective caution et intellectual neutrality which must be respected by the academic researcher.’¹⁹

If such obligations are not respected, the role of the court will be to demonstrate the bad faith, the lies and the perversity of the intentions, through the means of a contradictory debate. As Salas noted, the judge has not been turned into the guardian of historical truth and the judge’s control in cases of denial is in fact minimal:

par les membres d’une organisation déclarée criminelle en application de l’article 9 dudit statut, soit par une personne reconnue coupable de tels crimes par une juridiction française ou internationale.’

Loi n° 90–615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe.

¹⁴ The official bulletin of the Justice Ministry specifies that only those crimes against humanity perpetrated during the Second World War are the subject of the loi Gayssot. Bulletin Officiel du Ministère de la Justice, N°39 du 30 septembre 1990, Circulaire CRIM 90-09 F1 du 27 août 1990, Application de la *Loi n°90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe*.

¹⁵ See Loi n° 2001–70 du 29 janvier 2001 relative à la reconnaissance du génocide arménien de 1915, Article 1 : ‘la France reconnaît publiquement le génocide arménien de 1915’ [‘France publicly recognises the 1915 Armenian genocide’. Translation by the author].

¹⁶ See Décision n° 2012–647 DC du 28 février 2012, Loi visant à réprimer la contestation de l’existence des génocides reconnus par la loi, Conseil constitutionnel.

¹⁷ Salas, Denis (2003), ‘Le droit peut-il contribuer au travail de mémoire?’, in Association française pour l’histoire de la Justice, Commission nationale consultative des droits de l’homme, Ecole nationale de la magistrature (2003), pp. 36–45 at 41.

¹⁸ See *Affaire Faurisson, Ligue internationale contre le racisme et l’antisémitisme et autres c. R. Faurisson*, Tribunal de Grande Instance de Paris, 8 July 1981.

¹⁹¹⁹ Translated by the author. The original version reads as follows : ‘L’historien qui conclut que le génocide des juifs, tout comme l’existence affirmée des chambres à gaz, ne forment qu’un seul et même mensonge historique ayant permis une gigantesque escroquerie politico-financière [manque] aux obligations de prudence, de circonspection objective et de neutralité intellectuelle qui s’imposent au chercheur’. *Affaire Faurisson, Ligue internationale contre le racisme et l’antisémitisme et autres c. R. Faurisson*, Tribunal de Grande Instance de Paris, 8 July 1981.

‘We are therefore far from a historical truth for which the judge would be the standard-bearer. We seem closer to a control of the manifest errors of appreciation. What matter is to unveil, behind the masks of historians, a manifestation of anti-Semitic propaganda.’²⁰

These considerations notwithstanding, the ultimate declaration of non-constitutionality of the 2011 French memorial law providing for the punishment of the denial of genocides legally recognised as such illustrates the difficulties encountered by anti-denial legislation at the domestic level. Further, the loi Gayssot being however maintained, the French legislative apparatus now seems to create a distinction between instances of genocide: the Shoah, protected by anti-denial legislation, and other genocides, which thus can be denied in all impunity. In any event, these recent developments show the utmost difficulty encountered by the criminalisation of genocide denial at the domestic level, prompting the question whether international criminal law could or should intervene here.

3. Genocide denial: a genocidal act?

Could genocide denial qualify as direct and public incitement to commit genocide, as prohibited by Article 3, sub c, of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide?

There can indeed be some cases where genocide denial, through its distortion of the truth, directly aims at rehabilitating and supporting former genocidal regimes – making its prohibition for prevention purposes crucial. As Israel Charny stressed, ‘to seek to impose denial on the world is an incitement of the masses’.²¹ Perhaps more convincingly in terms of linking genocide denial with incitement to perpetrate the crime, Natacha Michel has observed that denying the crime ultimately amounts at promoting it:

Considered properly, denial is an affirmation. Not a pseudo-historical discourse but an apology: the apology of the crime. All the paradox, all the attempt to notify some reality to deprived significations, to spirits with no repercussion of clarity, is that the affirmation of the validity of the crime is given through its negation. Negation is here understood neither as a fascist litotes nor as one of Le Pen’s pun. It is the method of the affirmation. The sentence: ‘the gas chambers did not exist’, praises the crime, it defends and situates it, as denying the existence of the crime is precisely, in this atrocious case, to approve and to recommend it. *Affirmationnisme* is to make the apology of the crime by arguing of its inexistence because arguing of its inexistence is to make its apology.²²

²⁰ Salas, Denis (2003), ‘Le droit peut-il contribuer au travail de mémoire?’, in Association française pour l’histoire de la Justice, Commission nationale consultative des droits de l’homme, Ecole nationale de la magistrature (2003), pp. 36–45 at 41–42. Translation by the author. The original version reads as follows: ‘On est donc loin d’une vérité historique dont le juge serait le porte-drapeau. On semble plus proche d’un contrôle des erreurs manifestes d’appréciation. Ce qui compte est de dévoiler, derrière les masques de l’historien, une manifestation de propagande antisémite’.

²¹ Charny, Israel W. (ed.) (1991), *Genocide, A Critical Bibliographic Review, Volume Two* (London: Mansell), p. 22.

²² Michel, Natacha (ed.) (1997), *Paroles à la bouche du présent – Le négationnisme: histoire ou politique?* (Marseille: Editions Al Dante, Collection Axolotl), p. 14. Translation by the author. Emphasis added. The original version reads as follows: ‘A bien le regarder en face le négationnisme est un affirmationnisme. Non un discours pseudo historique, mais une apologie : celle du crime. Tout le paradoxe, toute la tentative d’intimer de la réalité aux significations frustrées, aux esprits sans répercussion de clarté, est que l’affirmation du bien-fondé du crime se donne dans sa négation. La négation n’est pas ici litote fasciste ou jeu de mot lepéniste. Elle est le mode même de l’affirmation. La phrase : « les chambres à

The above-mentioned distinction between hate speech and direct and public incitement to commit genocide is not of a purely theoretical interest: unlike hate speech and hate propaganda which, under international law, are violations of human rights law rather than criminal offences, direct and public incitement to commit genocide engages the individual criminal responsibility of its author(s). If it must be recognised that this has not stopped the International Criminal Tribunals – and in particular the ICTR²³ – from punishing hate speech, it must also be simultaneously acknowledged that they were only able to do so by forcing interpretations of international criminal law norms, a situation which is neither satisfactory nor viable in the long term. It is without doubt that, as the law stands today, hate speech is not an international crime and is thus not a crime over which the International Courts and Tribunals have, or can pretend to have, jurisdiction. As Trial Chamber III of the International Criminal Tribunal for the Former Yugoslavia (ICTY) unequivocally stated: ‘The sharp split over treaty law in this area is indicative that such speech may not be regarded as a crime under customary international law’.²⁴

Or is genocide denial an integral part of the genocidal pattern of occurrence? After all, genocide denial precisely aims at killing the victims a second time by ‘destroying the world’s memory of them’²⁵ and denying that the crimes ever took place, that they never were any victims aims at completing the total eradication of the group targeted for destruction. Genocide is not a pathological outburst of violence, it is methodically planned and orchestrated and may paradoxically culminate in its denial. In the words of Hannah Arendt,

...[A]s we know today, murder is only a limited evil. The murderer who kills a man – a man who has to die anyway – still moves within the realm of life and death familiar to us; both have indeed a necessary connection on which the dialectic is founded, even if it is not always conscious of it. The murderer leaves a corpse behind and does not pretend that his victim has never existed; if he wipes out any traces, they are those of his own identity, and not the memory and grief of the persons who loved his victim; he destroys a life, but he does not destroy the fact of existence itself.²⁶

By denying the crime, deniers deny that there ever were victims and consequently annihilate their existence. In turn, the denial of the victims’ very existence denies the existence of the group as such... and the destruction of the group – or genocide – goes on. Deniers’ reasoning will either minimise the real number of victims, or bring about the conclusion that genocide was in fact never committed, paradoxically allowing it to continue. ‘Because how could we remember individuals who have never existed and how one deprived of antecedents could in turn exist? Where would he

gaz n’ont pas existé », vante le crime, le défend et le pose, en ce que nier l’existence du crime est précisément, dans l’atroce cas précis, en faire la louange et la préconisation. L’affirmationnisme est tel de faire l’apologie du crime en arguant de son inexistence, parce que arguer de son inexistence est en faire l’apologie’.

²³ See ICTR, *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, Case No. ICTR-99-52-T, T. Ch. I, 3 December 2003.

²⁴ ICTY, Judgment, *Prosecutor v. Kordić and Čerkez*, Case No. IT-95-14/2-T, T. Ch. III, 26 February 2001, footnote 272.

²⁵ Lemkin, Raphaël (1944), *Axis Rule in Occupied Europe – Laws of Occupation, Analysis of Government, Proposals for Redress* (Washington: Carnegie Endowment for International Peace, Division of International Law), p. xvii.

²⁶ Arendt, Hannah (1966, reprint 1994), *The Origins of Totalitarianism* (New York: A Harvest Book, Harcourt Inc.), p. 442.

come from? ... In that sense, the denial of the number of deaths is part of the genocidal project as this backwards interpretation of time is nothing but an attempt to erase the origins.²⁷

No matter how convincing these analyses are, as international criminal law currently stands, there is nothing in the text of the law or in the case law that suggests the prohibition and criminalisation of genocide denial under these norms.

Violation of human rights law? Exception to a human rights law norm? Direct and public incitement to commit genocide? Genocidal act? It seems fair to assert that the legacy of international law on the issue of genocide denial is one of uncertainty.

4. The European efforts

Where more interesting developments may happen is through the implementation of European Union Law and notably of the European Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law,²⁸ which could be fairly far-reaching insofar as it explicitly and unequivocally requests each Member State to 'take the measures necessary to ensure that the following intentional conduct is punishable' by criminal penalties:

- (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;
- (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;
- (c) *publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes* as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;
- (d) *publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal* appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.²⁹

The European Union will however have to maintain its efforts in this area as the deadline for the transposition of the Decision in the domestic systems of the Member States, 28 November 2010, is now long gone and the great majority of the Western European legal systems have failed to

²⁷ Piralian, Hélène (1994), *Génocide et Transmission* (Paris: Editions L'Harmattan), p. 52. Translation by the author. The original version reads as follows: 'Car comment pourrait-on se souvenir de personnes n'ayant jamais existé et comment celui qui n'a pas d'antécédent pourrait-il exister à son tour ? D'où viendrait-il ? ... En ce sens, le déni du nombre des morts fait bien partie du projet génocidaire, puisqu'en prenant ainsi le temps à rebours, c'est bien d'une tentative d'effacement des origines mêmes dont il s'agit.'

²⁸ OJ L 328 of 6.12.2008.

²⁹ Ibid. Emphasis added.

comply with their obligations in this context, thereby creating a problematic flaw in the apparatus aimed at ensuring remembrance and preventing the reoccurrence of mass atrocities.

Yet, remembrance and prevention of genocide does not rely solely on anti-denial legislation and, in 2012, the European Parliament adopted a Written Declaration supporting the establishment of a European Day of Remembrance for the Righteous, a legislative step which is to be welcomed and which probably emphasises that remembrance and prevention can only come with education of the young generations. Indeed, the Declaration affirms that ‘the remembrance of good is essential to the process of European integration because it teaches younger generations that everyone can always choose to help other human beings and defend human dignity, and that public institutions have a duty to highlight the example set by people who managed to protect those persecuted out of hate’. For the European Union to commemorate ‘those who preserved human dignity during Nazism and Communist totalitarianism’ and ‘who challenged crimes against humanity and totalitarianism with individual responsibility’ is a new and remarkable addition to the existing remembrance ceremonies, legislative measures and political efforts established and adopted to prevent future mass atrocities. That this commemoration is a European pledge undoubtedly highlights its utmost significance: if Europe was the theatre of some of the most heinous deeds perpetrated in the name of totalitarian and criminal ideologies, it was also the place where individuals chose to put their own lives at risk to fight for freedom and to save other human beings.

Europe, theatre of the obscene, also witnessed among the most heroic acts performed by ordinary men and women who risked everything to defend freedom, human rights and human dignity. This is the message that must be transmitted to the young generation. It is only through education that remembrance but also action and prevention can be ensured.

Bibliography

- Andreopoulos, George J. (ed.) (1994), *Genocide: Conceptual and Historical Dimensions* (University of Pennsylvania Press).
- Arendt, Hannah (1966, reprint 1994), *The Origins of Totalitarianism* (A Harvest Book, Harcourt Inc.).
- Charny, Israel W. (1982), *How Can We Commit the Unthinkable?, Genocide: The Human Cancer* (Westview Press).
- Charny, Israel W. (ed.) (1991), *Genocide, A Critical Bibliographic Review, Volume Two* (Mansell).
- Hennebel, Ludovic and Hochmann, Thomas (eds) (2011), *Genocide Denials and the Law* (Oxford University Press).
- Lipstadt, Deborah (1994), *Denying the Holocaust – The Growing Assault on Truth and Memory* (Penguin Books).
- Michel, Natacha (ed.) (1997), *Paroles à la bouche du présent – Le négationnisme: histoire ou politique?* (Editions Al Dante, Collection Axolotl).
- Orentlicher, Diane (2006), ‘Criminalizing Hate Speech in the Crucible of Trial: Prosecutor v. Nahimana’, *American University International Law Review*, 557-96.
- Piralian, Hélène (1994), *Génocide et Transmission* (Editions L’Harmattan).
- Salas, Denis (2003), ‘Le droit peut-il contribuer au travail de mémoire?’, in *Association française pour l’histoire de la Justice, Commission nationale consultative des droits de l’homme, Ecole nationale de la magistrature* (2003), pp. 36–45.
- Stanton, Gregory H., ‘The 8 stages of genocide’, *Genocide watch*: www.genocidewatch.org/genocide/8stagesofgenocide.html.
- Vidal-Naquet, Pierre (1987), *Les Assassins de la Mémoire – “Un Eichmann de Papier” et Autres Essais sur le Révisionnisme* (La Découverte).



ECIA
23, Rue de la Tourelle
1040 Brussels, Belgium
E-Mail: info@european-centre.org