

Genocide and the ending of war: Meaning, remembrance and denial in

Srebrenica, Bosnia

Klejda Mulaj

Abstract: The occurrence of genocide during war is a serious security predicament facing humanity in modern times, producing civilian casualties measured in millions. The persistence of this heinous crime renders imperative understanding of the effects of genocide in the course of war and its aftermath, effects that this paper examines in the context of the Srebrenica genocide of July 1995 – the darkest moment in European history since the Holocaust. The analysis is grounded on a critical examination of the concept of genocide and its close connection with war. It shows that relations of power are central to the happening of genocide and the ways of dealing with it in the post-conflict setting. When embedded on asymmetrical relations of power, war can be conducive to genocide because it creates organizational, political, and psychological conditions that facilitate large scale killing of targeted people. Whilst in the course of war genocide benefits the perpetrators, in the aftermath of fighting genocide can lend credence to the victims' community demands for recognition, accountability and redress. At the same time, the perpetrators and their community – frequently – deny genocide with the view to avoiding responsibility and reparations. The instrumental utility of genocide reflects rationales that go at the heart of enhancement of national identity and (contested) claims for political authority and legitimacy. More than twenty years after the Srebrenica genocide, these competitive and divisive claims do not bode well for Bosnia's societal cohesion and transition to sustainable peace.

Introduction

Genocide—the worst crime known to mankind—hurts humanity by very large scale casualties, frequently incurred in times of war.¹ The coupling of genocide with war constitutes a serious security predicament in modern times, exemplified by the cases of World War II (WWII) which enabled the Nazi genocide of approximately six million Jews—the Holocaust, and the 1994 civil war in Rwanda which enabled the genocide of eight hundred thousand Tutsis—killed at a rate three times faster than that of the Jews during the Holocaust.² Another example pertains to the 1992-95 Bosnian War which led to approximately one hundred thousand people dead and over two million displaced, including the worst massacre in the European history since

WWII—the Srebrenica genocide of July 1995 where more than 7,000 Bosnian Muslims were killed in just one week.³ In recent years, the genocidal attacks of ad-Dawlah al-Islāmīyah fil 'Irāq wa ash-Shām (known as the so-called 'Islamic State') against Yazidi civilians in Iraq and Syria have taken genocide at a distinct level associated with the political aims—and capacity—of a violent non-state actor, a capacity frequently thought to belong only to states.⁴ Given the recurrence of this crime, understanding the effects of genocide in the course of war, and its aftermath, is an imperative.

This paper assesses the role of genocide both in the course of war and its aftermath in the context of the Srebrenica genocide (July 11-19, 1995) grounding the analysis on a wide range of interdisciplinary sources from conflict and peace studies, politics, sociology, and law. In over two decades since the ending of the war, the people of Srebrenica—and of Bosnia—have lived with the impact of that fateful event. Their rather common sentiment of 'unsettled scores', the idea that the war is not over yet, reflects discontent with the post-war setting. Hence the present participle 'ending' in the title of this contribution suggests some continuity from war to the present fragile peace, and implies discontent that is mediated—amongst other factors—by (divergent) interpretations of genocide.

This paper contributes to a deeper understanding of the relationship between genocide, war, and peace. It shows how interpretations of genocide—including its meaning—affect formulations of both war and peace. In Bosnia's setting, the paper demonstrates that the Srebrenica genocide has been a factor both in the ending of war and the constitution of inter-ethnic relations in the ensuing peace. The analysis proceeds as follows: the first section explores the etymology of genocide and its correlations with war. Following an overview of the place of Srebrenica in the Bosnian War, the analysis then subjects to critical scrutiny the

centrality of Srebrenica to the genocide debate and its effects on the constitution of knowledge about war atrocities. The penultimate section sheds light on the impact of genocide on national identity. It spells out, on the one hand, the utility of genocide commemorations for the enhancement of the community of victims' national identity and their demands for moral authority and redress. On the other hand, it shows that the denial of genocide by the community of perpetrators challenges survivors' claims and their political agendas. The conclusion draws these strands together and points out that inter-ethnic tensions bode ill for Bosnia's social cohesion. In particular, contentious interpretations—and denial—of the Srebrenica genocide hold the present hostage to a disputed past and constitute a stumbling block to transition of the country to a durable peace.

Genocide, war and its aftermath

The term 'genocide' was first coined by Raphael Lemkin, a Polish jurist, as a combination of the Greek word 'genos' which means 'race' and the Latin word 'cide' which means 'to kill' in his 1944 book *Axis Rule in Occupied Europe*—one of the first detailed documented accounts of war crimes perpetrated by the Nazis against the Jews and other groups in the course of WWII. He realized that these crimes were so heinous that exceeded criminal offences framed in existing international law, which assumed that war was fought between states rather than states against a section of their own people, as was the case of Germany which, guided by Nazi ideology, was waging war to destroy civilian populations, primarily the Jewish nation. For Lemkin, therefore, 'genocide' was an extreme form of violence waged by a state with the purpose of national extermination.⁵ This work laid the ground for the first formal, legal definition of genocide, which was codified in 1948 in the United Nations Convention on the Prevention and Punishment of Genocide (known as the UN Genocide Convention) which entered into force in 1951. According to Article II of this Convention, genocide refers to

acts committed with *intent* to destroy, in whole or in part, a national, ethnical, racial or religious group as such: (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.⁶

Despite being criticized especially on sociological grounds—particularly for emphasizing intent—the definition of genocide provided in the UN Genocide Convention remains the most widely accepted definition of the term in academia and the courts of law—including the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court. In fact, critics acknowledge that it is to the Convention that most scholars refer in identifying genocide.

Clearly, the targets of genocide are civilians, non-combatants. Two legal components of genocide demand attention, namely, the material element constituted by one or several of the genocidal acts enumerated in the definition, known in legal parlance as *actus reus*, and the mental factor known in juridical terminology as *mens rea*, which consists of the special intent (or *dolus specialis*) to destroy in whole or in part, a national, ethnic, or religious group, as such.⁷ This special intent (*dolus specialis*) of the perpetrators to destroy a group in whole or in part sets genocide apart from any other crime, including, for instance, ‘ethnic cleansing’ despite frequently interchangeable use of the two terms. The primary difference between ‘genocide’ and ‘ethnic cleansing’ pertains to intent. Whilst in genocide the intent of the perpetrators is to

exterminate the targeted group, the intent of ethnic cleansers has frequently been to remove and expropriate the targeted people.⁸

Both the United Nations International Criminal Tribunal for Rwanda (ICTR) and the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY)—established by the UN Security Council in 1993 and 1994 respectively to investigate and prosecute the perpetrators of genocide, war crimes, and crimes against humanity—have held that the crime of genocide does not necessarily imply the actual extermination of the targeted group in its entirety.⁹ The phrase ‘in whole or in part’ was understood by both Tribunals to mean the destruction of a significant portion of the group from either a quantitative or a qualitative standpoint.¹⁰ Subsequently, genocidal intent may be manifested in two ways: it may consist of desiring the extermination of *a large majority* of the targeted group, in which case it would constitute an intention to destroy the group *en masse*; or it may consist of the destruction of a more limited number of persons, such as the leadership of the group, or male members, chosen by the perpetrators for the impact that their disappearance would have upon the survival of the group as such.¹¹ The ICTY has maintained that the geographical zone in which an attempt to eliminate a group is made may be limited in size.¹²

This, nevertheless, raises a question about the quantification of the targeted ‘group’: what size should the targeted ‘group’ have for the crime to classify as genocide? Can it be the population of a district, a city, or a town? As it will be shown in the third section below, several cases decided by the ICTY have answered the latter question in the affirmative. This in itself might not be unproblematic, however, because it perpetuates discrepancies between a non-restrictive (expansivist) meaning of genocide and a more restricted one that is prescribed in the Genocide Convention. Should one decide to atomize the ‘group’ to the level of the town or village, one

might run the risk of opting for numerous genocides, which could be of a much smaller scale compared to the Holocaust and Tutsi genocides, the archetype cases of genocide compatible with the definition of the term provided in the Convention. In addition, should one atomize the ‘group’ as stated above, one is likely to be faced with a number of violent conflicts which in their totality may not qualify as genocide and yet could contain in themselves one or more of the constitutive ingredients of the *actus reus* of genocide cases as appears to be the case of the Bosnian War (1992-1995). In the context of the latter it has not been proven that the Serb leaders and their military echelons had the intent to commit genocide against the whole community of Bosnian Muslims—known also as Bosniaks—in the whole of Bosnia. However, should one focus at particular villages or towns then the constitutive ingredients of the crime of genocide can be less challenging to demonstrate. This is the case of Srebrenica where between July 11 and 19, 1995 some 25,000 Bosnian Muslims, were expelled and at least 7,661 Bosniak boys and man of military age were killed.¹³

Considerations regarding the size of the group targeted by the genocidaires ought not to be taken lightly. Such group has significant ramifications for interpretation of genocide and rationales thereof. Indeed, the size of the targeted group is central to what can be termed as a strict interpretation of genocide, whereby only the largest and severest cases of atrocity are termed genocide as opposed to a non-restrictive interpretation of genocide whereby small groups may be taken to be subjected to genocide. The French philosopher Alain Finkielkraut, in his stark reflection on the history of humanism, has suggested that only three genocides have befallen humanity in the course of the twentieth century, namely the Armenian genocide, the Holocaust, and the genocide of the Tutsis in Rwanda.¹⁴ There are moral reasons for acknowledging a hierarchy of crimes where genocide stands at the pinnacle, and therefore for questioning an expansive definition of genocide whereby the size of the targeted group could

be atomized at the level of town and village. Two main reasons come to mind: first, the archetype cases of genocide would be depreciated, and second, reconciliation in the post-conflict setting would be rendered more difficult by terming, or inflating, so many massacres as genocide, i.e., the worst crime known to humankind.¹⁵ In fact, the drafters of the Genocide Convention had opted for a strict construing of the term ‘genocide’. They were concerned that unless strictly construed ‘the idea of genocide [could] be expanded indefinitely to include the laws of war, protection of minorities or respect for human rights’ thus depreciating its stigma which ought to be assigned to the ‘most heinous crimes of intentional group destruction’.¹⁶ This conforms with the idea that in the pantheon of evil, genocide evokes greater condemnation than do other offences such as crimes against humanity or war crimes.¹⁷ Scholarly and legal opinion remains divided nonetheless on the interpretation of the size of the group with both strict and expansive interpretations—as defined above—being offered by scholars and legal experts.¹⁸

Although the question of the terminology is not entirely resolved, there is wide consensus on the close connection of genocide with war.¹⁹ In the strict definition of genocide, virtually all cases have occurred during war. The connection of genocide with war is frequently mediated by the state, in the sense that most modern acts of genocide have been highly organized, officially sanctioned campaigns—directed at defenceless and unresisting civilians—in the midst of an intra- or inter- state war.²⁰ Indeed, the main perpetrator of genocide has been almost always a state, genocide being a negative expression of state power and a display of state monopoly of power. A state-sanctioned affair in the midst of fighting, genocide has relied on war in many ways. In all examples mentioned above, war has offered social, political, strategic and psychological conditions conducive to genocidal killing. War can also play a role in masking genocidal activities and attribution of deaths by the perpetrators to ‘casualties of

war'.²¹ War creates organizational, political, and psychological conditions that facilitate the outbreak of genocide. Whilst war increases vulnerability of civilians, especially of the targeted groups, in war times government power becomes more centralized, using censorship and propaganda to increase support for its belligerent policies.²² Genocidal governments have consistently utilized military force for the purposes of perpetrating genocide.²³

Moreover, those engaging in genocide use ideology—nationalist, racial, or religious—to define people targeted for purging and elimination. Like war, genocide may be justified by a fear of a threat connected with the targeted people, which might be illusionary or real. Victims are dehumanized and perceived as lying outside the moral obligations of the perpetrators. They are frequently portrayed as subhuman and evil, and thereby—from the perpetrators' point of view—deserving death.²⁴ Getting rid of the adversary has not necessarily been simply an end in itself, but rather a means to an end. Genocide, therefore, can be seen as a state's political and military instrument to achieve an end—frequently conceived to maximize the efficiency of a conquest. Indeed, in the course of war, including the Bosnian War of 1992-95, the motivation of the genocidaires have been at least twofold: to accomplish war aims of acquiring territory cleansed of undesired peoples and simultaneously improve the chances of negotiating a favourable peace; and enhance solidarity and unity amongst the community of the perpetrators.²⁵ Hence, in the course of war, genocide seeks to serve what perpetrators perceive to be an intended function of security—although the actual effects of genocide can differ from intended ones.²⁶

Effects of genocide on societies do not cease when a peace deal is reached to end the fighting. The purposeful use of genocide continues in the post-war era as a fragile peace takes hold, frequently coupled with (new) expressions of nationalist ideology and new forms of identity

politics. Whilst in the course of war, genocide is intended to benefit the perpetrators, in the aftermath of war, genocide can lend credence to the victims' community demands for recognition, accountability, and redress. Yet, frequently, denial of genocide assists the perpetrators' community to avoid responsibility and reparations. These differing usages of genocide on the side of the community of victims and that of perpetrators undermine societal cohesion and prospects of sustainable peace. Moreover, the instrumental uses of genocide in the post-conflict setting reflect rationales that go at the heart of (contested) claims for political authority and legitimacy, a point that will be explored below in the Srebrenica's setting.

Place of Srebrenica in the Bosnian War

The place of Srebrenica in the Bosnian War is such that it is not really possible to think of one without the other. As Mark Danner has observed: just like 'the world is contained in a grain of sand, so the war in Bosnia is contained—in the barbarity and the disinclination of the "civilized world" to stop it—in the massacre at Srebrenica'.²⁷ In the international perception, the interrelation between the Srebrenica genocide and the Bosnian War may have been cemented on those faithful days (11-19) of July 1995, but such intertwining on the ground certainly preceded those dates. The complex causes of the Bosnian War have been examined in many studies and will not be revisited here due to lack of space.²⁸ The purpose of this section is to emphasize how the Srebrenica genocide manifested a key feature of the Bosnian War, namely the policy of ethnic cleansing in its most severe expression, and how Srebrenica embodied the flawed international response to this war in the form of the so-called 'safe areas' and ultimately the failure of peace-keeping, which in the face of genocide induced a more decisive response from the international community that became crucial both to the conclusion of the genocide and the war.

Srebrenica has been repeatedly subjected to ethnic cleansing during the war prior to the fateful month of July 1995. In many ways, Srebrenica epitomizes the main criminal feature of the Bosnian War, especially related to the first year of fighting (1992-1993) during which most non-Serbs were forced out of Serb-controlled territory, and majority of killings, rapes, tortures, etc., occurred.²⁹ The most tragic, and prolonged armed conflict on European soil since WWII, the Bosnian War was characterized from the outset by a policy of ethnic cleansing centered on forceful expulsion of targeted communities as a means of controlling territory and resources by the perpetrators and their ethnic kin.³⁰ A town in Eastern Bosnia—a region bordering Serbia—Srebrenica was geo-strategically important for establishing territorial continuity between holdings of the Bosnian Serb Army in eastern Bosnia and Serbia proper. According to the ICTY as early as mid-May 1992, the Bosnian Serb Political and Governmental Organs had adopted the goal of eliminating the Drina River as a border separating eastern Bosnia from Serbia by establishing a foothold in the Drina River valley.³¹ Occupied by the Serbian forces in April 1992, the majority Muslim population of Srebrenica was expelled in the course of this takeover. In May that year, the Bosniak forces managed to take control of the town, turning it into a base for Muslims expelled from their homes elsewhere in Eastern Bosnia, and also for Bosniak fighters who aimed to join Srebrenica with other small enclaves with substantial Muslim population.³² The crowded town's population lived in calamitous conditions, at times relying on Bosniak raids in neighbouring Serb villages which occasionally led to Serb casualties.³³ The ICTY sources show that in November 1992, the Bosnian Serb Army (VRS) devised a military strategy—incribed in Directive 4—to force the Bosnian Muslim population to leave the wider Srebrenica area. After several months of intense combat, the VRS launched a major offensive at the end of March and beginning of April 1993 which resulted in the expulsion of Bosnian Muslims from Vlasenica and Bratunac municipalities to Srebrenica.³⁴

Serb forces threatened to retake the latter, but a change of tack of the UN peacekeeping in the country postponed the Serb retake.³⁵

This change of tack pertains to the ‘safe areas’ policy which constitutes the second aspect that renders Srebrenica central to the Bosnian War. On April 16, 1993, UN Security Council Resolution 819 declared Srebrenica a ‘safe area’ a pioneering model which provided for protection of the town by the United Nations Protection Force (UNPROFOR). The Resolution inscribed that: ‘all parties and others concerned treat Srebrenica and its surroundings as a safe area that should be free from armed attack or any other hostile act’.³⁶ The ‘safe area’ model was then expanded to other cities and towns—Sarajevo, Tuzla, Bihać, Žepa, and Gorazde—and appeared, initially at least, to be central to UNPROFOR’s mission in Bosnia. Nonetheless, the hope that ‘safe areas’ would provide protection of civilian population was short lived. Indeed, no viable protection could be offered by lightly armed, small UNPROFOR units with no mandate to *enforce* peace. Protection of ‘safe areas’ was a job for combat-capable, peace-enforcement operations, but the UN troops on the ground were given only a peacekeeping mandate—a strategic incompatibility, since there was no peace to keep and civilians were increasingly the targets of violence. Srebrenica, therefore, exposed the flaws of the ‘safe areas’ policy, and the lack of international commitment to defend them.

Furthermore, Srebrenica was central to the Bosnian War in terms of the escalation of the war and simultaneously by giving expression to the failure of the peacekeeping mission in the country. In spring 1995, the Serbian leadership undertook to change its military strategy and escalate fighting. This followed the (re)establishment of the Croat Bosniak alliance (brokered by the United States), a gradual lifting of the UN arms embargo (an embargo that reinforced Serb military superiority), and tightening of economic sanctions against Serbia and Republika

Srpska.³⁷ Part of the Serbian plan related to physical separation of Srebrenica and Žepa—inscribed in the strictly confidential ‘Directive for Further Operations No. 7’ (‘Directive 7’ issued on March 8, 1995)—with the view of creating a situation of complete insecurity that would undermine prospects of civilians’ self-defence and survival.³⁸ This, in turn, would prepare the ground for the takeover of Srebrenica, and ultimately create favourable conditions for a peace agreement on Serbian terms. The Serbian offensive on the UN ‘safe area’ of Srebrenica commenced on July 6, 1995 without being confronted by the Dutch peacekeepers (Dutchbat) stationed in the enclave. UNPROFOR’s vulnerability was made crystal clear in May that year, when 347 Dutch peacekeepers were taken hostage by the Bosnian Serb Army (VRS), as a consequence of which UNPROFOR prioritized its own security rather than that of the civilian population it was supposed to protect.³⁹ In one of the most detailed judgements delivered by the ICTY, the Trial Chamber in *Prosecution vs. Radovan Karadžić* (2016) showed that as Srebrenica fell, a group of Serb leaders—including Radovan Karadžić, Ratko Mladić, Ljubiša Beara, and Vujadin Popović—formed and executed a plan to eliminate the Bosnian Muslims of Srebrenica by forcibly removing the women, children and elderly men. In the night of July 11 and the morning of July 12, this plan expanded to encompass the killing of the able-bodied men and boys.⁴⁰ In the ensuing days—July 12-19—at least 7,661 Bosniak men and boys were killed and tens of thousands of civilians, mostly women and children, were expelled to central Bosnia in a systematic and accelerated campaign of ethnic cleansing that now is widely recognized to meet the constitutive elements of the *actus reus* of genocide.⁴¹

This darkest moment of the Bosnian War represents a monumental failure of peacekeeping. Members of the Dutchbat themselves ‘facilitated the crimes in the enclave’,⁴² helping Serbian troops to separate men and boys, on one side, from the female and elderly population, on the other, and expelling the latter.⁴³ The fall of Srebrenica—in the presence of the UN

peacekeeping troops—and the massive loss of civilian life brought genocide back to Europe after some fifty years since the Holocaust. In marking the failure of the aspiration ‘Never Again’ the Srebrenica genocide meant a serious loss of prestige for the United Nations and was one significant factor that stirred the international community into a more decisive action to end violence. This constitutes another aspect in which Srebrenica is central to the Bosnian War. The fall of the enclave and the failure of the UN to protect its civilian population was a culmination of a pattern of tepid international response to the war marked by reluctance of the Great Powers to intervene. But just few days after the fall of Srebrenica, the United States made the robust decision to use force to end the Bosnian War.⁴⁴ Thus, the Srebrenica genocide was a crucial turning point that led to ‘the ending’ of the Bosnian War. The ensuing NATO’s air strikes were a factor to bringing the Bosnian Serbs to the negotiating table, resulting in the General Framework Agreement (GFA—known also as the Dayton Agreement) worked out in Dayton, Ohio, in November 1995, which officially ended the war. The Dayton Agreement—whose negotiators included some organisers and perpetrators of ethnic cleansing—provided for two distinct entities within Bosnia, namely the Muslim-Croat Federation holding 51 percent of Bosnia’s territory and Republika Srpska holding the remaining 49 percent. An inter-entity boundary line (IEBL) confirmed a *de facto* partition of the country. The GFA was construed in an ambivalent fashion; whereas it provided that the displaced people had the right to freely return to their homes of origin (‘domicile return’) it also conformed to the 1951 Refugee Convention in adhering to the principle of non-refoulement, that is, the GFA provided also for the right of refugees not to return but to resettle in a place of their choice. As some distinguished scholars of Bosnia have noted, the GFA was a poor basis for establishing a suitable modern state because it created a state that was defined in terms of the people who created the war and sanctioned and/or perpetrated ethnic cleansing.⁴⁵

Srebrenica and the genocide debate

Srebrenica is also central to an important and ongoing debate on genocide, both as it pertains to this particular case and also as it relates to the genocide phenomenon in general. The use of the term ‘Srebrenica genocide’ ultimately suggests implicit assumptions about what this genocide is and what effects it has. Whilst the first section shed light on the legalistic interpretation of the term ‘genocide’, this section brings into focus some legal and political repercussions of the process of representation of Srebrenica as a case of genocide.

The inception of the genocide debate in the context of the Bosnian War can be traced in March 1993 when, faced with the international community’s reluctance to intervene and end the fighting, the government of the newly recognized Republic of Bosnia and Herzegovina filed in the International Court of Justice (ICJ) a case against the Federal Republic of Yugoslavia (then comprising Serbia and Montenegro). In this unprecedented case, the Sarajevo government asserted that the Federal Republic of Yugoslavia was responsible for violating the Convention on the Prevention and Punishment of the Crime of Genocide.⁴⁶ This was as much a legal case as a political and social one, in so far as the Bosnian government sought to bring the suffering of its people to the attention of the world’s leaders and persuade the international community to intervene to stop maltreatment of civilians and induce the Serbian forces to cease their aggression in Bosnia. The proceedings of this case, however, run through severe delays due to the Bosnian government’s limited resources, and Belgrade’s fierce opposition to the case. The ICJ case was eventually decided after thirteen long years, in February 2007, a decision which is referred to below.⁴⁷

Legal battles over war crimes committed in the course of the Bosnian War—including genocide—continued in numerous cases considered by the ICTY in The Hague. A number of

these cases related directly to Srebrenica including the proceedings against Radovan Karadžić and Radko Mladić, and cases of Radislav Krstić, Vujadin Popović *et. al.*, and Zdravko Tolimir.⁴⁸ Of these, the Krstić case (2001)⁴⁹ is of particular significance because it established beyond reasonable doubt that genocide was committed in Srebrenica. Working with the legal definition provided in the UN Genocide Convention that considers intent of the perpetrators and scale as key, distinguishing elements of genocide, the Krstić judgement ascertained that the destruction of such a large number of Srebrenica men would ‘inevitably result in the physical disappearance of the Bosnian Muslim population at Srebrenica’.⁵⁰ Until this time, this was the first and only case in which the ICTY confirmed that genocide was perpetrated by the Serb troops against Bosniaks of Srebrenica. It took the ICTY fourteen more years to deliver the first full genocide judgement in 2015.⁵¹ So far only five indictees have been sentenced on genocide charges.⁵²

The limited convictions notwithstanding, classification of events at Srebrenica in July 1995 as genocide carries huge significance for Bosniak victims’ families and their wider community in terms of recognizing the extraordinary nature of their suffering and concomitantly victims’ efforts for redress. Such classification, nonetheless, has not gone unchallenged by legal experts, although the criminality of actions of Bosnian Serbs forces is undisputed. William Schabas—a professor of international law—has argued that although the atrocities at Srebrenica ‘surely qualify’ as crimes against humanity, ‘categorizing them as “genocide” seems to distort the definition unreasonably’.⁵³ Prosecutor’s contention that the intent in killing the men and boys of military age was to eliminate the community as a whole was accepted by the Trial Chamber.⁵⁴ However, Schabas suggests that this conclusion was a rather ‘enormous deduction’ and contends that the group ‘could have been targeted precisely because they were of military age and thus were actual or potential combatants’.⁵⁵

Despite these contestations, the classification of Srebrenica as genocide, received new boost with the 2007 decision of the ICJ on the case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide that the Bosnian government initiated against Serbia in 1993. Relying on ICTY material, the ICJ reached the conclusion that the Srebrenica massacre of July 1995 was an act of genocide under international law. In addition, the 2007 ICJ judgement confirmed the large extent to which Belgrade had supported Serb forces in Bosnia (by providing military, political, and financial aid) and the strong influence it had upon Bosnian Serb leaders, acts which, in effect, rendered Serbia an accomplice in the Bosnian War.⁵⁶ The 2007 ICJ judgement did find Serbia guilty for not preventing genocide, not punishing genocide and not cooperating with the ICTY.⁵⁷ However, the judgement restricted Serbia's culpability in that it found that the Belgrade government possessed no special intent to commit genocide in Bosnia.⁵⁸ This restriction of Serbia's culpability not only disappointed survivors and some analysts, but it also exposed discrepancy regarding legal consistency of the ICJ reasoning. The ICTY, on whose work the ICJ relied, inferred genocidal intent from factual, circumstantial evidence. Yet although establishing the large extent of Belgrade support for Bosnian Serbs and Belgrade's strong influence on their ethnic kin in Bosnia, the ICJ did not infer that Belgrade was an accomplice in the Srebrenica genocide or had the intent to commit genocide—showing that the ICJ adopted a strict, conservative interpretation of the term.⁵⁹ The space available here does not allow for engaging more elaborately with the elements of the ICJ 2007 judgement and ICTY judgements related to Srebrenica. Overall, assessments of these judgements contain both criticism and appraisal.⁶⁰ Nevertheless, in the context of this paper, it is worth noting three aspects of this legal work with reference to construction of knowledge about the occurrence of genocide and what responses such mass killing may (fail to) entail.

First, these judgements have contributed to establish beyond reasonable doubt a detailed factual record of the Srebrenica genocide, and other atrocities related to cases evaluated therein. The ICTY—and ICJ 2007—judgements narrate the evil which gripped Srebrenica and Bosnia in the course of war: crimes committed, criminals involved, extent of planning, and details of execution of such plans. These judgements influence the understanding and interpretation of events at Srebrenica in particular and the Bosnian War in general as well as their implications for the post-conflict era (in terms of a hierarchy of crimes, suffering, and redress). Therefore, the corpus of judicial pronouncements produced as a result of criminal trials related to Srebrenica and elsewhere in the course of the Bosnian War have contributed to construction of social knowledge about the Srebrenica genocide and other serious violations of human rights during the war.⁶¹ This work has also provided one particular frame within which the memories of genocide and war have been shaped and articulated.

Second, by singling out only crimes in Srebrenica in July 1995 as a case of genocide in the broader setting of the Bosnian War, the legal body of work produced by the ICTY and ICJ have actually atomized the concept of genocide in the sense that they have inferred that a wider conflict may not be considered genocide, yet a mass atrocity in its midst may be qualified as such.⁶² In the opinion of this writer, such atomization has not added clarity to the definitional debate pertaining to genocide. Indeed, this atomization is of some concern to those who adhere—strictly—to the letter of the Genocide Convention because judicial interpretations of the ICTY and the ICJ 2007 judgements have made genocide applicable to situations that differ from the prototype of systematized and massive group destruction, such as for instance the Holocaust that initiated the concept of genocide in the first place.⁶³

Third, the extraordinary nature of genocide is closely connected not only with the high degree of severity of crimes committed under the umbrella of genocide, but also with the political nature of the offence and also the political response inscribed in the Genocide Convention. Indeed, codified in the Convention is the duty to ‘prevent and to punish’ genocide.⁶⁴ A genocide occurring in times of war as well as peace requires intervention—a realistic prospect when political will and the national interest of Great Powers allow. Nonetheless, this is not universally the case as Rwanda (1993), Darfur (2000s) and ongoing carnage in the Syrian War attest.⁶⁵ Hence, the Srebrenica judgments whilst penalising *ex post facto* the offence of genocide have also exposed an ongoing reluctance of the international community to discharge the duty of intervention to stop that extraordinary offence, a duty implied in the Genocide Convention.

Politics of national identity: Utility of genocide and its denial

For the people of Bosnia the significance of genocide is not constrained solely to legalistic criteria and court cases pertaining to the massacre of July 1995. Indeed, genocide has become an intrinsic part of who Bosniaks are; the genocide informs ways of thinking both about the past and the present, and conditions how Bosniaks relate to the international community and their former opponents—Serbia and the Serbs. Ever since the occurrence of the genocide, victims have demanded recognition of their ordeal. They have engaged in acts of commemorations—most prominently those at the Memorial and Cemetery Centre at Potočari, the Peace March (Marš Mira), and mass burials acts that exert public recognition of war and suffering, and enhance collective memory and national identity.⁶⁶

The significance of commemorations and collective memorialization can be construed not only as a psychological need—an expression of mourning, a human response to death and suffering

on a very large scale—but also as profoundly *political*. The political aspect of commemorations lies in the fact that they are a crucial element in the symbolic repertoire available to the national elites for binding citizens into a collective national identity.⁶⁷ Numerous works have emphasized the power of commemorations to draw upon the sacrifice and loss occasioned by war and genocide as a means of shaping national identity and preserving, reinforcing, or challenging dominant elites and ideologies within a given state.⁶⁸ Suffering incurred in the course of war and genocide can be central to the identity and symbolic continuity of a nation. As Anderson has stipulated, a nation ensures its symbolic continuity by construing its members as forming an imagined community that surpasses death, whereby the living generations feel their connection with the dead co-patriots thus securing the nation's imagined continuity and transcendence of time.⁶⁹ Memory of persecution and suffering has become a crucial marker of the Bosnian heritage. One of the most significant attributes of the Srebrenica genocide—perhaps its greatest political utility—has been the enhancement of Bosnian national identity, that is, enhancement of the national identity of Bosnian republic inhabitants who adhere to the idea of Bosnian statehood.

Srebrenica is central to commemorations both at home and abroad. For instance, in May 2007 the High Representative for the implementation of the Peace Agreement on Bosnia and Herzegovina—Mr Christian Schwartz-Schilling—urged the United Nations to establish the UN Day of Srebrenica to pay respect to genocide victims and families.⁷⁰ In the United States, resolutions have been passed—at the federal, state, and city government levels—that have remembered the victims of Srebrenica and have condemned the massacre as a case of genocide.⁷¹ On January 15, 2009, the European Parliament declared July 11 Srebrenica Genocide Commemoration Day and other parliaments in Europe followed suit.⁷² These commemorations at the international level—grounded on principles of international human

rights law—complement those at the national level. Jointly, they represent a dominant frame within which the Srebrenica genocide is understood and its memory is articulated.

The legacy of suffering has become a core component of national identity, and claims for entitlements and redress. Srebrenica's Bosnian population has developed its own criteria of suffering and entitlement that have been tied to humanitarian aid and social welfare. Bosnians judge each other according to implicit criteria about who is most deserving of aid. This criterion is based on who has lost and suffered most. There is a distinction, for instance, between those who fled in the spring of 1992—before the violence engulfed the city—and the 365 residents who remained in the enclave and suffered throughout the war including the Srebrenica massacre in July 1995.⁷³ A further distinction exists in terms of loss of family members, as the most implicit measure of entitlement and suffering. Sarah Wagner has noted that although survivors did not openly compare their losses, there is an unspoken 'hierarchy of sufferers' in which special status is reserved for those who suffered most.⁷⁴

The memory of Srebrenica genocide, therefore, has become part of Bosnia's social structures in the sense that it permeates social practices of status and entitlements. This memory is also socially framed: it is mediated by Bosnian elites and their vested interests. The framing of Srebrenica is conditioned not only by the tragedy and suffering incurred in the past but also by current internal power relations and political circumstances of the present. As the former High Representative for the implementation of the Peace Agreement on Bosnia and Herzegovina—Christian Schwartz-Schilling—has asserted, Bosnian politicians have used the Srebrenica tragedy to advance their political agendas.⁷⁵

The political use of genocide is not an exclusive domain of Bosnian Muslim politicians. Serbian nationalists—both in Bosnia and Serbia—have not failed to capitalize on the utility of genocide’s denial and forgetting. Genocide denial is still common among the Serbs. Testimony of this is the memorial that Serbs have erected near Potočari—a sign of antagonistic struggle over competitive memory and victimhood. Moreover, Serb leaders refuse to label killing at Srebrenica as genocide. Just three days after taking office (May 2012), the current Serb President—Mr Tomislav Nikolić—rushed to declare that no genocide took place in Srebrenica in contradistinction to the findings of the ICTY and ICJ judgements.⁷⁶ In April 2013 President Nikolić apologized on behalf of Serbia in relation to Srebrenica but avoided referring to the massacre as genocide.⁷⁷

At one level, the Serbian denial is grounded on a relation with the past, that is, refusal to acknowledge the gravity of July 1995 crimes for what they were and for what they represent in line with international law canon. This denial not only devalues claims to truth championed by genocide’s survivors but also erodes social knowledge about the past which is produced by the finding of the legal judgements. At another level, genocide denial is grounded on a relationship with the present. The Serbian elite in Belgrade realize that acknowledging that Srebrenica massacre of July 1995 constitute genocide renders them liable for huge sums of reparations. In addition, accepting the blame for Serbia’s involvement in Srebrenica—and in the Bosnian War, generally—subverts the Belgrade sponsored narrative according to which the war was portrayed as a civil one and grounded on a false reciprocity of victimhood according to which all parties were viewed as equally victims.⁷⁸ This rhetoric (of false reciprocity of victimhood) persists despite the fact that the total number of Serb civilian casualties in the course of the four year Bosnian War approximates only the number of Bosniaks killed by Serbian forces in Srebrenica in one month alone.⁷⁹ Furthermore, in the post-war setting

domestic stakeholders in Serbia have used the Srebrenica discourse in order to define their own political profile for domestic political competition and also discredit political rivals—with the progressivist parties arguing that Serbia needs to strengthen her international position and build its credibility in Europe and nationalists accusing progressivists of ‘selling the country out to Europe’.⁸⁰

Similarly, for Serbian politicians in Bosnia contestation of the war and events at Srebrenica reflect not only a response to the past, but also a particular standing towards the present. The current Republika Srpska (RS) President—Mr Milorad Dodik—continues to insist that no genocide occurred at Srebrenica.⁸¹ Genocide denial goes at the heart of (challenging) the construction of the political community in the aftermath of war, because it undermines—even denies—survivors’ requests for return to their former homes, rebuild their livelihood and opportunities for employment. Although the UNHCR announced in September 2004 that one million persons had returned home in Bosnia, the reality of those returns is a largely sobering one. By 2004 the peak years for returns had passed, and the one million figure included only 40 percent of the 1.2 million refugees who left the territory of Bosnia during the war. The other 720,000 Bosnians remained outside the country. Furthermore, 56 percent of returns were majority returns. In most places the number of minority returns is well below 20 percent.⁸² In particular, genocide denial for the Serbian elite of the Republika Srpska is self-serving; it is conducive to a new political reality where Bosniaks have been permanently ethnically cleansed.

Divisive and ethno-nationalist rhetoric has been a constant feature of the political discourse on Srebrenica in particular, and Bosnia in general. Radical rhetoric has poisoned the political environment. In particular, the conflict over the genocide terminology has been an element of a broader struggle over national identity mediated by competing representations of the use of

armed force in the course of war. For the Serbs, denial of genocide is part of a struggle to render their meaning of violence dominant (at least within their community) in order to secure legitimacy for their own use of force in Srebrenica, and in the course of the Bosnian War generally, and acceptance of a new political and social reality in RS where Bosniaks have been uprooted permanently. For the Bosnian Muslims, on the other hand, the genocide debate is an avenue for rendering illegitimate Serbian violence in Srebrenica, because genocide can never be justified neither on moral nor on legal grounds. At the centre of naming the Srebrenica massacre as genocide or otherwise are attempts to use alternative frames for assigning significance to the conflict grounded on competing constructions of meaning, that in turn provide the basis for the contestation of the use of armed force, memories of genocide, and the post-war construction of the political community.

Concluding remarks

This paper has contributed towards a deeper understanding of correlations between genocide, war, and peace. It has scrutinized the meaning of the Srebrenica genocide and offered an appreciation of the long shadow it continues to cast more than twenty years after its occurrence and the ending of the Bosnian War. The analysis has suggested that relations of power have been central to the happening of Srebrenica as much as they remain central to ways of dealing with the tragedy in the post-conflict setting. War in itself, under whose mantle genocide occurs, embodies (asymmetrical) relations of power that enable genocidal killing. Whilst war and genocide are not synonymous, war has been conducive to genocide because it creates organizational, political, and psychological conditions that facilitate large scale killing of targeted people. The occurrence of the Srebrenica genocide in the midst of the Bosnian War reflects a historical pattern of the coupling of genocide with war that constitutes a serious security predicament for the international community.

Central to the Bosnian War in a number of ways, the Srebrenica genocide became also its turning point. Faced with genocide on European soil some fifty years after the Holocaust, the international community resolved to end the war after three years of fighting and hold accountable some of the perpetrators of genocide, war crimes, and crimes against humanity committed in the course of fighting. The large legal body of work produced by the ICTY in relation to crimes committed in Srebrenica on July 11-19, 1995 has provided the ground for deep debates on the meaning of genocide and interpretations of its constitutive elements. Yet, the ICTY case law has not offered a clear answer on the interpretation of intent and the size of the group targeted for destruction. Moreover, some critics are discontented that Srebrenica has been decontextualized from the rest of the Bosnian War, and that the concept of genocide has been atomized in the sense that only one mass atrocity in the midst of the Bosnian War—amongst too many similar such cases—has been classified as genocide. This decontextualization and atomization of genocide remain a source of contention amongst analysts and disappointment for the community of victims.

At the national level, the genocide discourse has been characterized by divisive ethno-nationalist rhetoric strongly informed by the political agendas of Bosnian and Serb elites as they vie for alternative interpretations of the use of violence in the course of war and the legitimacy of their post-war policies. The genocide discourse is profoundly political. Not only does it provide elites with a symbolic repertoire for binding citizens into a collective national community but it also underpins competing social practices of status and entitlements, as well as claims to political control. Central to defining the Srebrenica massacre as genocide or otherwise are attempts to utilize competing frames of meaning that contest narratives of war, memories of genocide, and post-war construction of the political community.

After more than twenty years since the ending of the war, Srebrenica continues to be an unfolding story of denial of genocide by the Serb establishment and memorialization of the tragedy by the Bosnian Muslims as new revelations about mass killing still emerge from court proceedings and newly discovered mass graves. The effects of competing narratives of events at Srebrenica in July 1995 on the side of the Bosnians and the Serbs have been the lingering distrust and resentment between these communities and their leaders. In turn, distrust and discontent undermine prospects that a shared historical record of events be accepted in the country as a whole, and that a forward-looking dialogue between ethnic communities takes hold. This legacy of the genocide undermines Bosnia's social cohesion and remains an impediment to the consolidation of peace.

Notes and References

¹ Useful introductory texts on genocide studies include Chalk, F., & Jonassohn, K. (1990). *The history and sociology of genocide*. New Haven and London, Yale University Press; and Meierhenrich, J. (2014). *Genocide: A reader*. Oxford: Oxford University Press.

² Refer, for instance, to Bazylar, M. (2016). *Holocaust, genocide, and the law*. Oxford: Oxford University Press; and Straus, S. (2006). *The order of genocide: Race, power, and war in Rwanda*. Ithaca: Cornell University Press.

³ The 100,000 casualties figure in the course of the Bosnian War include both civilian and military deaths. The majority of casualties, however, were civilians. No less than 31,500 people went missing in the course of the Bosnian War—8,000 of whom are still missing. Vulliamy, E. (2016, December 12). The appalling reality of Bosnia's missing dead, BBC Future. <http://www.bbc.com/future/story/20161212-the-appalling-reality-of-bosnias-missing-dead>. BBC News. (2013, November 1). Huge Bosnia mass grave excavated at Tomasica. <http://www.bbc.co.uk/news/world-europe-24778713>. Burg, S.L. & Shoup P.S. (1999). *The War in Bosnia-Herzegovina: Ethnic conflict and international intervention*. Armonk, N.Y.: M. E. Sharpe.

⁴ Wintour, P. (2016, June 16). UN condemns Isis genocide against Yazidis in Iraq and Syria. *The Guardian*. <https://www.theguardian.com/world/2016/jun/16/un-condemns-isis-genocide-against-yazidis-in-iraq-and-syria>

⁵ Lemkin, R. (1944). *Axis rule in occupied Europe*. New York: Columbia University Press.

⁶ United Nations. (1948). UN Convention on the Prevention and Punishment of Genocide <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>.

⁷ Schabas, W. (2009). *Genocide in international law: The crime of crimes*, 2nd Edition. Cambridge: Cambridge University Press, Chapters 4 and 5.

⁸ Although ethnic cleansing is not necessarily genocide, the International Court of Justice (ICJ) has ruled that there can be situations where ethnic cleansing may satisfy the constitutive elements of genocide: ‘This is not to say that acts described as “ethnic cleansing” may never constitute genocide, if they are such as to be characterized as, for example, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction “in whole or in part”, contrary to Article II, paragraph (c), of the Convention, provided such action is carried out with the necessary specific intent (*dolus specialis*), that is to say with a view to the destruction of the group, as distinct from its removal from the region . . . In other words, whether a particular operation described as “ethnic cleansing” amounts to genocide depends on the presence or absence of acts listed in Article II of the Genocide Convention, and of the intent to destroy the group as such’. ICJ. (2007). *Bosnia and Herzegovina v. Serbia and Montenegro*. ICJ Reports 2007 (I), p. 190. <http://www.icj-cij.org/docket/files/91/13685.pdf>

⁹ International Criminal Tribunal for Rwanda (ICTR). (1998). *The Prosecutor v. Jean-Paul Akayesu*, Case No.96-4-T. September 2. Paragraph 497. <http://www.un.org/en/preventgenocide/rwanda/pdf/AKAYESU%20-%20JUDGEMENT.pdf>. ICTR. (1999). *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, Case No. 95-IT. May 21. Paragraph 95. <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ictr-95-1/trial-judgements/en/990521.pdf>. International Criminal Tribunal for former Yugoslavia (ICTY). (1999). *Prosecutor v. Goran Jelisić*, Case No. IT-95-10. December 14. Paragraphs 79-83. <http://www.icty.org/x/cases/jelisc/tjug/en/jel-tj991214e.pdf>.

¹⁰ Refer, for instance to, ICTY. (2004). *The Prosecutor v. Radislav Krstić*. Appeals Chamber Judgement. Case No. IT-98-33-A. April 19. Paragraph 8. <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>. ICTY. (2015). *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić, and Vinko Pandurević*, Appeals Judgement, IT-05-08-A. January 30. Paragraph 419. http://www.icty.org/x/cases/popovic/acjug/en/150130_judgement.pdf. ICTR. (1998). *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, paragraphs 505, 506.

¹¹ ‘[P]roof of specific intent, ... may, in the absence of direct explicit evidence, be inferred from a number of facts and circumstances, such as the general context, the perpetration of other culpable acts systematically directed against the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership of a particular group, or the repetition of destructive and discriminatory acts’. ICTY. (2001). *Prosecutor v. Goran Jelisić*. Appeal Judgement. July 5. Case No. IT-95-10-A. Paragraph 47. <http://www.refworld.org/docid/4147fcad4.html> Cited also in ICTY. (2015). *Prosecutor v. Vujadin Popović, et al.*, paragraph 468, at note 10.

¹² ICTY. (2004). *The Prosecutor v. Radislav Krstić*. Appeals Judgement. Paragraph 12, at note 10. Cited also in ICTY. (2015). *Prosecutor v. Vujadin Popović, et. al.* Paragraph 493, at note 10.

¹³ For an account of events in Srebrenica refer to United Nations. (1999). *The Fall of Srebrenica*, Report of the Secretary-General pursuant to General Assembly resolution 53/35. November 15, 1999, United Nations doc. A/54/549. <http://www.refworld.org/docid/3ae6afb34.html>. For an analysis of the figures of casualties refer to Brunborg, H., Tabeau, E., & Hetland, A. (2005). *Missing and dead from Srebrenica: The 2005 report and list*. (Expert Report for the Case of Vujadin Popović *et. al.* (IT-05-88). Reprinted in Tabeau, E. (Ed.). (2009). *Conflict in numbers. Casualties of the 1990s wars in the former Yugoslavia. Testimonies*. Vol. 33. Belgrade: Helsinki Committee for Human Rights in Serbia, pp. 399-430. Available at <http://www.helsinki.org.rs/doc/testimonies33.pdf>. I am thankful to Dr Helge Brunborg of the International Peace Research Institute (PRIO), Oslo, for alerting me to these sources. E-mail communication March 7, 2016.

¹⁴ Finkelkraut, A. (2000). *In the name of humanity*. New York: Columbia University Press.

¹⁵ Mulaj, K. (2003). *Ethnic cleansing in the former Yugoslavia in the 1990s: A euphemism for genocide?*. In Béla Várdy, S., & Tooley, T. H. (Eds.). *Ethnic cleansing in Twentieth-Century Europe* (pp. 693-711). Boulder, Co.: Social Science Monographs / Columbia University Press.

¹⁶ Wald, P. M. (2003). *General Radislav Krstić: A war crimes case study*, *Georgetown Journal of Legal Ethics*, 16, 445-72. Wald refers to the Commentary on the Secretariat Draft of the 1948 Genocide Convention, UN Doc. E/447.

¹⁷ Drumbl, M. (2004). Prosecutor v. Radislav Krstić: ICTY authenticates genocide at Srebrenica and convicts for aiding and abetting. *Melbourne Journal of International Law*, 5(2), 434-50.

¹⁸ For a representative sample of the strict interpretation refer to Schabas, W. A. (2001). Was genocide committed in Bosnia and Herzegovina? First judgements of the International Criminal Tribunal for the Former Yugoslavia. *Fordham International Law Journal*, 25(1), 23-53. The expansive interpretation of targeted group/s is more a characteristic of sociological studies on genocide. See, for instance, Fein, H. (1993). *Genocide: A Sociological Perspective*. London: Sage.

¹⁹ Refer, for instance, to Bartrop, P. (2002). The relationship between war and genocide in the Twentieth Century: A consideration. *Journal of Genocide Research*, 4(4), 519-532; and Shaw, M. (2003). *War and genocide: Organized killing in modern society*. Cambridge: Polity Press.

²⁰ Day, D.L., & Vandiver, M. (2000). Criminology and genocide studies: Notes on what might have been and what could be. *Crime, Law and Social Change*, 34(1), 43-59 at 44.

²¹ Bartrop, The relationship between war and genocide in the Twentieth Century, 519-532 (at note 19).

²² Dobkowski, M. N., & Wallimann, I. (Eds.) (1992) *Genocide in our time*. Michigan: The Pierian Press.

²³ Some authors have emphasized that consolidation of the nation state in the world political system has set the stage for the (re)occurrence of genocide in modern times. Refer, for instance, to Levene, M. (2008). *Genocide in the age of the nation state*. London: I.B. Tauris. Also, Bauman, Z. (1989). *Modernity and the Holocaust*. Cambridge: Polity Press.

²⁴ Day & Vandiver, Criminology and genocide studies, 44-5 (at note 20).

²⁵ Mulaj, K. (2008). *Politics of ethnic cleansing: Nation-state building and provision of in/security in Twentieth Century Balkans*. Lanham, MD: Lexington Books / Rowman & Littlefield, Chapter 3.

²⁶ It is not suggested here that genocide benefits perpetrators only in the course of war. Sadly, a successful genocide can benefit perpetrators also in times of peace when, for instance, forced homogenization of people can render control of territory more feasible and can justify perpetrators' claims for acquisition and control of that territory, as is the case of the Serb entity—Republika Srpska—in Bosnia.

²⁷ Danner, M. (2000). What Went Wrong. Essay on the documentary *Srebrenica: A Cry from the Grave*. www.markdanner.com. Documentary available on <https://www.youtube.com/watch?v=Fliw801iX84>.

²⁸ For a seminal study refer to Campbell, D. (1998). *National deconstruction: Violence, identity, and justice in Bosnia*. Minneapolis: University of Minnesota Press.

²⁹ I thank an anonymous reviewer for suggesting this point be made explicit.

³⁰ Mulaj, K. (2008) *Politics of ethnic cleansing* (pp. 121-160), at note 25.

³¹ International Criminal Tribunal for the Former Yugoslavia. (2016). *Prosecutor v. Radovan Karadžić*. IT-95-5/18-T. March 24. Paragraphs 4969-4970. Available at http://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf.

³² *Ibid.*, paragraphs 4993, 4994, 5002.

³³ Delpla, I., Bougarel, X., & Fournel, J-L. (2012). The Judge, the historian, the legislator. In Delpla, I., Bougarel, X., & Fournel, J-L. (Eds.). *Investigating Srebrenica: Institutions, facts, responsibilities* (pp. 3-7). Oxford: Bergham Books.

³⁴ ICTY. (2016). *Prosecutor vs. Radovan Karadžić*, IT-95-5/18-T, paragraph 5680, at note 31.

³⁵ Ibid., paragraphs 4969, 4970.

³⁶ United Nations Security Council (UNSC), (1993). Resolution 819, (S/RES/819) April 16, 1993. www.un.org/Docs/scres/1993/scres93.htm.

³⁷ The Serbian plan to escalate the war was inscribed in a number of documents of the Republika Srpska (RS) government which have been examined by the ICTY in a number of Srebrenica trials related to the role of the RS military and political leaders. Refer, for instance, to International Criminal Tribunal for former Yugoslavia (ICTY). (2001). *Prosecutor v. Radislav Krstić*. Case No. IT-98-33-T. August 2. <http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>. ICTY. (2010). *Prosecutor v. Vujadin Popović et al.* Case No IT-05-88-T. June 10. <http://www.icty.org/x/cases/popovic/tjug/en/100610judgement.pdf>. ICTY. (2012). *Prosecutor v. Zdravko Tolimir*. Case No. IT-05-88/2-T. December 12. <http://www.icty.org/x/cases/tolimir/tjug/en/121212.pdf>.

³⁸ ICTY. (2016). *Prosecutor v. Radovan Karadžić*, paragraphs 4979, 4980, 4981, 5680, at note 31.

³⁹ For the Serbian rationale for the UN peacekeepers hostage taking refer to Ibid., paragraphs 5857-5863, 5999.

⁴⁰ Ibid., paragraphs 5755, 5814, 5849, 5998.

⁴¹ The figure cited here comes from Brunborg, H., Tabeau, E., & Hetland, A. (2005). Missing and dead from Srebrenica: The 2005 report and list., at note 13.

⁴² Nettelfield, L. J., & Wagner, S. E. (2014). *Srebrenica in the aftermath of genocide*. Cambridge: Cambridge University Press (p. 14).

⁴³ The UN failure at Srebrenica cannot be attributed to the Dutchbat *only*. The Sarajevo command and the headquarters in New York were implicated too. I thank an anonymous reviewer for suggesting this point.

⁴⁴ Burg, S., & Shoup, P.. (2000). *The war in Bosnia-Herzegovina: Ethnic conflict and international intervention*. New York: ME Sharpe, (p. 382).

⁴⁵ Toal, G., & Dahlman, C. T. (2011). *Bosnia remade: Ethnic cleansing and its reversal*. Oxford: Oxford University Press; McMahon, P., & Western, J. (2009). 'The Death of Dayton: How to stop Bosnia from falling apart. *Foreign Affairs*, 88(5).

⁴⁶ Boyle, F. A. (1994). *The Bosnian people charge genocide: Proceedings of the International Court of Justice concerning Bosnia vs. Serbia on the prevention and punishment of the crime of genocide*. Northampton, MA: Aletheia Press.

⁴⁷ International Court of Justice (ICJ). (2007). Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide. February 26. <http://www.icj-cij.org/docket/files/91/13685.pdf>.

⁴⁸ International Criminal Tribunal for former Yugoslavia (ICTY). (1995). *Prosecutor v. Radovan Karadžić and Ratko Mladić*. Case No. IT-95-18-I. Indictment. November 14. <http://www.icty.org/x/cases/karadzic/ind/en/kar-ij951116e.pdf>. ICTY. (2016). *Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, at note 31. ICTY. (2001). *Prosecutor v. Radislav Krstić*. Case No. IT-98-33-T. August 2. <http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>. ICTY. (2010). *Prosecutor v. Vujadin Popović et al.* Case No IT-05-88-T. June 10. <http://www.icty.org/x/cases/popovic/tjug/en/100610judgement.pdf>. ICTY. (2012). *Prosecutor v. Zdravko Tolimir*. Case No. IT-05-88/2-T. December 12. <http://www.icty.org/x/cases/tolimir/tjug/en/121212.pdf>.

⁴⁹ ICTY. (2001). *Prosecutor v. Radislav Krstić*. Case No. IT-98-33-T. August 2. <http://www.icty.org/x/cases/krstic/tjug/en/krs-tj010802e.pdf>.

⁵⁰ ICTY. (2004). *Prosecutor v. Radislav Krstić*. Appeals Chamber Judgement. Case No. IT-98-33-A. Paragraphs 28-33, at note 10. For in depth analysis of Krstić decision see Drumbl. (2004). *Prosecutor v. Radislav Krstić*, at note 17; and Wald. (2003). *General Radislav Krstić*, at note 16.

⁵¹ ICTY. (2015). *Prosecutor v. Vujadin Popović et. al.*, Appeals Judgement, IT-05-08-A, January 30, at note 10.

⁵² As of May 2017 the indictees sentenced on genocide charges are: Radislav Krstić, Vujadin Popović, Ljubiša Beara, Zdravko Tolimir, and Radovan Karadžić. ICTY. (2015). *ICTY Remembers: The Srebrenica Genocide 1995 - 2015*. <http://www.icty.org/specials/srebrenica20/?q=srebrenica20> In accordance with the Tribunal's mandate, the judgements delivered by the ICTY pertaining to Srebrenica and the Bosnian War are centred on judging and punishing *individuals* responsible for violations of international criminal law in the course of fighting. In a number of its judgements, however, the Tribunal has grounded some of its reasoning on the concept of 'joint criminal responsibility' (JCE) that shows—unsurprisingly—that the Serbian leaders worked in groups when implementing their policies. See, for instance, ICTY. (2016). *Prosecutor v. Radovan Karadžić*, at note 31, paragraphs 560-570, 3237, 3524, 5680, 5731, 5737, 5821, 5831, 5849, 5998. See, also, ICTY. (1999). *Prosecutor v. Duško Tadić*. Appeal Judgement. Case No. IT-94-1-A, paragraphs 195-226. <http://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>. However, the ICTY is mandated to prosecute individuals only.

⁵³ Schabas, W. A. (2001). *Was genocide committed in Bosnia and Herzegovina?*, 47, at note 18.

⁵⁴ ICTY. (2001). *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, at note 48, paragraph 584.

⁵⁵ Schabas. (2001). *Was genocide committed in Bosnia and Herzegovina?*, 47, at note 18.

⁵⁶ Refer to ICJ. (2007). *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide*, at note 47. Paragraphs 236-241. Paragraph 386 of this decision citing UN Security Council resolutions 752 (1992), 757 (1992), 762 (1992), 819 (1993), 838 (1993) that had demanded that Former Republic of Yugoslavia put an end to its support to Bosnian Serbs.

⁵⁷ ICJ. (2007). *Case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide*, at note 47, paragraphs 425-438 and 439-450.

⁵⁸ *Ibid.*, paragraphs 386-415, especially 413.

⁵⁹ An analysis of the ICJ 2007 Judgement can be found in Aquilina K., & Mulaj, K (2017). *Limitations in attributing state responsibility under the Genocide Convention*. *Journal of Human Rights*, 16.

⁶⁰ For the legacy of the ICTY refer to Kutnjak Ivković, S., & Hagan, J. (2016). *Pursuit of justice and the victims of war in Bosnia and Herzegovina: An exploratory study*. *Crime, Law and Social Change*, 65(1), pp. 1-27; Gow, J., Kerr, R., & Pajić, Z. (Eds.) (2013). *Prosecuting war crimes: Lessons and legacies of the International Criminal Tribunal for the Former Yugoslavia*, London: Routledge.

⁶¹ Refer to Nettelfield & Wagner. *Srebrenica*. Chapter 7, at note 42.

⁶² Some critics contend, nevertheless, that Srebrenica cannot be decontextualized from the rest of the Bosnian War because it 'was neither isolated nor aberrant'. *Ibid.*, p. 8. Vulliamy, E.: 'Srebrenica was not an isolated incident. ... It "ticks the box" of appearing to reckon with Bosnia, without doing so. Who ever hears these days about Vlasenica, Bjeljina, Doboj, Brcko, Prijedor, Foca, Visegrad, Caplinja, East Mostar... the list is endless, beyond those bereaved, shattered and scattered by the slaughter there?'. Vulliamy, E. (2014). *Srebrenica: The World fails, but never one's own government*. *Open Democracy*, July 12. <https://www.opendemocracy.net/can-europe-make-it/ed-vulliamy/srebrenica-world-fails-but-never-one%E2%80%99s-own-government>.

⁶³ See Finkelkraut, *In the name of humanity*, at note 14; and Schabas, *Was genocide committed in Bosnia and Herzegovina?*, at note 18.

⁶⁴ Article I of the Genocide Convention. Also Article V.

⁶⁵ As the international community is found wanting in the face of a vicious civil war in Syria whereby civilians are killed in large scale, it is clear that lessons of Srebrenica have gone amiss in the Syrian setting. Refer to Hague, W. (2013). The true legacy of Srebrenica should be that such violence is never perpetrated again', *Huffington Post*, July 11. http://www.huffingtonpost.co.uk/william-hague/bosnia-srebrenica-true-legacy_b_3576057.html

⁶⁶ The Potočari Memorial and Cemetery was opened on September 20, 2003 to honour victims of the Srebrenica genocide, support efforts to identify and return to this cemetery remains of the missing, and encourage internally displaced people to return to Srebrenica. The Peace March—Marš Mira—is a commemorative walk in respect of about fifteen thousand men who sought to escape the genocide by undertaking a hazardous 63 mile journey on foot through heavily mined woods from Srebrenica to Tuzla. The Peace March follows the same route taken by approximately one fifth of the initial groups of men who survived the genocide in 1995. Both the Potočari Memorial and Cemetery and the Peace March are important symbols of Bosnian identity and part of a movement committed to remember the Srebrenica genocide.

⁶⁷ Ashplant, T.G., Dawson, G., & Roper, M. (2000). The politics of war memory and commemoration: Contexts, structures and dynamics. In Ashplant, T.G., Dawson, G., & Roper, M. (Eds.). *The politics of war memory and commemoration*. London: Routledge, (p. 7).

⁶⁸ Hobsbawm, E. (1983). Inventing traditions. In Hobsbawm, E., & Ranger, T. (Eds.). *The invention of tradition*. Cambridge: Cambridge University Press; Anderson, B. (1983). *Imagined communities: Reflections on the origins and spread of nationalism*. London: Verso; Winter, J. and E. Sivan (Eds.). (1999). *War and remembrance in the Twentieth Century*. Cambridge: Cambridge University Press.

⁶⁹ Anderson. (1983). *Imagined communities*, (pp. 6-7, 9-10), at note 67.

⁷⁰ United Nations Security Council (UNSC). (2007). Press Release. Bosnia and Herzegovina has historic window of opportunity to move closer to Europe, Leaders must 'Seize the Moment' Security Council Told. May 16. <http://www.un.org/News/Press/docs/2007/sc9018.doc.htm>.

⁷¹ Nettelfield & Wagner. *Srebrenica*, (pp. 158-159), at note 42.

⁷² Delpla et. al. (2012). The Judge, the Historian, the Legislator, (p. 15), at note 33. The Western countries are the largest donors in post-genocide Srebrenica—and Bosnia, in general—a leverage that may be traced on their reluctant engagement throughout the war, and in particular failure to prevent the genocide.

⁷³ Wagner, S. (2008). *To know where he lies: DNA technology and the search for Srebrenica's missing*. Berkeley: University of California Press, (p. 66).

⁷⁴ Ibid.

⁷⁵ UNSC, 'Press Release', at note 69. One expression of such manipulation—arguably—can be found in the Special Status Initiative (2007) whereby Bosnian politicians demanded that Srebrenica be taken out of Republika Srpska and be joined with the Federation of Bosnia and Herzegovina. The international community rejected this initiative and upheld the Dayton Peace Agreement and its constitutional design for the country. A detailed account of this initiative can be found in Nettelfield & Wagner, *Srebrenica*, (pp. 121-132), at note 42.

⁷⁶ U.S. Department of State. (2012). Press Statement. Serbian President Nikolić denies Srebrenica genocide. June 5. <http://www.state.gov/r/pa/prs/ps/2012/06/191831.htm>. *The Guardian*. (June 2, 2012). Serbian President denies Srebrenica genocide. <http://www.theguardian.com/world/2012/jun/02/serbian-president-denies-srebrenica-genocide>

⁷⁷ McElroy, D. (2013). Serbian President in historic Srebrenica massacre apology. *The Telegraph*, April 25. <http://www.telegraph.co.uk/news/worldnews/europe/serbia/10017552/Serbian-president-in-historic-Srebrenica-massacre-apology.html>.

⁷⁸ Zwierzchowski and Tabeau found that 7480 Serb civilians were killed in Bosnia in 1992-1995. Zwierzchowski, J., & Tabeau, E. (2010). The 1992-1995 War in Bosnia and Herzegovina: Census-based multiple system estimation

of casualties undercount. Paper for the International Research Workshop on 'The Global Costs of Conflict'. The German Institute for Economic Research, Berlin, February 1-2, 2010. Available at http://www.icty.org/x/file/About/OTP/War_Demographics/en/bih_casualty_undercount_conf_paper_100201.pdf This figure is approximately the same as the number of persons killed in Srebrenica in the month of July 1995. Brunborg, Tabeau & Hetland (2005) at note 13. I thank an anonymous reviewer for suggesting these figures and sources.

⁷⁹ Zwierzchowski and Tabeau found that 7480 Serb civilians were killed in Bosnia in 1992-1995. Zwierzchowski, J., & Tabeau, E. (2010). The 1992-1995 War in Bosnia and Herzegovina: Census-based multiplesystem estimation of casualties undercount. Paper for the International Research Workshop on 'The Global Costs of Conflict'. The German Institute for Economic Research, Berlin, February 1-2, 2010. Available at http://www.icty.org/x/file/About/OTP/War_Demographics/en/bih_casualty_undercount_conf_paper_100201.pdf This figure is approximately the same as the number of persons killed in Srebrenica in the month of July 1995. Brunborg, Tabeau & Hetland (2005) at note 13. I thank an anonymous reviewer for suggesting these figures and sources.

⁸⁰ These themes were particularly obvious in the Serbian parliamentary debate on Srebrenica in March 2010 initiated by then Serbian President Boris Tadić in response to the European Parliament's resolution of January 2009 which declared July 11 a Europe-wide day of remembrance for the Srebrenica genocide. The Serbian Parliament's declaration on Srebrenica omitted the term 'genocide'. See Mehler, D. (2012). Understanding narrative gaps in transitional justice: The Serbian discourse on the Srebrenica Declaration of 2010. *Journal on Ethnopolitics and Minority Issues in Europe*, 11(4), particularly 142-147.

⁸¹ Dodik explicitly denied that the Srebrenica massacre amounted to genocide on July 12, 2010, the 15th anniversary of the Genocide. 'If a genocide happened' he said 'than it was committed against Serb people of this region where women, children and the elderly were killed *en masse*'. *The Sidney Morning Herald*. (2010, July 13). 'Srebrenica Massacre not "genocide"'. <http://news.smh.com.au/breaking-news-world/srebrenica-massacre-not-genocide-20100713-1083q.html>. The leaders of the Republic of Serbia continue to deny the Srebrenica genocide too. The Serbian President Mr Tomislav Nikolić praised the Russian veto of a United Nations Security Council Resolution that, 20 years after, would have condemned the Srebrenica massacre as genocide on July 8, 2015. Bilefsky, D., & Sengupta, S. (2015). Srebrenica massacre, After 20 years, Still casts a long shadow in Bosnia. *New York Times*. July 8. http://www.nytimes.com/2015/07/09/world/europe/srebrenica-genocide-massacre.html?_r=0

⁸² Toal, G. & Dahlman C. T. *Bosnia Remade*, (pp. 285-287).