



Legal Monuments for Srebrenica in the Hague

CASE NOTES

OTTO SPIJKERS 

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ABSTRACT

This paper addresses the question whether the premises of the International Criminal Tribunal for the former Yugoslavia (ICTY), and court judgments adjudicating the responsibility of various actors for what happened in Srebrenica, could be considered “legal monuments”, urging us to remember and show respect for the victims of the Srebrenica genocide of 1995.

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INTRODUCTION

On 11 July 2020, the 25th anniversary of the fall of Srebrenica was commemorated in the center of The Hague, the Netherlands, with a ceremony and the installment of a temporary monument in the form of a photo installation by the Bosnian Girl Collective.¹ On the same day, the mayor of The Hague announced his support for the installation of a permanent Srebrenica monument somewhere in his city.

To move things forward, Stroom – an art center, based in The Hague, exploring the relationship between art, architecture, and urban planning – organized an event on ‘A Srebrenica Monument: Reflections on The Role of a New Monument in The International City of Peace’, which took place 17 September 2020.² The event provided an opportunity for artists and representatives of the relevant communities to talk about different aspects of the future commemorative monument. What should the monument look like, what should be its main *raison d’être* for the citizens of The Hague, for Dutch society, for people from the former Yugoslavia, and for the wider world? What impact is it likely to have *in practice*? Relevant stakeholders exchanged ideas and opinions on these questions of great societal importance. Two additional questions that came up further in this discussion and which are more directly related to the theme of this Special Issue – i.e. the legacy and future relevance of court rulings relating to Srebrenica – were (1) whether the premises of the International Criminal Tribunal for the former Yugoslavia (ICTY), and (2) court judgments adjudicating the responsibility of various actors for what happened in Srebrenica, could also be considered monuments. These two questions this comment seeks to address.

In what follows, the term ‘monument’ is dissected first (section II). The next section looks at whether the premises of the ICTY, situated in the city of The Hague, can be qualified as monument (section III). Section III is limited to a discussion of the ICTY because it was established to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, including the genocide of Srebrenica in 1995. For that reason, the building has become associated with those events. One cannot say the same thing of the International Court of Justice, or the District, Appeals and Supreme Courts of the Netherlands. Those courts *did* issue judgments on the responsibility of various actors for what happened in Srebrenica (see section IV), but they were not established *exclusively* for that purpose.

Then, an overview is provided of all the paper ‘legal monuments’: various court rulings on responsibility for what happened in Srebrenica, both international and

Dutch/domestic, that have been produced by various courts in the city of The Hague so far (section IV). This section is limited to a discussion of the rulings, by various domestic and international courts situated in the city of The Hague, that relate specifically to the events of Srebrenica. The ICTY has also ruled on serious violations committed *elsewhere* in the former Yugoslavia, but those rulings cannot be considered as legal monuments *for Srebrenica* and will thus not be discussed. The comment ends with a brief conclusion in section V.

MONUMENT

The word ‘monument’ is not a legal term, i.e., it does not have any specific meaning in the language of law, let alone in the language of international law. We thus start by looking at its ordinary meaning. The *Cambridge Academic Content Dictionary* defines a monument as an ‘object [...] built to remember and show respect for a person or group of people, or a special place made for this purpose’.³ According to the *Oxford English Dictionary*, the word ‘monument’ is derived from the classical Latin word *monumentum*, which refers to a ‘commemorative statue or building, tomb, reminder, written record, [or] literary work’.⁴

When asked what a monument is, many people might be inclined to describe a stone statue of a (once) famous or notable person, staring majestically into the distance, sitting on a horse, with a pigeon on his head, relieving itself. But a monument can basically be any object or place that preserves a memory of something, anything that serves as a reminder of, or witness or tribute to, an important event. It need not necessarily be a statue. It can also be a building – like a courthouse – or a written document – like a court judgment. These are the two types of monuments that are the focus of the present analysis. They are referred to as ‘legal monuments’ only to emphasize that they play a meaningful role in the *legal* settlement of disputes, either as the location of such process (court), or as the outcome of it (court ruling).

The relationship between courts and monuments is a rich and multifaceted one. For example, in the past, international courts have ordered States to establish a museum, memorial or monument, to comply with those States’ legal obligations to provide reparations to the victims of human rights violations committed by those States.⁵ In this comment, another aspect of that complex relationship between courts and monuments is touched upon briefly – and thus necessarily somewhat superficially. In what follows, it will be argued that the premises of the ICTY (section III) and the court rulings relating to Srebrenica (section IV) can be considered monuments themselves.⁶

THE ICTY AS MONUMENT

On 22 February 1993, the United Nations (UN) Security Council ‘decide[d] that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991’.⁷

The ICTY is, therefore, not *exclusively* mandated to prosecute the main perpetrators of the Srebrenica genocide. As noted above, it has also prosecuted persons responsible for breaches of international criminal law committed *elsewhere* on the territory of the former Yugoslavia. It could be argued that, even if one accepts that the ICTY might be qualified as a monument, the Tribunal ought to be qualified as monument to remember *all* violations that occurred *everywhere* in the former Yugoslavia *at any time* since 1991, thus making it inappropriate to qualify this tribunal exclusively as a Srebrenica monument. In this comment, the argument is not made that the premises of the ICTY have come to represent Srebrenica alone. Rather, it is suggested that the crucial importance of Srebrenica in the history of the former Yugoslavia since 1991, makes it appropriate to see the ICTY, in a way, as representing, *in particular*, that crucial chapter within the larger history. Indeed, in the public perception the ICTY will most probably be associated primarily with the convictions of Ratko Mladić and Radovan Karadžić (more on this below in section IV). But that is not to deny that other tragic events have been adjudicated there, and that memorable moments unrelated to Srebrenica will be associated with this house of law as well. Think of Slobodan Praljak, Croatia’s former Minister of Defense, who, on 29 November 2017, committed suicide by drinking poison in the Courtroom of the ICTY, at the time when the appeal judgement was read to him.⁸

Being an *ad hoc* international criminal tribunal, the ICTY needed a home. This raised lots of questions: should the premises be selected based on efficiency? Or should the symbolic significance of the building also be considered? To answer these questions, this section reflects briefly on whether the premises of the ICTY can adequately be considered a legal monument for justice, peace, and reconciliation in the former Yugoslavia, including in Srebrenica.

The symbolic significance of the building of an international court or tribunal is considered crucial.⁹ ‘Organizations and institutions are often defined by the structures in which they are housed’, the Coalition for the International Criminal Court noted at the time the premises of the International Criminal Court were being designed; ‘as these can express the history, power, and virtues of the institutions that occupy them. Critically, they can give organizations an identity that can shape public opinion for the better, or in some cases, for the worse’.¹⁰

The same view is found in academia. For example, Nicole De Silva noted that ‘while international courts’ premises are clearly functional structures, they are also symbolic objects of international law. The premises can symbolize the normative commitments that underpin an international court’s creation and operation’.¹¹ In short, the building in which it is housed determines the institutional image of the court as it becomes the public face of the institution and must, therefore, reflect its character and identity. It is – or becomes – a monument itself.

The challenge is, of course, how to translate this realization into concrete requirements of the premises. To successfully serve as ‘monument’, an international tribunal such as the ICTY must meet certain requirements.¹² The building must proclaim authority, and symbolize, in a dignified manner, the eminence of an international criminal tribunal. This means that there is little room for playfulness and humor in the building of an international criminal tribunal. The premises must also symbolize ‘justice’, which means that the structure must give the impression that, inside it, everybody’s rights are protected, and everybody’s wrongs are punished. The desire for justice is shared by all people in this world, rich or poor, powerful, or powerless, and the courthouse must reflect that. One way to meet this requirement, is to add paintings or other works of art, reminding visitors of the crucial importance of the pursuit of justice, especially in relation to the events on the ground (including Srebrenica). Another way to accomplish this, is to have a library and a museum inside the premises, which can serve as archive of the many personal stories told by witnesses and victims testifying before the ICTY.¹³ The important contribution of art to the processes of restorative justice and social reconstruction, and to ‘construct a shared sense of truth about the Srebrenica genocide’, has been underlined in scholarly research.¹⁴ Just as important is that the courthouse is a symbol of hope. People entering the building must get a feeling of reassurance that it is okay to believe in the future, in peace and reconciliation.¹⁵ Related to this is the requirement that no aspect of the premises must pose a risk of re-traumatizing victims and witnesses. Of course, the premises need to be secured; but this should be done in such a way that it does not give the visitors the feeling they are re-entering a war zone or prison camp. In one phrase, the aim of an international criminal tribunal¹⁶ such as the ICTY is to ‘bring war criminals to justice, and justice to victims’, and the tribunal must be designed in such a way that this formidable task can best be accomplished (functional aspect) and in such a way that it represents or symbolizes this task (symbolic aspect).¹⁷ Having said that, it is important that the premises do not give the impression that the ICTY is merely a guilty verdict producing factory, doing nothing other than prosecuting perpetrators as a service to the victims.¹⁸

COURT JUDGMENTS AS MONUMENTS

Let us now leave the premises of the ICTY, and turn to its ‘products’, i.e., the judgments issued by it. As explained above, the ICTY issued judgments on violations of international criminal law committed on parts of the territory of the former Yugoslavia other than Srebrenica since the 1990s. These rulings of the ICTY cannot be considered legal monuments for *Srebrenica* and will thus not be considered in the following analysis. In this sense, the scope of the present section (section IV) is *narrower* than that of the previous (section III).

The scope of this section is also *broader* than the previous one, because it is not restricted to Srebrenica-related judgments of the ICTY alone. Indeed, various other courts have issued rulings directly related to the responsibility for what happened in Srebrenica in the 1990s. Such ‘legal monuments for Srebrenica’ were produced in the city of The Hague, Netherlands, by no less than six (!) different courts.

In scholarly literature, rulings of courts are seldom, if ever, qualified as legal monuments.¹⁹ But if a monument can indeed be defined as an object that preserves a memory of something, and/or serves as a reminder of an important event – as argued in section II –, then it is not so farfetched to qualify court rulings as such.

This section begins by introducing the legal monuments in chronological order. In 2007, the International Court of Justice (ICJ), housed in the Peace Palace, delivered a judgment in a case initiated by the State of Bosnia and Herzegovina against the neighboring State of Serbia and Montenegro.²⁰ The ICJ found that the murders committed in Srebrenica in the summer of 1995 were committed by the Bosnian Serb Army with the intent to destroy the Bosnian Muslims in that area, and thus they could be qualified as a genocide. The State of Serbia had acted wrongfully, the ICJ concluded, by its failure to use all means reasonably available to it to prevent the Srebrenica genocide, and by its failure to punish the main perpetrators of this genocide.

Many Dutch domestic legal monuments have been produced relating to the Srebrenica genocide. It so happens that all these judgments were issued by courts in The Hague: the Hague District Court, the Hague Appeals Court, and the Netherlands Supreme Court (Hoge Raad). In 2013, the Netherlands Supreme Court (Hoge Raad) ruled in two separate but parallel proceedings that the State of the Netherlands had acted wrongfully when Dutchbat – a battalion of Dutch soldiers placed at the disposal of the UN to keep the peace in Srebrenica – sent Rizo Mustafić, as well as the father and brother of Hasan Nuhanović, away from the United Nations compound in Potočari situated near the town of Srebrenica, at the time the Bosnian Serbs took this town on the 13th of July 1995. They were all killed by the Bosnian Serb Army.²¹

In 2016, the Trial Chamber of the ICTY found Radovan Karadžić, who called himself President of the Republika Srpska during the Bosnian War, guilty of committing genocide in Srebrenica.²² He was sentenced to 40 years of imprisonment. The Appeals Chamber of the United Nations International Residual Mechanism for Criminal Tribunals (IRMCT), housed in the same building as the ICTY, set aside the sentence of 40 years of imprisonment, and imposed on him a sentence of life imprisonment.²³ In 2017, the same ICTY Trial Chamber found Ratko Mladić, leader of the Army of the Republika Srpska, guilty of committing genocide in Srebrenica.²⁴ On 8 June 2021, the Appeals Chamber of the International Residual Mechanism for Criminal Tribunals affirmed the sentence of life imprisonment imposed on Mladić by the Trial Chamber.²⁵ The ICTY has delivered other judgments relating to what happened in Srebrenica, but the two abovementioned proceedings are the most high-profile cases.²⁶

In 2019, the Netherlands Supreme Court held that the State of the Netherlands had acted wrongfully when the Bosnian Muslims, who were seeking protection inside the Potočari compound from the advancing Bosnian Serbs, were not offered the choice by Dutchbat of remaining there, thus depriving them of the 10% chance of not being exposed to inhumane treatment and execution by the Bosnian Serbs.²⁷

Based on the definition of the term *monument* referred to above (section II), we can conclude that these judgments, both domestic and international, can be considered legal monuments, as they make us remember and show respect for the victims of the tragedy of Srebrenica. They certainly purport to do so. But there are many limitations to their functioning as monuments.²⁸ In the remainder of this section, four of these limitations will be touched upon briefly.

First, it is important to keep in mind that the main function of court rulings is not to provide a comprehensive picture of ‘what really happened’. Instead, the role of the courts is to establish the facts and the legal responsibility that is being disputed between the parties appearing before them. Consequently, the burden and standard of proof are different in adjudication by courts than in efforts by historians at discovering the truth. This holds equally true for international courts – with an inter-State (ICJ) or criminal (ICTY and IRMCT) jurisdiction – and domestic courts – with a civil jurisdiction (Hoge Raad). In fact, many efforts have been made by researchers to find out ‘what really happened’ in Srebrenica. From 1996 to 2002, the Netherlands Institute for War Documentation (NIOD) worked on a report.²⁹ The United Nations did so from 1998 until 1999, resulting in a report by the UN Secretary-General.³⁰ Under the auspices of the French Parliament, research was done in 2001.³¹ The Dutch Parliament did the same from 2002 up to 2003.³²

In December of 2020, a report was published by the ARQ National Psychotrauma Center, at the request of the Netherlands Ministry for Defense. The main conclusion was that most of the Dutchbat peacekeepers were still waiting for recognition and appreciation from society, the media, and the Ministry of Defense, even 25 years after the fall of Srebrenica. The veterans said the ‘real story’ of the mission had yet to be told.³³ One of the themes of the discussions with the veterans, on which the report was based, was that of recognition. It included issues such as the organization of reunions, financial compensation, the place of Srebrenica in the school curriculum, the importance of telling the ‘real story’, the decoration of veterans, and the establishment of a monument and other ways to commemorate and remember.³⁴

In conclusion, it must be noted that court rulings only play a very limited role in what appears to be a never-ending attempt to find out what really happened in Srebrenica.

A second and related common characteristic of courts that poses a serious limitation on their competence to produce legal monuments is that adjudication is often, for jurisdictional reasons, limited to a specific aspect of the events. For example, the ICJ found that it did have jurisdiction to deal with the dispute between the States of Bosnia and Serbia, but solely based on Article IX of the Genocide Convention. It dismissed all other bases of jurisdiction invoked by Bosnia. Article IX of the Genocide Convention proclaims that ‘disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the [Genocide] Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III [i.e. committing genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide], shall be submitted to the International Court of Justice at the request of any of the parties to the dispute’. This being the only valid basis for the ICJ’s jurisdiction, it meant the Court could only assess whether the State of Serbia was responsible *for genocide*. It could not look at the responsibility of the State of Serbia for alleged breaches of humanitarian law, human rights law, and beyond.

Third, some actors can, again for jurisdictional reasons, not be brought before any court. Most notably, the United Nations Organization could itself not be held responsible by any court – be it international or domestic – for its failure to prevent the tragedy of Srebrenica, because the Organization successfully relied on its absolute immunity from the jurisdiction of domestic courts, and there is no alternative legal remedy available at the UN or international level.³⁵ This might lead to a legal monument that provides an incomplete picture.

Finally, the work of courts is, in many ways, rather technical. They work according to their own methodology and rules of procedure and evidence. They apply the

applicable law to a set of facts, using case law and other sources of authority to assist them in the interpretation and application of that law, and in establishing the facts that are disputed between the parties appearing before them. Perhaps then, courts are not the appropriate fora to produce monuments on something as dramatic and tragic as genocide. This dilemma is most pronounced in the domestic cases. Most notably, the Dutch courts approached Dutchbat’s failure to protect the Bosnian Muslims in the Potočari compound from the Bosnian Serb Army as a ‘tort’ – a wrongful act under private domestic law. A failure to prevent the murder of hundreds of innocent civilians is not a typical tort, which often include car accidents, or a slippery floor in a restaurant that causes customers to fall and get hurt.

Can the responsibility for what happened in Srebrenica be evaluated with the help of the same legal framework that is designed to establish legal liability for such simple accidents? Let the result *in casu* be an indication of the answer to this question: applying the ‘tort’-framework to the events in Srebrenica, the Dutch courts had to determine the probability of survival by the Bosnian Muslims if Dutchbat would have made a serious effort to protect them. The Appeals Court gave them a 30% chance of survival, and the Netherlands Supreme Court later reduced it to 10%. One might find this playing with numbers highly inappropriate, perhaps even offensive, to the victims and their relatives.³⁶ But the tort law legal framework dictated such an approach.³⁷

Court judgments thus play an important role in urging us to remember and show respect for the victims of the tragedy of Srebrenica, but these legal monuments need the help of monuments from other disciplines, such as history and the arts. Legal monuments alone cannot paint, or provide, a complete and comprehensive picture.

CONCLUSION

Monuments are objects built to remember and show respect for a person or group of people. The premises of the ICTY were primarily intended to facilitate the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, including in Srebrenica. The different court judgments analyzed in this comment were all primarily intended to settle disputes relating to the responsibility of various actors for what happened in Srebrenica. Their principal *raison d’être* was thus not to serve as monument for Srebrenica. Nevertheless, the premises of the ICTY and the rulings of the various courts discussed in this brief comment, also purported to remember and show respect for the victims and surviving relatives of Srebrenica. Therefore they may be considered legal monuments for Srebrenica, even though they play only a limited role in urging us to remember and show respect for the victims of the Srebrenica genocide of 1995.



Photo of ICTY premises by Kushtrim Istrefi.

6 September 2013

First Chamber

12/03324

LZ/TT

Supreme Court of the Netherlands

Judgment

in the case of:

THE STATE OF THE NETHERLANDS (Ministry of
Defence and Ministry of Foreign Affairs),
which has its seat in The Hague,

APPELLANT in the appeal in cassation,

counsel: G.J.H. Houtzagers,
M.W. Scheltema and
K. Teuben,

v.


Hasan NUHANOVIĆ,
residing in Sarajevo, Bosnia and
Herzegovina,

RESPONDENT in the appeal in cassation,

counsel: R.P.J.L. Tjittes and
G.R. den Dekker.



Design for a Tribunal by Victor Spijkers.

	IT-95-5/18-T D100316-D97627 24 March 2016	100316 AJ
UNITED NATIONS		
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	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991	Case No.: IT-95-5/18-T Date: 24 March 2016 Original: English
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<u>IN THE TRIAL CHAMBER</u>		
Before:	Judge O-Gon Kwon, Presiding Judge Judge Howard Morrison Judge Melville Baird Judge Flavia Lattanzi, Reserve Judge	
Registrar:	Mr. John Hocking	
Judgement of:	24 March 2016	
PROSECUTOR v. RADOVAN KARADŽIĆ <i>PUBLIC</i>		
<hr/> PUBLIC REDACTED VERSION OF JUDGEMENT ISSUED ON 24 MARCH 2016 <hr/> VOLUME I OF IV <hr/>		
<u>Office of the Prosecutor</u>		
Mr. Alan Tiger Ms. Hildegard Uertz-Retzlaff		
<u>The Accused</u>		
Mr. Radovan Karadžić		

O.K.

First page of Karadžić judgment.

NOTES


- 1 For more information about this initiative, see <https://srebrenicaisdutchhistory.com/>.
- 2 For more information about the event, see the item on the website of Stroom, available at https://www.stroom.nl/activiteiten/lezing_symposium.php?l_id=792562. The entire event has been recorded, and this recording is available at <https://youtu.be/Qi3LYIAOx5Q>. The author of this paper was one of the speakers at this event, and the text of this paper is based on the presentation made at the event.
- 3 'Monument, n.', entry in the Cambridge Academic Content Dictionary (Cambridge University Press 2017), available at <https://dictionary.cambridge.org/dictionary/english/monument>.
- 4 'Monument, n.', entry in the Oxford English Dictionary Online (Oxford University Press 2020), available at <https://www.oed-com/>.
- 5 See Farida Shaheed, Memorialization Processes: Report of the Special Rapporteur in the Field of Cultural Rights (UN Doc A/HRC/25/49 (2014), 23 January 2014), paras. 36–38, and the case law referred to there.
- 6 It could be argued that this understanding of what constitutes a 'legal monument', which is primarily inspired by the dictionary-meaning of the term, is too broad, because, based on this understanding, almost any important organization, building, document, etc. can qualify as a monument. It could be suggested, then, that a more in-depth engagement with scholarship on remembrance and memory (under transitional justice) might be apt, to complement, enrich and nuance the dictionary-based understanding. This brief comment, however, is limited to addressing the question specifically in relation to the ICTY premises and the court rulings on Srebrenica.
- 7 Resolution 808, adopted by the UN Security Council on 22 February 1993, UN Doc. S/RES/808 (1993).
- 8 *Slobodan Praljak and others Case* (ICTY Appeals Chamber Judgment) IT-04-74-A (29 November 2017).
- 9 Many international legal scholars have recently become interested in this thématique. See e.g., Miriam Bak McKenna, 'Designing for International Law: The Architecture of International Organizations 1922–1952' (2021) 34 *Leiden Journal of International Law* 1; Renske Vos and Sofia Stolk, 'Law in Concrete: Institutional Architecture in Brussels and The Hague' [2020] *Law and Humanities* 1; Tanja Aalberts and Sofia Stolk, 'The Peace Palace: Building (of) the International Community' (2020) 114 *AJIL Unbound* 117; and Daniel Litwin, 'Stained Glass Windows, the Great Hall of Justice of the Peace Palace', in Jessie Hohmann and Daniel Joyce (eds), *International Law's Objects* (Oxford University Press 2018) 463.
- 10 Coalition for The International Criminal Court, Architectural Design Competition for The Permanent Premises of the ICC: Statement to the Jury, 30 October 2008.
- 11 Nicole De Silva, 'African Court on Human and Peoples' Rights', in Jessie Hohmann and Daniel Joyce (eds), *International Law's Objects* (Oxford University Press 2018) 95, 96.
- 12 See also Victor Spijkers and Otto Spijkers, 'Designing A More Perfect Ad Hoc International Criminal Tribunal', posted 22 October 2019 on the Art and International Justice Initiative (ARTIJ) Blog, available at <https://artij.org/en/blog.html#17>; and Judith Resnik and Dennis Curtis, *Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms* (Yale University Press 2011), 247–287.
- 13 On the ICTY's efforts to produce documentary films, posters, graphic novels, on-site exhibitions, and online exhibitions of photographs and other relevant materials that served as evidence in court, see Rachel Kerr, 'Art, Aesthetics, Justice, and Reconciliation: What Can Art Do?' (2020) 114 *AJIL Unbound* 123, 125. The material in the archives of the ICTY can itself also be used as basis for works of art. See *ibid.* 127. On the importance, of personal narratives, see also Odile Heynders, 'Speaking the Self, Narratives on Srebrenica' (2014) III *The European Journal of Life Writing* 1.
- 14 Dion Van Den Berg and Martin J.M. Hoondert, 'The Srebrenica Exhibition' (2020) 10 (3) *Oñati Socio-Legal Series* 544. On the importance of the burial and memorial process for mourning, see M. S. Craig Evan Pollack, 'Intentions of Burial: Mourning, Politics, and Memorials Following the Massacre at Srebrenica' (2003) 27 (2) *Death Studies* 125. On the importance of war memorials in the mourning process (in a general sense), see Jay Winter, *Sites of Memory, Sites of Mourning: The Great War in European Cultural History* (Cambridge University Press 2014), 78–116.
- 15 On the potential role of art in furthering goals of international criminal courts beyond justice, including towards peace and reconciliation, see Rachel Kerr, 'Art, Aesthetics, Justice, and Reconciliation: What Can Art Do?' (2020) 114 *AJIL Unbound* 123.
- 16 In this brief comment, it is not possible to investigate the scholarship addressing the question whether older international criminal tribunals, such as the Nuremberg and Tokyo Tribunals, have also been viewed as legal monuments at the time, or whether it is felt – by some scholars – that they ought to be seen in this way.
- 17 Sophie Rigney, 'Postcard from the ICTY' in Jessie Hohmann and Daniel Joyce (eds), *International Law's Objects* (Oxford University Press 2018) 366.
- 18 *ibid.* 376.
- 19 I did not find any scholarly literature in support of this qualification.
- 20 International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007 <<http://www.icj-cij.org/>>.
- 21 See *Mustafić v. The Netherlands* and *Nuhanović v. The Netherlands*, Netherlands Supreme Court, 6 September 2013, ECLI:NL:HR:2013:BZ9228 and ECLI:NL:HR:2013:BZ9225. The cases of Mustafić and Nuhanović are formally separate, but the judgments in the two cases are almost identical. See e.g., Noelle Higgins, 'The Responsibility of the Netherlands for the Actions of Dutchbat: An Analysis of Nuhanović and Mustafić' (2014) 14 *International Criminal Law Review* 641.
- 22 *Radovan Karadžić Case* (ICTY Trial Chamber Judgment) IT-95-5/18 (24 March 2016).
- 23 *Radovan Karadžić Case* (Mechanism Appeals Chamber Judgement) MICT-13-55 (20 March 2019).
- 24 *Ratko Mladić Case* (ICTY Trial Chamber Judgment) IT-09-92 (22 November 2017).
- 25 *Ratko Mladić Case* (Mechanism Appeals Chamber Judgement) MICT-13-56-A (8 June 2021).
- 26 Srebrenica-related cases before the ICTY include the cases of *Krstić* (IT-98-33), *Momir Nikolić* (IT-02-60/1), *Obrenović* (IT-02-60/2), *Popović et al.* (IT-05-88), and *Tolimir* (IT-05-88/2).
- 27 *Mothers of Srebrenica Association et al. v. The Netherlands*, Netherlands Supreme Court, judgment of 19 July 2019, ECLI:NL:HR:2019:1223 (English translation: ECLI:NL:HR:2019:1284).
- 28 See also Alma Mustafić and Otto Spijkers, 'A Monument for Srebrenica in The Hague', posted 25 October 2020 on the Art and International Justice Initiative (ARTIJ) Blog, available at <https://artij.org/en/blog.html#18>.
- 29 Netherlands Institute for War Documentation (NIOD), *Srebrenica—A 'Safe' Area: Reconstruction, Background, Consequences and Analysis of The Fall of a Safe Area*, 10 April 2002, available at <http://213.222.3.5/srebrenica>.
- 30 UN Secretary-General, *The Fall of Srebrenica*, UN Doc. A/54/549, 15 November 1999.
- 31 Assemblée nationale de France, *Rapport d'Information Déposé en Application de L'article 145 du Règlement par La Mission D'information Commune sur les Événements de Srebrenica*, 22 November 2001.
- 32 Dutch Parliamentary Enquiry, *Mission without Peace*, Doc. 28 506, nr. 3 (2002–2003), January 2003.
- 33 ARQ National Psychotrauma Center, *Focus on Dutchbat III: Research on The Welfare of Dutchbat III Veterans and The Need for Care, Recognition and Appreciation*, December 2020, report available at <https://www.arq.org/nl/documenten/focus-op-dutchbat-iii-onderzoeksrapport>.

- 34 *ibid.* Annex VIII, available at <https://www.arq.org/nl/documenten/focus-op-dutchbat-iii-bijlagen>, 113.
- 35 *Mothers of Srebrenica Association et al. v. The Netherlands and the United Nations*, Supreme Court of the Netherlands, decision of 13 April 2012, ECLI:NL:HR:2012:BW1999; affirmed by the European Court of Human Rights (ECtHR), *Stichting Mothers of Srebrenica and Others v. The Netherlands*, Appl. No. 65542/12, decision of 11 June 2013.
- 36 See also the contribution by Rianka Rijnhout to this Special Issue.
- 37 See also Cedric Ryngaert and Otto Spijkers, 'The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in Mothers of Srebrenica' (2019) 66 *Netherlands International Law Review* 537.

COMPETING INTERESTS

The author has no competing interests to declare.

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