

## THE JUDGE, THE HISTORIAN, THE LEGISLATOR



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On 11 July 1995, the enclave and town of Srebrenica in eastern Bosnia fell into the hands of General Mladić's Serb nationalist forces. They organized the forced transfer of women and children, massacred about eight thousand Bosniaks,<sup>1</sup> and, in the months that followed, unearthed and transported the corpses to secondary graves in order to conceal evidence of their crimes.<sup>2</sup> Yet the enclave had officially been declared a "safe area" by the United Nations in 1993 and its inhabitants—including thousands of refugees from across eastern Bosnia—had been put under the protection of the international community, which was represented in this case by a battalion of Dutch blue helmets (*Dutchbat*). The Srebrenica massacre quickly came to be seen as the symbol of the contradictions, errors, faults, and even crimes that had marked the policy of "peace keeping" advocated in the former Yugoslavia by the great powers and the UN. The horror of this last great massacre of the war in Bosnia (1992–1995) no doubt played an important role in NATO's decision to intervene against the Bosnian Serbs in late summer 1995, which in turn led to the conclusion of the Dayton agreements several months later. The Srebrenica massacre was thus a sad milestone for post-Cold War Europe and, more particularly, for the development of a European security and defense policy. At a more global level, the tragic result of the "safe areas" policy in eastern Bosnia contributed to redefining the rules of engagement and establishing national and international responsibility in operations of a military-humanitarian nature.

The fall of Srebrenica and the massacre that followed have been the object of a large number of investigations and reports conducted by the institutions and countries that were party to the events, most notably

the UN, the Netherlands, and France. In this respect, too, the case of Srebrenica is exceptional: few events in contemporary history have given rise to so many reports from such different perspectives, institutions, and places. Srebrenica became a universal object of investigation even before the massacre was acknowledged by the Serb side. Through critical examination of these investigations and reports, this book seeks to analyze a threefold process: (1) writing the history of the events in Srebrenica in 1995; (2) determining criminal, political, and moral responsibility; and (3) constructing a public debate about foreign policy. In regards to the writing of history, the focus here is on the inquiry, as such (rather than the judgment process, for example), and the means for establishing knowledge about and patterns of intelligibility for the events. These investigations and reports also raise the question of the manner in which the countries and institutions involved confronted their own responsibility. In so doing, these international or state institutions contributed to the creation of a debate and to official awareness and recognition of the scale of the massacre. It is thus necessary to understand how these diverse institutions conceive of the publicity of debates, make their sources accessible and see themselves (or not) as sources of documentation contributing to “history.” In examining these texts, the present work thus devotes particular attention to the overlapping issues of justice and the writing of history. Before presenting these reports and setting out this book’s framework of analysis in more detail, however, we should first set the fate of Srebrenica in the broader context of the war in Bosnia.<sup>3</sup>

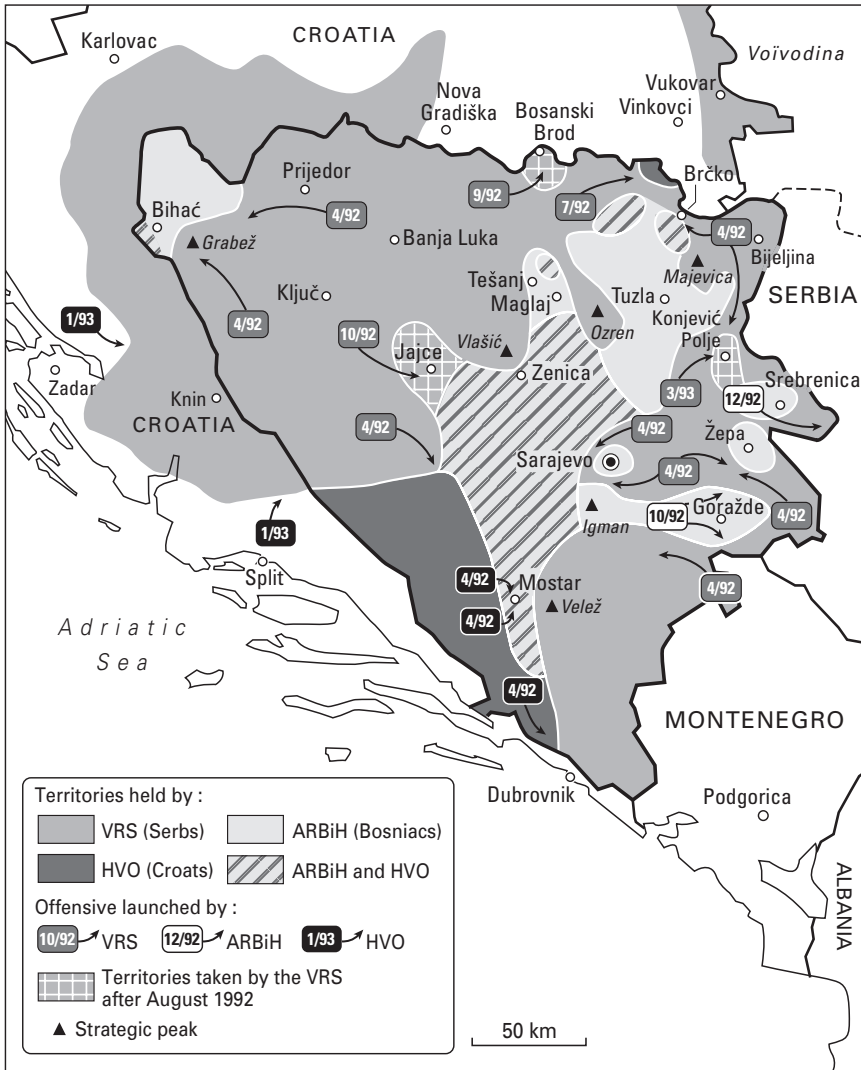
## **The Place of Srebrenica in the War in Bosnia**

How did Srebrenica, a small town in eastern Bosnia, become the theater of the largest massacre in Europe since the end of the Second World War and the symbol of the failure of the international community in former Yugoslavia? In order to understand this, the war in Bosnia must first be put in the broader context of the violent breakup of Yugoslavia.<sup>4</sup> Against the backdrop of the collapse of communist regimes in Central and Eastern Europe, free elections were organized in 1990 in all republics of the Yugoslav Federation. However, these elections were won by nationalist parties, including in Bosnia, a republic populated by Bosniaks (43.7 percent of the population), Serbs (31.4 percent), and Croats (17.3 percent)<sup>5</sup> where the three nationalist parties—Bosniak, Serb, and Croat—together received 71.1 percent of the vote.<sup>6</sup> From that point on, Bosnia faced a double threat. On the one hand, it became the object of territorial claims on the part of the neighboring republics of Serbia and Croatia. This external threat in-

creased with Croatian independence in June 1991, when a war pitted the Yugoslav People's Army (JNA) against the newly created Croatian army, leading to the formation of a "Republic of Serb Krajina" covering a third of Croatia's territory (see map 3).<sup>7</sup> On the other hand, the three nationalist parties, although sharing power, found themselves in ever more severe conflict over the future of Bosnia.<sup>8</sup> The Party of Democratic Action (SDA, Bosniak), the Croat Democratic Community (HDZ), and the non-nationalist parties reaffirmed the sovereignty of Bosnia on 14 October 1991. The Serb Democratic Party (SDS), for its part, opposed this step toward independence and proclaimed on 9 January 1992 a "Serb Republic of Bosnia-Herzegovina" covering the territories that it considered as Serb. On 1 March 1992, 63.7 percent of Bosnian voters turned out for the self-determination referendum boycotted by the SDS, with 99 percent voting for independence. The referendum was immediately followed by the erection of Serb barricades around the capital Sarajevo. One month later, on 6 April 1992, the European Community recognized the independence of Bosnia. The next day, the SDS proclaimed the secession of the "Serb Republic" (Republika Srpska, RS) in the territories that it controlled. Sarajevo thus found itself encircled by Serb forces and, in the weeks that followed, the entire country spilled over into war.<sup>9</sup>

Initially, the war in Bosnia pitted the Army of the Republika Srpska (VRS), which was drawn from the Yugoslav People's Army,<sup>10</sup> against the Army of the Republic of Bosnia-Herzegovina (ARBiH), which was drawn from the Bosnian Territorial Defense<sup>11</sup> and mainly consisted of Bosniaks, and the Croat Defense Council (HVO). With the support of neighboring Serbia, the VRS endeavored to link up Serb population areas and in a few months seized 70 percent of the territory of Bosnia (see map 3).

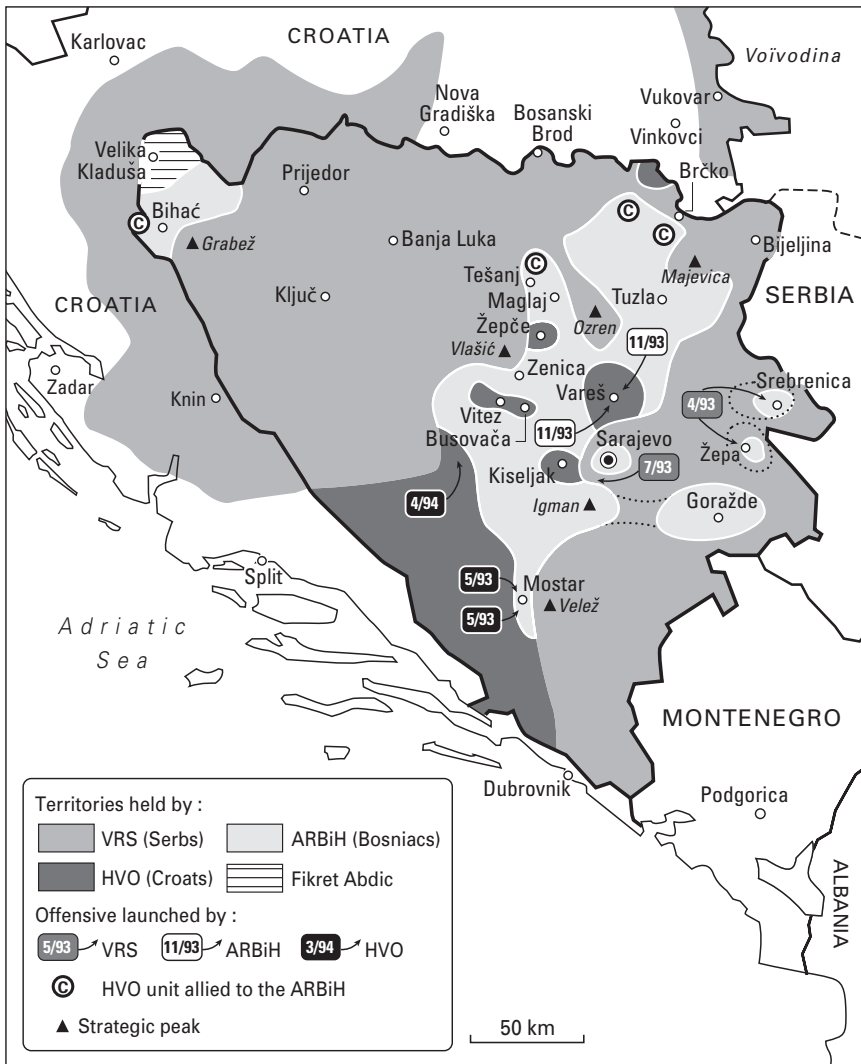
This Serb offensive was accompanied by a first wave of "ethnic cleansing," the violent expulsion of populations on the basis of ethno-national criteria. This "ethnic cleansing" took particularly violent forms in certain strategic municipalities mainly populated by non-Serbs, such as Prijedor and Sanski Most in western Bosnia, Brčko in the valley of the Sava, and Foča, Višegrad, and Zvornik in the valley of the Drina in eastern Bosnia.<sup>12</sup> It was then accompanied by massive or selective (i.e., above all targeting men) executions, sexual violence (mainly against women), and the opening of camps, including the infamous camps of Omarska and Keraterm in the municipality of Prijedor. Beginning at this time, Srebrenica occupied a particular place in the war. Indeed, in April 1992, it was among the towns of eastern Bosnia that had been conquered by Serb forces in their effort to gain control over this region bordering with Serbia. The Bosniak population of Srebrenica was thus also victim of "ethnic cleansing." But, one month later, Bosniak combatants led by Naser Orić succeeded in retak-



MAP 3. The frontlines in Bosnia-Herzegovina (April 1992–March 1993)

ing control of the town. From that point on, Srebrenica became a refuge for the Bosniak populations of eastern Bosnia who had been driven out by “ethnic cleansing,” with the number of its inhabitants growing from around thirty thousand to around sixty thousand people. Given the lack of housing, provisions, and medicine and the difficulty of moving in humanitarian aid, living conditions in the enclave rapidly became dire. In order to obtain supplies, the enclave’s inhabitants carried out raids against

neighboring Serb villages that sometimes resulted in several dozen deaths among the local Serb population. At the same time, the Bosniak combatants succeeded in enlarging the territory under their control, joined up with other, smaller Bosniak enclaves, and even threatened to cut the Serbs laying siege to Sarajevo off from their supply lines (see map 3). In March 1993, the VRS launched an offensive against the Srebrenica enclave, considerably reducing its size and threatening to take the town (see map 4).



MAP 4. The frontlines in Bosnia-Herzegovina (April 1993–March 1994)

But the intervention on 16 April 1993 of General Philippe Morillon, commander of the United Nations Protection Force (UNPROFOR) deployed in Bosnia to ensure that humanitarian aid reached its destination, led to the Srebrenica enclave being transformed into a “safe area.” Placed under UN protection, the latter was supposed to be protected by a contingent of blue helmets and, if needed, by NATO aircraft. One month later, five other “safe areas” were created for Sarajevo, Tuzla, and the Bosniak enclaves of Bihać in western Bosnia and Goražde and Žepa in eastern Bosnia. Srebrenica was thus at the origin of a profound redefinition of the UNPROFOR mandate in Bosnia.<sup>13</sup> But, straightaway, the “safe areas” appeared as highly vulnerable: of the 34,000 blue helmets requested by the UN to protect these zones, only 7,600 were granted and deployed.

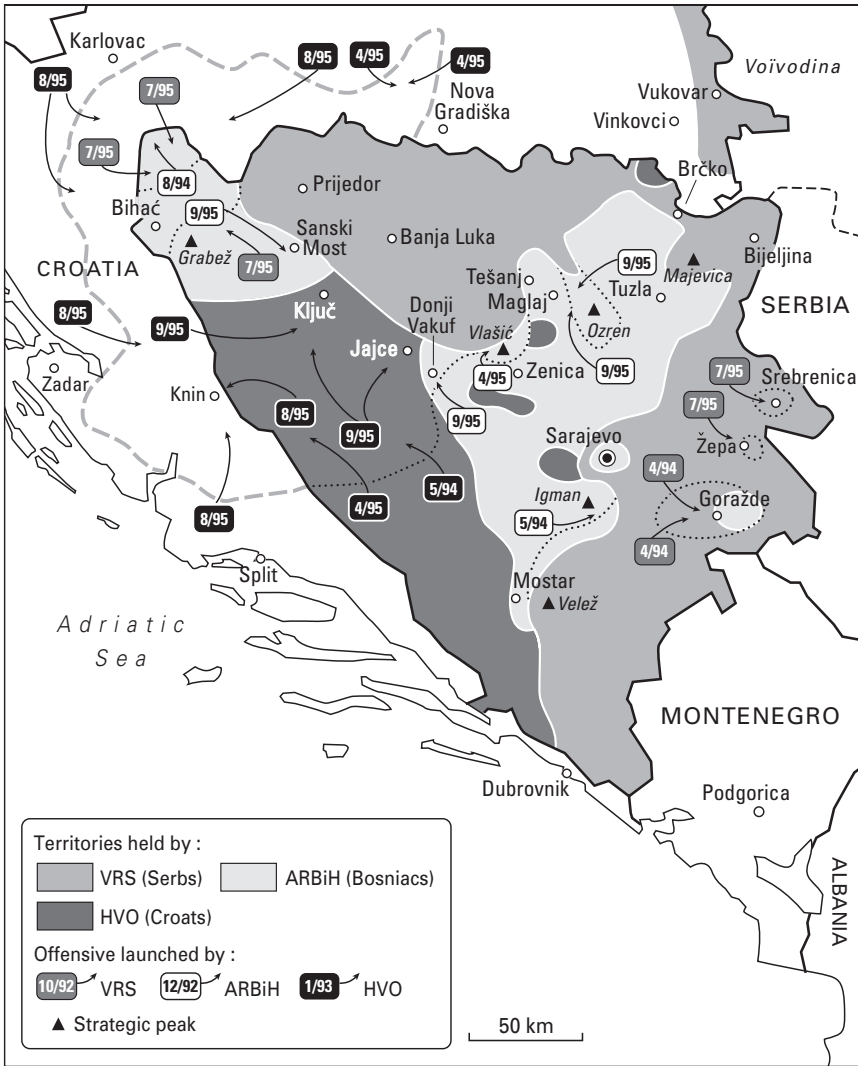
From March 1993 to March 1994, the war in Bosnia was marked by intense fighting between the ARBiH and the Croat HVO and by violent campaigns of “ethnic cleansing” between Bosniaks and Croats in central Bosnia and in Herzegovina (see map 4). Serb forces, for their part, made do with preserving their territorial gains, even if a Serb offensive against the “safe area” of Goražde in April 1994 was stopped at the last moment by a NATO ultimatum. But the fate of the three Bosniak enclaves of eastern Bosnia—Srebrenica, Žepa, and Goražde—constituted one of the principal issues in the negotiations presided over by the UN and the European Community and helped foil the peace plans presented by international mediators (the Vance-Owen plan of January 1993 and the Owen-Stoltenberg plan of May 1993). It was the unilateral intervention of the United States that finally unblocked the situation with the signature in March 1994 of an agreement that put an end to the fighting between Croats and Bosniaks and created a Federation of Bosnia-Herzegovina composed of several Bosniak and Croat cantons. The reestablishment of the Croat-Bosniak alliance was accompanied by a discreet lifting of the UN arms embargo. With the hardening of economic sanctions against Serbia and the Republika Srpska, this allowed for a gradual shift in the balance of military power on the ground.

Yet it was not until 1995 that broader and more rapid political and military changes were set in motion. In May, a deadly bombardment of the town of Tuzla by Serb artillery provoked NATO to retaliate with air strikes. The VRS then took more than four hundred blue helmets hostage, thereby demonstrating UNPROFOR’s vulnerability. The air strikes ceased and UNPROFOR decided to focus on its own security to the detriment of the safety of civilian populations. In June 1995, the French and British governments sent a heavily armed Rapid Reaction Force (RRF) to Bosnia. The ARBiH, for its part, launched an offensive against the Serb positions around Sarajevo but failed to break the siege. Several weeks later, on 6 July

1995, the VRS attacked the Srebrenica enclave. Despite its status as a “safe area,” Serb forces advanced on the enclave without being confronted by a determined response on the part of the *Dutchbat* or NATO aviation. On 11 July, General Ratko Mladić’s soldiers entered the town, which had by then been abandoned by its inhabitants. In the days that followed, about eight thousand Bosniak men were massacred by the Serb forces and the rest of the population of the enclave was expelled toward central Bosnia. Finally, on 14 July, the VRS attacked the enclave of Žepa, which fell in its turn on 25 July (see map 5).

The capture of the Srebrenica and Žepa “safe areas” and the massacre that followed in Srebrenica marked the definitive failure of UNPROFOR and led the major western powers to opt for a policy that privileged the use of air strikes. Thus, they threatened to bombard Serb forces if they attacked the Goražde “safe area.” At the same time, the Croatian army launched a vast offensive against the “Republic of Serb Krajina” on 4 August and in a few days recaptured most of the territory that had been lost in 1991, thereby opening up the region of Bihać (see map 5). At the end of the same month, following a deadly shelling of Sarajevo, NATO and the RRF bombarded Serb military installations for several weeks. The Croatian and Bosnian armies took advantage of the bombardments to recapture large areas of western Bosnia. In three months, the map of the frontlines that had emerged in 1992 was significantly changed (see map 3 and map 5). The United States then exploited the new situation on the ground to launch new peace negotiations and, starting in September 1995, two framework agreements were signed on the future institutional architecture of Bosnia. The peace negotiations continued in November at the American air base in Dayton, Ohio, and on 21 November 1995 a territorial compromise was found, providing for the partition of Bosnia between two constitutive entities: the Federation of Bosnia-Herzegovina (51 percent of Bosnian territory) and the Republika Srpska (49 percent) (see map 2). The Dayton agreements, signed on 14 December 1995 in Paris, officially put an end to the war in Bosnia-Herzegovina. Goražde was brought under the jurisdiction of the Federation of Bosnia-Herzegovina but Srebrenica and Žepa remained in the RS.

It thus appears that Srebrenica played an important role in the main phases of the war in Bosnia. Obstacles to the conquest of eastern Bosnia by the VRS, the enclaves of Srebrenica, Žepa, and Goražde were the object of violent fightings and fierce negotiation throughout the war. In April 1993, Srebrenica became the first “safe area” protected by UNPROFOR, before this model was extended to other towns. Two years later, the capture of the Srebrenica “safe area” by Serb forces and the massacre that followed revealed the complexity of decision-making procedures within UNPRO-



MAP 5. The frontlines in Bosnia-Herzegovina (April 1994–October 1995)

FOR, represented its definitive failure in Bosnia, and precipitated the massive intervention of NATO aviation. Beyond the single case of Bosnia, the painful experience of Srebrenica influenced the attitude that the major western powers adopted toward the Kosovo crisis several years later and led the UN to revise its conception of its peace-keeping operations. The unparalleled extent of the Srebrenica massacre also explains why it became the symbol of the “ethnic cleansing” that had been massively prac-



ticed by Serb forces over the course of the 1990s. The trials relating to the Srebrenica massacre are among the most significant conducted by the International Criminal Tribunal for the Former Yugoslavia (ICTY).

## **Investigations, Reports, and Public Debates about Srebrenica**

Indeed, starting in July 1995, the ICTY opened investigations into the Srebrenica massacre, which in 2001 led to the conviction for genocide of Radislav Krstić, former commander of the VRS' Drina Corps.<sup>14</sup> General Ratko Mladić and the President of the Republika Srpska, Radovan Karadžić, the principal organizers of the massacre, were also charged with genocide—in particular, for Srebrenica. After years on the run, Radovan Karadžić was arrested in Serbia in July 2008 and his trial at the ICTY started in October 2009. Ratko Mladić was also arrested in Serbia in May 2011. Even if the testimony of thousands of victims and the rare survivors of the executions, as well as the writings of certain journalists, had already informed the public about the scale of the crimes, it was only through the ICTY's investigative work that the various phases of this vast operation of forcible transport, massacre, and moving of corpses were successfully reconstructed (especially as the latter phase of dissimulation could not be established on the basis of victims' testimony). Without the ICTY investigations, which allowed most of the primary and secondary graves to be found, it is very likely that the fate of the men of Srebrenica as well as the number who died in the massacre would remain a matter of speculation, rumor, and denial.

However important the investigations and judgments of the ICTY, this tribunal nevertheless only judges criminal responsibility in the massacre. It is not within its mandate to judge moral or political responsibility for the enclave's fall, whether on the part of the blue helmets or on that of the international leaders in charge of protecting the "safe area." Under pressure from survivors of Srebrenica, the Sarajevo authorities, public opinion, and various NGOs, several investigative reports were carried out in the months and years that followed by international or state institutions involved in various ways in the course of events (the UN, France, the Netherlands, Republika Srpska). By contrast, certain states that might also have been called into question—Great Britain and the United States, for example—did not produce investigations or reports.<sup>15</sup>

The main investigations and reports were produced by the ICTY beginning in 1996, the UN in 1999, the French National Assembly's Fact-Finding Mission in 2001, the Netherlands Institute for War Documentation

(NIOD), an independent historical research institute, at the request of the Government of the Netherlands in 2002, and the Dutch Parliament in 2003. In Bosnia itself, major controversies within the Bosniak community led to a parliamentary debate being organized as early as 1996 and the Government of the Republika Srpska submitted several reports, including that which finally came to terms with the massacre in 2004. The latter was in response to firm orders on the part of the Office of the High Representative (OHR) of the international community in Bosnia, which drew on decisions by that country's Human Rights Chamber demanding that the RS inform families concerning the fate of their missing loved ones.

Until now, these reports have never been the object of comparative analysis.<sup>16</sup> Yet the reader may wonder what is to be gained through devoting considerable attention to these often tedious investigations and reports. A first answer may be found by adopting a broader perspective, in terms of both the historical and the analytical scope. On the one hand, the work of historians has shown the importance of investigative commissions concerning crimes and atrocities in the construction of accounts of war.<sup>17</sup> On the other hand, it should be recalled that these international tribunals and investigative commissions, though they often bring to mind American, French, and British investigators, also have a history in the Balkans. The Balkan wars of the late nineteenth and early twentieth centuries were the object of international investigations.<sup>18</sup> During the First World War, the Serbian Government asked Rodolphe Reiss, a Swiss criminologist and one of the founders of forensic science, to write reports on the crimes committed by the Austrian, German, and Bulgarian armies of occupation.<sup>19</sup> Likewise, at the end of the Second World War, communist Yugoslavia created a State Commission for the Investigation of the Crimes of the Occupants and Their Collaborators that brought together documentation on crimes committed on Yugoslav territory, transmitting a part of it to the Nuremberg Tribunal.<sup>20</sup>

The present work also contributes to critical reflection on such investigations. More than fifteen years after the facts, it is not simply a matter of denouncing or commemorating them. It is a matter of analyzing the manner in which the history of an event of this gravity is written as well as the manner in which the question of responsibility in the area of foreign and international policy is addressed by the countries and institutions concerned. Indeed, the institutions that carried out these investigations and reports benefited from significant powers: a considerable mass of otherwise inaccessible information and documents was assembled on this occasion and decisively contributed to the history of the enclave's fall and the subsequent massacre. What is more, the *comparison* of these investigations and reports helps us to assess their results as well as the particular

conditions and rationales that preceded their production. In this respect, it is necessary to understand the powers of investigation and their limits and the working methods that permitted and determined the collection of information. This is why the chapters of this book emphasize the importance of the investigative component, the reports' preparation, and the production of knowledge.<sup>21</sup>

Faced with the difficulty of finding words to name and describe, these investigations and reports offer frameworks for narration and intelligibility that shape public discussions on Srebrenica. They thus amount to an effort to instill rationality into a process of clarification which, from the outset, left too much room to rumor, disinformation, invective, and various conspiracy theories. They remain the principal source of knowledge concerning the enclave's fall and the massacre, the organized character of which they have solidly established. And, even if significant grey areas remain, the investigations and reports have broadly contributed both to minimizing the extent of rumors and denials concerning the number of deaths and the men's fate and to rationally examining suspicions of secret bargains or the deliberate abandonment of the enclave. Moreover, it is significant that certain attempts to deny the massacre or its scale, which one finds circulating on Serb nationalist websites, also take the form of reports, as a would-be gauge of truth and authenticity.<sup>22</sup>

These international or state institutions have thus contributed to the construction of a rational public debate and knowledge about the events.<sup>23</sup> It is therefore necessary to clarify their relationship to publicity and the constitution of archives (do they make their results, their sources, their procedures, and even their internal disagreements available?), especially given that their striving for transparency also aims to counter rumors and denials. Indeed, it is quite remarkable that, ten years later, a relative public consensus among international and state institutions, including the Republika Srpska, has been achieved on certain of the most contentious points, such as the number of the dead and the criminal nature of their elimination. By contrast, it is often forgotten that no consensus of this type or acknowledgment by the RS exists concerning "ethnic cleansing" in Prijedor, Zvornik, Foča, or Višegrad, or even in Srebrenica in 1992. In this respect, the shift from the 2002 RS report denying the massacre<sup>24</sup> to that of 2004 acknowledging it constitutes a decisive step. Even if its annexes remain classified, the forty public pages of the report, which are remarkable for their dullness, constitute first and foremost a public speech act.

Despite their limits, these investigations and reports thus circumscribe a (public) space of reasonable discussion concerning Srebrenica. It could be said that the Bosnian, French, and Dutch debates and reports fall short in analyzing the respective responsibility of these countries; there remains

room for discussion about the predictability of the massacre, the motives of those who organized and carried it out, the models of intelligibility that allow one to understand it, and the more general place of Srebrenica in the war in Bosnia and in the international politics that preceded and accompanied it. In fact, the chapters offered in this volume may express divergent views on the validity of the historiographical models applied to the massacre and the analysis of national and international responsibility in the enclave's fall. But there can be no debate about the murder of thousands of Bosniaks in Srebrenica, on the pretext that this is a myth aiming to discredit the Serbs. Such negationist efforts, even when—indeed, above all when—they are expressed in an academic context are as humanly appalling as they are intellectually grotesque.

The comparison that we offer does not claim to be exhaustive.<sup>25</sup> It does not extend to the various commemorative parliamentary resolutions on Srebrenica, such as the one adopted by the Serbian Parliament in March 2010 (see below).<sup>26</sup> It does not extend to the numerous NGO reports,<sup>27</sup> in particular because these organizations had no decision-making power in the events. Nor does it extend to the history of testimony—in particular, that of the victims—for that would entail another type of study with its own methodology and objectives. The editors and authors of this volume do not consider the personal experience of the victims of Srebrenica or individual testimony in general to be of lesser importance as a source; after all, these often constitute the principal basis upon which the investigations and reports are based. The aim of this comparison, however, is to clarify the construction of a public debate and the manner in which international and national institutions face up to their own responsibility in the events. What is more, certain phases of the events—in particular, the vast corpse-moving operation—are not known to us through testimony. Accordingly, without the ICTY's exhumation efforts and the work of identification carried out by the International Commission for Missing Persons (ICMP), it would have been impossible to establish the fate of the men of Srebrenica and their mortal remains.

Moreover, the various attempts by victims of Srebrenica to pursue legal proceedings against international organizations have been unsuccessful. During the past few years, victims from Srebrenica and Dutch human rights organizations and lawyers have been attempting to work through the legal system to wrest formal apologies and reparations from the Dutch state and from individual Dutch politicians and soldiers. Till today, they have met with very little success. In a number of court cases, judges have consistently dismissed claims from Srebrenica victims. These claims were initiated above all by surviving family members of Bosniaks who had worked at the UN-compounds in the Srebrenica "safe area."

*Dutchbat* handed over a number of these employees and their relatives to the Bosnian Serbs, which in fact amounted to a death sentence. According to the Dutch courts, victims would have to address UN headquarters in New York: *Dutchbat* had after all been part of the UN chain of command. However, judges admitted, the UN itself was necessarily immune from judicial claims, implying that the victims had nowhere to go. This point of view—shared by the Dutch state—caused intense debate among legal and political experts. Some felt the opinion of the courts was too “cold,” “technical,” and biased in favor of the Dutch authorities. After all, human rights lawyers stressed, just how serious would any intrusion on basic human rights have to be, before *ius cogens* (general and enforceable rule of law) could be invoked to replace the immunity enjoyed by the UN?<sup>28</sup>

## The ICJ Decision and the Serbian Parliamentary Debate

The present work focuses on the investigations and the construction of knowledge concerning Srebrenica. Hence, it does not include a specific chapter addressing the decision by the International Court of Justice (ICJ) in The Hague concerning the complaint for genocide filed by Bosnia-Herzegovina against the Federal Republic of Yugoslavia (Serbia-Montenegro) in 1993, a decision that was made public on 26 February 2007.<sup>29</sup> The ICJ ruled on the responsibility of Serbia as a state, not the criminal responsibility of individuals (the object of the ICTY) or the political responsibility of countries or institutions in the enclave’s fall (the object of the UN, French, and Dutch reports). In the February 2007 ruling, the ICJ held that genocide had been committed in Srebrenica but not in the rest of Bosnia and that Serbia was responsible neither for genocide nor for complicity in genocide but that it had violated its obligation to prevent and punish this crime.<sup>30</sup> This decision both directly and indirectly exemplifies the rationale that permeates the investigations and reports presented here. Directly, for it pushes the rationale of inter-report reference and citation to its limit. The ICJ ruling, which also refers to the NIOD report, is nearly entirely based on UN reports about the war in Bosnia (in particular, the report on the fall of Srebrenica) and on the judgments of the ICTY. The ICJ ruling thus contributes no new element or document vis-à-vis the judgments of the ICTY and the other reports cited and seems guided more by a desire to conform to these judgments and documents than by any desire to produce truth or clarify the nature of the events. Indeed, this decision follows those of the ICTY in declaring that a genocide has been committed in Srebrenica but not elsewhere in Bosnia, modeling the principle of determination of state responsibility on that of individual penal responsibility. This approach is

all the more surprising given that the ICJ's decision relies on ICTY judgments that are temporary, contingent, and revisable, thereby weakening the authority of its decision. The logic of this decision suggests that it could have turned out differently had the trial of Slobodan Milošević reached a conclusion or if one of those charged by the ICTY had later been condemned for genocide elsewhere than in Srebrenica.<sup>31</sup> This division of labor—or deference in regards to the ICTY—is doubly problematic.

Indeed, by adopting the term *genocide* for Srebrenica, the ICJ uncritically and without justification endorsed a term that is an object of debate among legal scholars and, in so doing, also weakened its significance in marking the specific nature of the violence of Srebrenica, which consisted in the differential treatment of men and women and the systematic elimination of the former.<sup>32</sup> By rejecting Serbia's responsibility for participation or complicity in genocide, moreover, the ICJ decision made no effort to more thoroughly explore the role of Serbia in the Srebrenica massacre or publish the relevant documents concerning it. If the decision gave rise to a heated public discussion, it was in large measure due to its refusal to contribute to the work of investigation.<sup>33</sup> Indeed, the Court refused Bosnia's request to order Serbia to furnish the ICJ with the minutes of the Supreme Defense Council, the body in charge of the Yugoslav army. These minutes had been delivered to the ICTY in the framework of the Milošević trial on condition of confidentiality<sup>34</sup> and were available to the judges when they decided to refuse to acquit Milošević of charges of genocide in several municipalities of Bosnia.<sup>35</sup> Although the verdict that would have been issued in the Milošević trial had it reached its conclusion cannot be presumed, it is puzzling that the ICJ chose to focus on the ICTY judgments rather than that tribunal's investigative work, archives, and evidence. Even as it refused to order Serbia to produce these documents—something it was legally entitled to do—the ICJ based its exoneration of Serbia for responsibility or complicity in the commission of genocide precisely on the absence of such evidence. The stir to which this decision gave rise was thus inversely proportional to its contribution to establishing the facts.

As for the judgment's contribution to public discussion about Srebrenica, such an effect is clearly observable in Serbia. Attempts have long been made in Serbia to obtain acknowledgment of the Srebrenica massacre. In June 2005, on the eve of the tenth anniversary of the Srebrenica massacre, eight human-rights NGOs called for the adoption of a resolution condemning the genocide committed in Srebrenica. This initiative was supported by two MPs but the main parties opposed it, advocating instead that a resolution condemning all war crimes be adopted. The matter was then buried.

Over the following years, small opposition parties continued to demand that such a resolution be adopted, but without success. In an official

communiqué following the ICJ decision, President Boris Tadić called on Serbia to recognize and condemn the Srebrenica massacre, though he did not use the term *genocide*. On 15 January 2009, the European Parliament proclaimed 11 July Srebrenica Genocide Commemoration Day; other parliaments in Europe did likewise. The same small opposition parties then asked the Parliament of Serbia to follow suit. In the meantime, Serbia filed a complaint with the ICJ against Croatia for genocide and another protesting the independence of Kosovo. It also signed on 29 April 2008 a Stabilization and Association Agreement with the European Union. The positions taken by President Tadić concerning Srebrenica were thus also interpreted as an effort to facilitate Serbian accession to the EU and strengthen its position in the ICJ against Croatia and Kosovo.

Appearing on Republika Srpska television on 9 January 2010, Boris Tadić stated that Serbia had the duty of condemning the Srebrenica massacre, provoking sharp reactions in the RS and Serbia. In concrete terms, Tadić proposed the adoption of two resolutions, one concerning Srebrenica in particular, the other concerning all of the crimes committed in the former Yugoslavia in the 1990s. In doing so, he benefited from the support of the small parties mentioned above as well as his own party (the Democratic Party—DS) and the G-17 party, both of which were in the Government. But he came up against opposition from Vojislav Koštunica's Democratic Party of Serbia (DSS), the Socialist Party of Serbia (SPS), and other parties that did not want a specific resolution addressing Srebrenica. The debates also concerned the possible inclusion of the term *genocide* in the Srebrenica resolution following the precedent of the ICJ and the European Parliament. After three months of negotiations, the ruling parties presented to the Parliament of Serbia a compromise resolution on Srebrenica at the end of March 2000. This resolution was adopted on 31 March 2010 with 127 votes for, 21 against, and 15 abstentions. It condemned the crime perpetrated in Srebrenica against Bosniaks "in the way established by the decision of the International Court of Justice," regretted and apologized that not everything had been done to prevent this crime, and required full cooperation with the ICTY, including the arrest of general Ratko Mladić. But the resolution carefully abstained from using the term *genocide* and did not require any parliamentary investigation into the role of Serbia in the Srebrenica events.<sup>36</sup>

## A Dialogue between Actors and Researchers

The ICJ decision and the resolution of the Serbian Parliament thus underscore—indirectly and as counter examples—the specificity of the texts

studied here, which all examine the issue of criminal or political responsibility and seek to establish the facts or at least improve knowledge of them, by giving access to confidential documents, for example. Given the role played by the ICTY investigations in establishing the facts about what happened after 11 July 1995, it is clear that our knowledge of Srebrenica is in large measure indebted to the legal narrative of the Tribunal. In this respect, clarifying the ICTY's rationale and investigative limits contributes to discussions of the relationship between the judge and the historian. As the police commissioner who directed the ICTY investigation into the 1995 massacre, Jean-René Ruez, explains in the interview with which this volume opens, the ICTY investigation is concerned neither with the issue of international responsibility for the enclave's fall nor with combat operations nor even with the responsibility of secondary actors such as police forces. Historians will certainly devote themselves to tying together the various dimensions of the events separated by the ICTY and distancing themselves from the purely legal reconstruction and categorization of these events, as historians of the Second World War have endeavored to do vis-à-vis the Nuremberg trials.<sup>37</sup> But the interest of comparing these investigations and reports is also to be found in going beyond and displacing the terms of the debate concerning the nature of the relationship between the judge and the historian. According to the predominant model, a judge is simply responsible for criminal justice proceedings—including investigations, in contexts where there is an examining magistrate—while it is the historian who holds the position of independent, external critic relative to the official documents from these proceedings and their production. In the present case, by contrast, police inspectors and legal scholars, just as much as historians, have engaged in critical reflection concerning the legal narrative of the events and its limits. What is more, the legal procedures of the ICTY and the Human Rights Chamber of Bosnia-Herzegovina provide an enlightening contrast with the European model centered around the examining magistrate, which has shaped reflections on the relationship between the judge and the historian. According to the accusatory procedures that prevail in the ICTY, the judges who draft the rulings and “write history” do not investigate, a duty that instead falls to police officers and prosecutors. And the decision of the Human Rights Chamber that led to the Republika Srpska report fell under the jurisdiction of civil, not criminal, procedures and bodies. Moreover, in the case of the NIOD report and that of the RS, it is historians who found themselves in the position of investigators producing official documents capable of being used or contested in the ICTY trials. Finally, parliamentarians and high-ranking officials contributed as much as historians to the production of these reports.



A complex relationship is thus established among police commissioners, judges, historians, parliamentarians, and high-ranking officials via this very self-referential body of investigations and reports. The process by which they were produced thus does not allow one to establish a clear separation, much less an opposition, between the role of judges and professional investigators and that of historians and academics, since both can be seen as bringing a critical perspective to bear on these investigations. It is thus neither history “from below,” keeping as close as possible to the accounts of witnesses, nor history “from above.” This fact is reflected in the very structure of the present work, which is based on a dialogue between various participants, some of whom more or less actively participated in elaborating these investigations and reports while others tried to understand their logic from outside by means of comparison.

It seemed essential for the present book to include perspectives from individuals who have, to one degree or another, participated in the realization of these investigations and reports on Srebrenica, both because of the institutions for which they have worked and because of their competence and personal involvement in promoting understanding and acknowledgment of the massacre. As a police commissioner, from 1996 to 2001 Jean-René Ruez led the ICTY investigation into the massacre. He has testified in all of the trials of those indicted by the ICTY in this affair and continues to do so. Michèle Picard was President of the Human Rights Chamber of Bosnia-Herzegovina from 1997 to 2003 and actively participated in the “Selimović” decision, which led to acknowledgment of the massacre by the RS. Asta Zinbo, former director of the ICMP’s Department of Civil Society Initiatives, here intervenes on behalf of that institution, which participated in the preparation and work of the RS commission, and on account of her patient and precious work with the victims’ associations of Srebrenica during her years within the ICMP. Pierre Brana, a former MP, participated in the French Parliamentary Fact-Finding Mission on Srebrenica and was the rapporteur for its counterpart on Rwanda. Although he did not serve as spokesman for the Srebrenica mission, a reading of the report and the hearing of the Parliamentary Fact-Finding Mission more than adequately show that his stances were among the freest and most constructive in the Commission’s work. The career of Christ Klep, a historian and author of a dissertation on international interventions and, in the present volume, a chapter on the Dutch parliamentary report, also illustrates how porous the barrier is that separates the role of actor from that of researcher. As part of a team of historians within the Dutch Ministry of Defense, he interviewed *Dutchbat*-soldiers in Zagreb on their return from Srebrenica in late July 1995. These interviews were later used as source material by several Dutch Srebrenica commissions. He subsequently served as both witness

and advisor during the Interim Parliamentary Commission (the first Bakker Commission) and as a commentator in the media on all Srebrenica commissions.<sup>38</sup>

The UN report is not the object of a separate chapter and the retrospective remarks on this report by David Harland, who was its principal author, are presented in the final and conclusive chapter by Isabelle Delpla. The chapters by Pieter Lagrou and Xavier Bougarel, both of whom are historians, bring an external perspective to bear on the rationales that cut across the preparation of the NIOD report (in the case of Pieter Lagrou) and the course of the debate in the Bosnian Parliament (in the case of Xavier Bougarel), each underscoring how these inquiries reflect specific political styles and practices. Those written by Jean-Louis Fournel, a historian of political thought, and Isabelle Delpla, a philosopher, present complementary analyses of the principles guiding comparison between these investigations and reports. Jean-Louis Fournel's chapter analyzes the "report-form" and the conflicts among temporalities that cut across the drafting of the reports. Isabelle Delpla's chapter compares how these texts establish facts, assign responsibility, and produce intelligibility, in particular by their choice of descriptive and interpretive levels (local, regional, national).

In the programmatic preface to his masterwork on the Mediterranean and the Mediterranean world in the age of Phillip II, Fernand Braudel called upon his readers to distrust "the burning passions" of the time of men: it is about precisely this sort of history that the present work tries to speak — about it and about the various ways in which one can and must try to put it into words. By bringing together institutional and academic contributors, detailed monographs, and comparative approaches, this book contributes to a reflection on the manner in which the history of an event of this gravity is written. More generally, it seeks to displace and overcome the usual historiographical frameworks of contemporary history and mass violence. On the one hand, the various chapters open up perspectives on national and international styles of action, political debate, and academic research without leading to a relativistic perspectivism. On the other hand, they contribute original information and reflection concerning the interactions between international organizations, national institutions and individuals during the events of July 1995 and the subsequent investigations and public debates. By various means, they insist as much on the role of state structures as on individual responsibility in the massacre itself. Similarly, they show the relationship between various degrees of institutional and personal responsibility, between institutional rationales and the active role of individuals, both in the attitude of the international community in July 1995 and in the conduct of international and national investigations.

In this respect, the present work aims to contribute to an informed and critical discussion of the Srebrenica massacre and its aftermath. Further, it seeks to underscore the importance of this massacre, not only for understanding the wars in the former Yugoslavia and the spiral of exactions and crimes that accompanied them, but also in order to contribute to broader reflections on violence, the prevention of conflicts, and relations between citizens, states, and international organizations in extreme crises and their effects at the dawn of the twenty-first century.

*Translated from French by Ethan Rundell*

## Notes

1. In this volume, the term *Bosnians* (*Bosanci*) refers to all inhabitants of Bosnia while the term *Bosniaks* (*Bošnjaci*) only refers to members of the nation that has been called Muslim until 1993 and is distinct from the two other constituent nations of Bosnia (Serbs and Croats).
2. For a detailed description of the methods for assessing the number of victims and identifying bodies, see Asta Zinbo's contribution on behalf of the ICMP and Isabelle Delpla's chapter.
3. A first version of this work appeared in French under the title *Srebrenica 1995. Analyses croisées des enquêtes et des rapports* in the journal *Cultures & conflicts*, no. 65 (Spring 2007). This first edition was updated and supplemented, in particular by the addition of a chapter by Christ Klep concerning the Dutch parliamentary debate.
4. On the breakup of Yugoslavia, see Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, DC, 1995); Lenard Cohen, *Serpent in the Bosom: The Rise and Fall of Slobodan Milosevic* (Boulder, CO, 2001); Valère P. Gagnon, *The Myth of Ethnic War: Serbia and Croatia in the 1990s* (Ithaca, NY, 2004).
5. On the history of Bosnia, see Noel Malcolm, *Bosnia: A Short History* (London, 1994); Robert J. Donia and John V. Fine, *Bosnia and Herzegovina: A Tradition Betrayed* (London, 1994).
6. In Srebrenica, populated by Bosniaks (72.9 percent) and Serbs (25.2 percent), the Party of Democratic Action (SDA, Bosniak) and the Serb Democratic Party (SDS) respectively won 42 and 14 of the 66 seats on the city council.
7. In January 1992, a ceasefire in Croatia led to the creation of four "United Nations protected areas" (UNPA) covering the regions populated by Serbs and to the deployment of a United Nations protection force (UNPROFOR) that was to have its mandate extended to Bosnia in May 1992.
8. On Bosnia before the war, see Neven Andjelic, *Bosnia-Herzegovina: The End of a Legacy* (London, 2003).
9. On the war in Bosnia, see Steven L. Burg and Paul S. Shoup, *The War in Bosnia-Herzegovina: Ethnic Conflict and International Intervention* (New York, 1999); Xavier Bougarel, *Bosnie, anatomie d'un conflit* (Paris, 1996).
10. On the Yugoslav People's Army, see Miroslav Hadžić, *The Yugoslav People's Agony: The Role of the Yugoslav People's Army* (Aldershot, 2002).

11. In the framework of the Yugoslav “general people’s defense” system, each republic possessed its own Territorial Defense equipped with small arms, the Yugoslav People’s Army keeping a monopoly over heavy weapons. On the origins of the ARBiH, see Marko Hoare, *How Bosnia Armed: The Birth and Rise of the Bosnian Army* (London, 2004).
12. On “ethnic cleansing,” see Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, MA, 2001); Cathie Carmichael, *Ethnic Cleansing in the Balkans: Nationalism and the Destruction of a Community* (London/New York, 2002); *Final Report of the United Nations Commission of Experts Established Pursuant to Security Council Resolution 780 (1992)—document S/1994/674*, available at [http://www.ess.uwe.ac.uk/comexpert/REPORT\\_TOC.HTM](http://www.ess.uwe.ac.uk/comexpert/REPORT_TOC.HTM).
13. On the international dimensions of the war in Bosnia, see James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (New York, 1997); Thierry Tardy, *La France et la gestion des conflits yougoslaves (1991–1995)* (Paris, 1999).
14. The conviction upheld after appeal was that of aiding and abetting genocide.
15. The case of Greece is particular to the degree that the parliamentary report requested by certain NGOs did not concern the role of the Greek authorities but rather the participation of Greek volunteers in the attack against Srebrenica.
16. At least not in an academic framework. For analyses of several of these reports containing elements of comparison between them in an activist framework, see Mient Jan Faber, *Srebrenica. De genocide die niet werd voorkomen* [Srebrenica. The Genocide That Was not Prevented] (Utrecht, 2002) and the website *Domovina*, which in particular brings together texts written by victims of Srebrenica, such as Hasan Nuhanović, concerning these various reports: [http://www.domovina.net/srebrenica/page\\_006.php](http://www.domovina.net/srebrenica/page_006.php), last accessed on 8 December 2011.
17. See, in particular, John Horne and Alan Kramer, *German Atrocities, 1914: A History of Denial* (New Haven, CT, 2001) and the dossier “Enquêteur sur la guerre” in *Le mouvement social*, no. 222 (January–March 2008). The present work is the result of work carried out in the framework of the GDR 2651 “Crises extrêmes.” In this connection, see Marc Le Pape, Johanna Siméant, and Claudine Vidal, eds., *Crises extrêmes. Face aux massacres, aux guerres civiles et aux génocides* (Paris, 2006) and more particularly the comparison between the investigative reports on the genocide in Rwanda offered in this work by Marc Le Pape, “Vérité et controverses sur le génocide des Rwandais Tutsis. Les rapports (Belgique, France, UN),” 103–118.
18. See in particular Dzovinar Kévonian, “L’enquête, le délit, la preuve: les ‘atrocités’ balkaniques de 1912–1913 à l’épreuve du droit de la guerre,” *Le mouvement social*, no. 222 (January–March 2008): 13–40.
19. Zdenko Levental, *Rodolphe Archibald Reiss, criminaliste et moraliste de la Grande Guerre* (Genève, 1992); Nicolas Quinche, “Reiss et la Serbie: des scènes de crime aux champs de bataille, l’enquête continue,” in *Le théâtre du crime: Rodolphe A. Reiss (1875–1929)*, eds. Christophe Campod et al. (Lausanne, 2009), 289–306.
20. Albert Vajs, “Rad komisije za utvrđivanje zločina okupatora i njihovih pomagača” [The Activity of the Commission for the Investigation of the Crimes of the Occupants and their Collaborators], *Anali pravnog fakulteta* 9, no. 4 (October 1961): 387–400. On the use of the notion of genocide in communist Yugoslavia, see Xavier Bougarel, “Du code pénal au mémorandum: les usages du terme ‘génocide’ dans la Yougoslavie communiste,” in *Peines de guerre. La justice pénale internationale et l’ex-Yougoslavie*, eds. Isabelle Delpla and Magali Bessone (Paris, 2010), 67–84.
21. The approach here is complimentary to that adopted in Isabelle Delpla and Magali Bessone, eds., *Peines de guerre. La justice pénale internationale et l’ex-Yougoslavie* (Paris,

- 2010), which is more concerned with the history and use of legal categories such as genocide.
22. A striking example of a website using the report form in a fallacious manner is one calling itself the “Srebrenica-report.” It presents itself as an official report by researchers and former UN officials and borrows from the form of the report both its style and its material presentation, imitating the websites of international organizations, in particular in order to claim that the number of eight thousand Bosniaks killed has no foundation in fact and is essentially a political fabrication.
  23. In this respect, our discussions are indebted to the cosmopolitan reflections of Kant and Habermas concerning how public norms can be used to exert republican control over foreign policy (Immanuel Kant, *Perpetual Peace and Other Essays* [Indianapolis, IN, 1988]; Jürgen Habermas, *Perpetual Peace: Essays on Kant’s Cosmopolitan Ideal* [Cambridge, MA, 1997]). In a reflection on transitional justice, Mark Osiel also very rightly underscores that trials and judgments for mass crimes matter as much for the judgments of the crimes themselves as for their contribution to public debate (Mark Osiel, *Mass Atrocity: Collective Memory and the Law* [New Brunswick, NJ, 1997]).
  24. See the chapter by Michèle Picard and Asta Zinbo in this volume.
  25. This comparison does not present the content of the reports, which in most cases may easily be consulted on the Internet. Nor does it seek to be exhaustive or systematic in the approaches and analytical methods it employs, which can vary from one chapter to another. In particular, it does not carry out a sociology of the institutions and persons who produced these reports.
  26. The House and Senate of the US Congress passed resolutions on the Srebrenica genocide in June 2005, including all the atrocities that occurred in Bosnia as well. The European Parliament passed a resolution on 15 January 2009, marking 11 July for the Srebrenica Genocide Commemoration Day. In July 2009, the former Yugoslav countries of Croatia and Montenegro adopted declarations condemning the genocide and designated 11 July as a day of commemoration. Macedonia did likewise in February 2010, and Canada in October 2010.
  27. Among the NGOs that were the most active in favor of investigations concerning international responsibility in the fall of Srebrenica, the local associations of families of the missing “Mothers of the Srebrenica and Žepa Enclaves” and “Women of Srebrenica” should be mentioned in particular (<http://www.srebrenica.ba>) as well as Médecins sans frontières in France (<http://www.paris.msf>), the Ecumenical Council for Peace in the Netherlands (<http://www.ikvpaxchristi.nl>), and the Greek Helsinki Monitor (<http://www.greekhelsinki.gr>) in Greece.
  28. We thank Christ Klep for this paragraph.
  29. 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)*, <http://www.icj-cij.org/docket/files/91/13685.pdf>, last accessed on 8 December 2011.
  30. Another reason not to linger over this question is that a number of journals have devoted special issues to this decision. See, in particular, *Annuaire Français de Droit International* 53 (2007); *Journal of International Criminal Justice* 5, no. 4 (September 2007); *Leiden Journal of International Law* 21, no. 1 (March 2008); *European Journal of International Law* 18, no. 4 (September 2007); *Rutgers Law Review* 61, no. 1 (Fall 2008). In the context of the present work, we refer in particular to the article by Vojin Dimitrijević and Marko Milanović, “The Strange Story of the Bosnian Genocide Case,” *Leiden Journal of International Law* 21, no.1 (March 2008): 65–94. This article describes the evolution of the legal and political strategies of the various protagonists, whose legal status and political aims changed over the course of the proceedings.

31. See in particular Richard J. Goldstone and Rebecca J. Hamilton, "Bosnia v. Serbia: Lessons from the Encounter of the International Court of Justice with the International Criminal Tribunal for the Former Yugoslavia," *Leiden Journal of International Law* 21, no. 1 (March 2008): 95–112.
32. For the meager contributions of this decision to the definition of genocide, see Claus Krefß, "The International Court of Justice and the Elements of the Crime of Genocide," *The European Journal of International Law* 18, no. 4 (September 2007): 619–629.
33. See in this regard Edina Bećirević, "ICJ Judgment Significant Despite Flaws," *IWPR's Tribunal Update*, no. 491 (4 March 2007), <http://iwpr.net/fr/node/12606>.
34. ICTY, *First Decision on Admissibility of Supreme Defence Council Materials*, 23 September 2004, [http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040923-2.htm](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040923-2.htm), last accessed on 8 December 2011.
35. ICTY, *Decision on Motion for Judgment of Acquittal*, 16 June 2004, [http://www.icty.org/x/cases/slobodan\\_milosevic/tdec/en/040616.htm](http://www.icty.org/x/cases/slobodan_milosevic/tdec/en/040616.htm), paragraph 289, last accessed on 8 December 2011.
36. *Deklaracija skupštine Republike Srbije o osudi zločina u Srebrenici*, 31 March 2011, <http://www.parlament.gov.rs/akti/ostala-akta/doneta-akta/doneta-akta.1039.html>, last accessed on 8 December 2011.
37. On the relationship between the judge and the historian—to borrow the title of Carlo Ginzburg's book—or on the writing of contemporary history, we are in particular indebted to the work of Henri Rousso, Annette Vieworka, and Carlo Ginzburg as well as to the more general reflections of Paul Veyne and Pierre Vidal Naquet on writing history. On the distance taken by historians toward the historiography inherited from the Nuremberg trials, see in particular Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (New York, 2001).
38. The career of Ger Duijzings is also exemplary of this shift from the position of actor to that of researcher. A Dutch anthropologist who participated in the NIOD report, Ger Duijzings was one of the report's only contributors who had real expertise on the former Yugoslavia. He expressed his reservations over the final results of the NIOD's work in an article entitled, "The Road to Hell Is Paved with Good Intentions: The Srebrenica Report of the Netherlands Institute for War Documentation (NIOD)," *South-East Europe Newsletter*, London, no. 54 (June 2003): 1–7. He afterward worked as an investigator for the ICTY. For a reflexive examination of his own contribution to the NIOD report, see also his chapter, "Commemorating Srebrenica: Histories of Violence and Politics of Memory in Eastern Bosnia," in *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society*, eds. Xavier Bougarel, Ger Duijzings, and Elissa Helms (Aldershot, 2007), 141–166.