

Chapter 9

Memorial Culture in the Former Yugoslavia: Mothers of Srebrenica and the Destruction of Artefacts by the ICTY

Olivera Simić

Introduction

*I would not wish anyone to live with these memories regardless of religion, race or colour. No one knows how difficult it is to live without family and only with memory.*¹

In July 1995, Srebrenica, a small town in the east of Bosnia and Herzegovina (BiH), became the site of a genocide that was carried out over just four days, when members of the Serbian forces slaughtered thousands of Muslim men and boys. During the war in BiH, Srebrenica was an isolated enclave which hosted thousands of Bosnian Muslims who had fled their homes as a result of attacks by Serb forces. In 1993, the UN Security Council ‘demanded’ that Srebrenica should be treated as a ‘safe area’ by ‘all parties and others concerned’ and thus should be ‘free from any armed attack or any other hostile act’.² Despite proclaiming Srebrenica as one of the six ‘safe zones’ in BiH protected by the UN peacekeeping mission (UNMBIH), this town proved to be among the most unsafe places in the world.³ Only a few months after the promulgation of Srebrenica as a ‘safe area’,

¹ Personal interview, Hatidža Mehmedović, Srebrenica, 9 December 2011.

² United Nations Security Council Resolution 819 (1993) on the situation in Bosnia and Herzegovina. See, S/Res/819/1993, 16 April 1993.

³ Laura Silber and Allan Little, *The Death of Yugoslavia* (Penguin Books, 1996), 274.

O. Simić (✉)

Griffith Law School, Griffith University, QLD, 4111 Brisbane, Australia

e-mail: o.simic@griffith.edu.au

on 11 July 1995, Bosnian Serb forces entered Srebrenica, looted the small town and, in only four days, executed between 7,000 and 8,000 men and boys.⁴

Since 1996, when reports first emerged alleging that a massacre had wiped out the male population that had sought refuge in and around Srebrenica, the local, non-for-profit organization 'Mothers of Srebrenica see also Mothers of Srebrenica'⁵ (Mothers) galvanized local and international community to unearth the truth about the events of 1995 and to bring those responsible to justice. To achieve their goals, the Mothers use a variety of methods, including symbolic demonstrations, peaceful marches, public gatherings and speeches, as well as media exposure.

Similar to the Mothers of the Plaza de Mayo and the Federation of Mothers from Ayacucho,⁶ these women demand that the truth be revealed about the disappearances and murders of their family members, predominantly their sons and husbands. Through their activism, they demonstrate that while they are victims of the war, they are also survivors.⁷ They have been actively engaged in political mobilization at a grassroots level, using the ironically and sadly privileged place that they occupy as mothers who have lost their children, and often their whole families.

I have met with the Mothers in public settings, such as conferences and forums, and also privately, in their offices, when I was interpreting for an international agency that wanted to find out more about their work, and when I was travelling

⁴ Estimates of the number of people killed in Srebrenica differ and are highly contested. The number 8,372 is adopted from the 'Preliminary List of People Missing or Killed in Srebrenica' compiled by the Bosnian Federal Commission of Missing Persons. The number was increased from the original 8,106 on 21 December 2008. See, Srebrenica Genocide Blog, <http://srebrenica-genocide.blogspot.com/2008/12/update-8372-victims-of-srebrenica.html>. Radislav Krstić, a Serb officer, was convicted for genocide and sentenced to 46 years of imprisonment by the International Criminal Tribunal for the former Yugoslavia, the first conviction for genocide by the Tribunal. See, *The Prosecutor v. Radislav Krstić*, Judgement, Case No. IT-98-33-T, 2 August 2001, para. 84.

⁵ Four associations bring survivors together in Srebrenica: Mothers of Srebrenica, Women of Srebrenica, Association of Mothers of Srebrenica and Podrinja and Association of Mothers of Srebrenica and Žepa Enclaves. In this paper, I use 'Mothers' to refer to the association based in Potočari-Srebrenica.

⁶ The Mothers of the Plaza de Mayo is an association of Argentine mothers whose children "disappeared" during the period of military dictatorship in Argentina from 1976 until 1983. The Mothers have gathered in order to find their missing sons and daughters, many of whom were tortured and killed. For detailed analyses of this association, see, Marguerite Guzman Berjano, *Revolutionizing Motherhood: The Mothers of the Plaza de Mayo* (Wilmington, DE: Scholarly Resources, 1994); Diana Taylor, 'Making a Spectacle: The Mothers of the Plaza de Mayo' (2001) 3 (2) *Journal of the Association for Research on Mothering: Mothering, Fathering and a Culture of Peace*, 97-109. The Federation of Mothers from Ayacucho is an organization of Peruvian mothers who promotes peace and raise human rights awareness.

⁷ Meredith Turshen and Clotilde Twagiramariya, *What Women Do in War-time: Gender and Conflict in Africa* (Zed Books, 1998); Krishna Kumar, *Women and Civil War: Impact, Organizations and Actions* (Lynne Rienner, 2001); Cynthia Cockburn, *The Space Between Us: Negotiating Gender and National Identities in Conflict* (Zed Books, 1998).

with a group of scholars who visited the Srebrenica graveyard.⁸ To someone who was born and lived most of my life in the region, these encounters have been incredibly important, but also uncomfortable and painful. I have often felt anger and helplessness, which was absorbed and muted by the pain I sensed everywhere around me during these encounters.

Although I have met with members of the Mothers several times, I always feel nervous before I am about to meet and speak with one of them. Hatidža Mehmedović, the founder of Mothers, is a warm and brave woman of 62 years of age. She is well known in the Federation of BiH⁹ as having lost two sons, her husband, two brothers and other male family members in the Srebrenica massacre. In the project '1,000 Women for Nobel Peace Prize', Hatidža was nominated for her tireless work for missing persons and for her support to all of the mothers whose children and family members were killed in the Srebrenica genocide.

Although I had encountered Hatidža on several occasions, I did not know her personally, so a good friend of mine from Sarajevo, Selma, told me that she would 'find out' Hatidža's cell phone for me. After I received Hatidža's phone number, I postponed calling her for several days, hoping that I would find a way to travel to Srebrenica and sit down and talk to her over the coffee, as the custom of my country prescribes. I felt embarrassed to call a woman who had lost her whole family in genocide and to talk to her over the phone about artefacts from the mass graves that the International Criminal Tribunal for the Former Yugoslavia (ICTY) had apparently destroyed. It seemed to me deeply inappropriate and disrespectful to instigate a conversation about anything related to genocide over the phone.

For days, I tried to find a way to get to Srebrenica from Banjaluka, my home city and the place where I resided while I was doing fieldwork in BiH in November and December of 2011. It is a paradox that many people told me how complicated it would be to get to Srebrenica from anywhere in BiH, even Sarajevo, while for Ratko Mladić¹⁰ and the Serb army, it was not complicated at all. Nonetheless, for me, the travel logistics proved complicated. After all of my travel arrangements fell apart, I mentioned to another of my interviewees, Belma Zulčić, someone who knows Hatidža personally, that I wanted to talk to Hatidža but felt uncomfortable doing so over the phone. Belma encouraged me to call Hatidža anyway and volunteered to phone her first to give her notice to expect my call.

⁸ Olivera Simić, 'Remembering, Visiting and Placing the Dead: Law, Authority and Genocide in Srebrenica' (2009) 13 *Law Text Culture*, 273-311; Olivera Simić, 'A Tour to a Site of Genocide: Mothers, Bones and Borders' (2008) 9 (3) *Journal of International Women Studies*.

⁹ The Federation of Bosnia and Herzegovina is one of two entities in BiH. The vast majority of the population in this entity are Bosniaks (Bosnian Muslims).

¹⁰ Ratko Mladić is a Bosnian Serb former military leader accused of committing war crimes during Bosnian war. Mladić was accused by the ICTY of being responsible for the Srebrenica massacre. His trial began on June 3, 2011 and according to some predictions expected to finish in 2016. See, *The Prosecutor v Ratko Mladic*, Case No. IT-09-92-I, 1 June 2011; Jesse Wieten, 'Mladic trial still expected to end in 2016', *News*, 11 April 2013, http://news.xinhuanet.com/english/world/2013-04/11/c_132301640.html.

When I finally called Hatidža, the first thing I told her was that I apologized for not being able to come to Srebrenica to meet her personally and to talk with her face to face. I told her that there were no buses to Srebrenica from Banjaluka or Belgrade (the two cities in which I was based during my visit) and that I had not been able to arrange someone to drive me there. Indeed, I did not have anyone to turn to in Banjaluka to ask to give me a ride to Srebrenica. Banjaluka is the political and economic centre of the Republika Srpska (RS) and a city that is still in denial of genocide. Srebrenica is about a five-hour drive from Banjaluka, and it is only possible to travel there by car. However, as there are no public transport options, it is extremely difficult, and generally impossible, to organize, for example, school excursions or any other sort of group tour to Srebrenica. It is also not possible for individuals to travel from Banjaluka to Srebrenica on public transport to pay their respects to those killed in genocide.

It is dangerous to talk about genocide in Banjaluka, let alone express any sorrow or acknowledgement of the horror that happened there in July 1995. I have hardly heard any solidarity or empathetic comments from my friends and acquaintances regarding Srebrenica. At the bare mention of this small town, most people in Banjaluka react with anger, rage and hatred. Persistent rumours circulate in Banjaluka that the massacre at Srebrenica did not happen; that the people allegedly killed now live in Canada or US, vote in elections for ultra-nationalist Bosniak parties, and even attend their own memorial service each year in Srebrenica; that the famous documentary that was broadcast across the world showing the execution of six unarmed men by the Scorpions, the Serbian paramilitary unit, was a fake montage made by those who hate the Serbs¹¹; that the people shown dead in that footage were acting, and after the cameras stopped rolling, they got up and walked away in freedom; that the victims of the Srebrenica massacre killed each other; that then President of BiH Alija Izetbegovic ‘needed’ Srebrenica to provoke the international community and NATO into bombing the Serb army in BiH to end the war.¹²

These are just some of the dreadful rumours that I have heard over the last few years from Serbs in my hometown who deny the genocide. I even heard a few who

¹¹ In June 2005, the authentic video was publically broadcasted in Serbia and around the world which shows the ‘Scorpions’, a paramilitary Serb group, taking six Bosniak men into the wood near Srebrenica to be shot. Nataša Kandić, the executive director of the Humanitarian Law Centre in Belgrade, had managed to secure a copy of home video that the Scorpions made of their participation in executions of Bosniak men and boys after the fall of Srebrenica in 1995. The tape was used by the ICTY as an evidence material. See, Daniel Williams, ‘Srebrenica video vindicates long pursuit by Serb Activist’, *Washington Post*, 25 June 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/24/AR2005062401501.html>; Institute Research for Genocide Canada, ‘Natasa Kandic-Eyewitness Testimony’, <http://instituteforgenocide.org/?p=1126>; Tim Judan and Daniel Sunter, ‘How video that put Serbia in dock was brought to light’, *The Guardian*, <http://www.guardian.co.uk/world/2005/jun/05/balkans.warcimes>.

¹² NATO bombed positions of the Serb army not because of Srebrenica, but massacre at Markale market in Sarajevo in August 1995.

said that they would 'kill them all' again because this was rightful revenge for what the Bosniaks did to Serbs in Bratunac between 1992 and 1995.¹³

I apologized and told Hatidža that I felt uncomfortable talking over the phone but that Belma had encouraged me to call. I said to her that I had been writing about and following the work of Mothers for a long time, and I had travelled several times to the Srebrenica graveyard and Memorial Room. She politely thanked me for my interest in her story and started to speak. Once she started to talk, I could not stop her. I was stunned by this woman's wisdom, bravery and pride. I sat in silence, with a knot in my stomach, while I listened to Hatidža recount the loss of her whole family in genocide. I was sitting in front of my phone and stared at it, completely frozen, worried that my breathing might interrupt the flow of Hatidža's talk. I wanted to ask many questions, but I interrupted her only twice during our twenty-five-minute talk. Hatidža spoke for ten minutes, without taking a breath, as she talked of her shock and rage at the ICTY who destroyed the artefacts. I was moved by the absence of any expression of vengeance, by her humanity and by her sincere goodwill towards all people in BiH, especially children, regardless of their ethnicity.

At the end of our talk, I wished her 'all the best', but as soon as I hung up the phone I felt embarrassed for using these words. The phrase 'sve najbolje' is commonly used when saying goodbye in BiH. But how could I say 'sve najbolje' to Hatidža, a mother who is still searching for the bones of her killed children? What else could I say? What does wishing 'sve najbolje' means to Hatidža? It does not mean as assumed, to have good health and prosperity since she now faces, as she says, 'a life of a victim and endless sorrow'. In the case of Hatidža, perhaps 'sve najbolje' means wishing her luck to find the bones of her dead children and her other relatives before she dies because as she puts it, 'time passes away too quickly'. As Leydesdorff argues, 'news of a body being found became good news, because it made a decent burial possible.'¹⁴ Likewise, Šehida Abdurahmanović who lost a husband during the war and a dozen of relatives in Srebrenica genocide notes how identification of a body is important for survivors, '...when someone manage to identify his relative, we say to him 'You are the lucky one'.¹⁵

When Hatidža mentioned her two sons who were killed in the genocide, and how she does not have 'anything' (artefacts) from the younger one, I did not make any remarks or ask any questions. Immediately after I hung up, I regretted that I had not asked her something about her children, especially what their names were or how old

¹³ Naser Orić was the first and only indictee for crimes against the Serb population in Srebrenica. In 2006, Orić, a former Bosnian army commander was found guilty of failing to prevent war crimes, and sentenced to two years in prison by the ICTY. On 3 July 2008, he was released from prison acquitted from the charges brought against him due to a lack of evidence that he bore criminal responsibility. See, *Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Appeal Judgment, 3 July 2008.

¹⁴ Selma Leydesdorff, *Surviving the Bosnian Genocide* (Indiana University Press, 2011), 8.

¹⁵ Marija Taušan, 'Masovna stratišta of Kravice do Pilice', 10 July 2012, *BalkanInsight*, <http://www.balkaninsight.com/en/article/masovna-stratista-od-kravice-do-pilice>.

they were when they were killed. I felt numb, rendered speechless by Hatidža's story of the genocide, of BiH and destroyed artefacts. I was not even sure whether it was appropriate, but I felt an urge, almost an obsession, to find out more about her children, at least their names and age. For a moment or two, I wanted to call her again and ask these questions but I did not. I could not. I decided to write a letter to Belma about my feelings and my regret at not telling Hatidža that I felt sorrow, shame and guilt for a genocide that was committed in my name. I asked Belma whether she knew the name of her children, so I could mention them in my writing.

Azmir was born in 1974 and Almir in 1977. In November 2007, almost the whole skeleton of one of Hatidža's sons was found, but DNA analysis could not establish which son's skeletons had been found. There was no clothing on the skeleton, nor any other marks that could help with establishing identity. At the same time, a piece of the skeleton of Hatidža's husband, Abdulah, was also found. In May 2010, Hatidža was told that her other son had been found too. Unfortunately, only four bones belonging to the lower extremities were found, along with pieces of green trousers that Hatidža recognized as Azmir's. In a mass grave, an artefact was also found which Hatidža could identify as an amulet Azmir had with him at the time of killing. Thus, Hatidža could finally, thanks to those artefacts, establish that the skeleton that was first found in 2007 must have belonged to her younger son, Almir. Only after this identification could Hatidža bury both sons.

She decided to bury her two sons and her husband on 11 July 2010, even though she had only a few bones from the skeletons of Azmir and her husband. She was afraid of waiting any longer, in case something happened to her and then there would be no one to bury her sons and husband, because the majority of her and her husband's family had been killed. Even today, Hatidža's painful memories follow her. She often thinks about how her younger son, Almir, might have been nude at the time of killing, and she fears he may have been tortured. Hatidža worries that the ICTY may have destroyed the artefacts that belonged to her sons and husband and that she lost them forever:

I have a piece of cloth and amulet from my older son and these are big things for me. I have nothing from my younger son. I have only one photo when he was a baby and one of his toys. That is what I keep with me in my house. I would never wish this to anyone, not even to Ratko Mladić to live from memories. And to kill memories is genocide on top of genocide.

The ICTY, 'genocide of memories' and *the right to destroy*

They [the Serb army] killed our children, and the court of justice [ICTY] killed memories of our loved ones.¹⁶

The ICTY was established in 1993 'for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in

¹⁶ Hatidža Mehmedović, above n 2.

the territory of the former Yugoslavia between 1 January 1993 and a date to be determined by the Security Council upon restoration of peace.’¹⁷ The intention of the court was to bring only the perpetrators of the most serious crimes before the court, and once that task was completed, the ICTY would close down its judicial activities. All indictees for the statutory crimes, 161 in total, had been brought before the ICTY as of February 2013.¹⁸

Materials, such as bones, tissue parts, hair, blood sample, IDs and photographs, were used by prosecutors preparing for the largest trial before the ICTY for the so-called Srebrenica seven, indicted for genocide in Srebrenica which started in August 2006. In June 2010, all seven Serb defendants, former police and military officials were found to have played various roles in the 1995 Srebrenica genocide.¹⁹ According to Hague officials, the evidence was destroyed just before the start of the trial of the ‘Srebrenica seven’. The Office of the Prosecutor (OTP) spokeswoman, Olga Kavran, reportedly stated that such decision was made in accordance with standard court procedure:

We are talking about artefacts that were disposed of at the end of 2005 and the beginning of 2006. The vast majority of these artefacts came from mass graves, were deteriorating, and presented a risk for health.²⁰

The destroyed material consisted of approximately 1000 pieces of identification, photographs and articles of clothing belonging to the victims found in the mass graves (see for example Figs. 9.1 and 9.2).²¹ I asked Hatidža what she and the Mothers thought about the OTP official position with respect to the destruction:

We are aware that the evidence materials, artefacts were in a bad shape. Of course, they were. They had not been taken from our homes or boutiques but they had to be preserved to warn future generations and our children. We know they were in bad shape, but why they did not return them to Bosnia? There must be a way these days to preserve those things. They had to stay in a museum. I will never be happy again because they killed all of my family. Children have to know the truth and to me all of them are same. I don’t make difference amongst them. What the Hague did is a crime. In Srebrenica, they killed our children and in the Hague, our memories.

Similarly, Amor Mašović, the head of the Bosnian Institute for Missing Persons reportedly stated:

¹⁷ The UN Security Council, S/Res/827 (1993), 25 May 1993.

¹⁸ The last indictee, former Bosnian Serb military leader Ratko Mladić, was arrested on 26 May 2011 and extradited to the Hague on 31 May 2011 to face trial for war crimes.

¹⁹ *Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Ljubomir Borovčanin, Radivoje Milić, Milan Gvero and Vinko Pandurević*, ‘Srebrenica’, IT-05-88, Judgement Summary, 10 June 2010.

²⁰ Kristin Deasy and Dzenana Halimović, ‘After Hague Destroys Srebrenica Evidence, Survivors Feel Pain Of Lost Memories’, *Radio Free Europe*, 3 September 2009.

²¹ *Srebrenica Genocide Blog*, ‘U.N. Tribunal Destroys Evidence of Srebrenica Genocide’, 8 May 2009.

Fig. 9.1 Artefacts exhumed from Srebrenica mass graves. Courtesy of the International Commission on Missing Persons (ICMP), Sarajevo, Bosnia and Herzegovina



If some of the skeletal remains have also been destroyed, then that is really unacceptable. Those remains should have been sent to Bosnia for DNA analysis, so that the identities of the victims could be confirmed, and then returned to their families. The Hague tribunal's explanation about the possibility of infection is extremely debatable. Why were they permitted to store these items in conditions that would cause them to disintegrate?²²

Yet, the OTP maintains that there was nothing unusual about the ICTY decision to destroy artefacts and that such procedures are regarded as 'regular' explaining that in national judicial institutions, 'when the gathered materials are not needed for court proceedings, they can be destroyed, if, for example, they represent a threat to people's health.'²³

Although destruction of artefacts did not raise any significant international discussion, it sparked bitterness and action from survivors and their associations. The Sarajevo-based 'Society for Threatened Peoples' called the destruction of the evidence a 'monstrous scandal', saying any similar attempt to destroy documents from the Nuremberg trials of the 1940s would have caused an international outcry.²⁴ Belma said that that the ICTY cannot explain why it did not return the artefacts to survivors, or at least inform them and asked for their consent to destroy them.²⁵

²² Ibid.

²³ *Balkan Insight*, 'Srebrenica Artefacts Destroyed in the Hague', 16 July 2010, <http://www.balkaninsight.com/en/article/srebrenica-artefacts-destroyed-in-the-hague>.

²⁴ Personal interview with Belma Zulčić, Sarajevo, 2 December 2011.

²⁵ On October 20, 2011 I sent an email to the ICTY Prosecutor office asking whether the ICTY has any policy on destruction of evidence. Although there are no clear policies about destruction either before the ICTY or any other international tribunal, I was asking for any help to understand the reasoning and authority behind the decision to destroy. I received a reply a day later that 'unfortunately, this issue is a part of an ongoing discussion with victims organizations' and that they are 'not able to assist me in this matter'. Email correspondence on file with author.

Hatidža also said that they had been told by Mr Brammertz, the ICTY Prosecutor, that the court and its staff ‘were afraid of infection’. However, she said that the ICTY ‘could send us a package with this stuff. This stuff belongs to the Memorial Centre. Can you imagine if artefacts from Holocaust were destroyed?’²⁶ Similarly, Sasa Madacki, the Head of the Human Rights Centre at the University of Sarajevo stated,

Try to imagine someone destroying a part of artefacts kept in the Holocaust Museum or Yad Vashem or Auschwitz for hygienic reasons. This is nonsense and is extraordinary particularly today when we have various methods of disinfections, conservation and restoration.

These statements draw a link between the Holocaust and Srebrenica and are based on the fact that artefacts and archives from the Nuremberg Military Tribunal (NMT) were all preserved. The NMT was also a temporary institution set up by the four victorious powers to try the major war criminals of European Axis. After the end of trials, on 14 March 1950, film footage, written documents, printed materials and other exhibits were delivered to the International Court of Justice. As Acquaviva argues, in this case, it was decided that such records should be entrusted to the custody of the principal judicial organ of the UN due to fact that Germany had not fully recovered its sovereignty by 1950.²⁷ However, about 15,000 documents from private firms involved in the NMT proceedings, 5,900 documents from the Reich government and 3,500 documents from the Wehrmacht were subsequently given back to Germany.²⁸ It was regarded as important for countries to have objects which reflect their cultural heritage and national history preserved in their own museums.

The Security Council Resolution 1966 (2010), states that ‘the archives of the ICTY, the ICTR and the Mechanism shall remain the property of the United Nations.’²⁹ The Resolution excludes any possibility to claim any of the materials preserved in the archives by either private or public subjects. While it is understandable that the ICTY and ICTR are custodians of these records as long as they need them for procedure, it is disputable whether their custody should remain beyond the trial process.³⁰ Rather than being seen as permanent custody, the artefacts should be in temporary custody for the duration of trial and evidence

²⁶ The official opening of the Srebrenica-Potočari Memorial Room and Cemetery for the Victims of the 1995 Genocide was on 20 September 2003. In the Room in Srebrenica-Potočari, the objects are accompanied by personal narratives of the human loss. The purpose of the Room is two-fold: preserving the memory of the dead, but also reminding people of those who survived the genocide. For extensive analysis of the Memorial Room, please see Olivera Simić, ‘Remembering, Visiting and Placing the Dead: Law, Authority and Genocide in Srebrenica’ above n 9.

²⁷ Guido Acquaviva, ‘The Best before the date indicated’: Residual Mechanism at the ICTY’, in Bert Swart, Alexander Zahar and Goran Sluiter (eds.) *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (New York, Oxford University Press, 2011), 511.

²⁸ Telford Taylor, ‘Final Report to the Secretary of the Army on the Nurnberg War Crimes Trials under Control Council Law No. 10’, 15 August 1949, cited in Acquaviva, *ibid*.

²⁹ UN Security Council, Resolution 1966 (2010) Adopted by the Security Council at its 6463rd meeting, on 22 December 2010, S/RES/1966 (2010), Article 27.

³⁰ Guido Acquaviva, above n 28.

Fig. 9.2 Artefacts exhumed from Srebrenica mass graves. Courtesy of the International Commission on Missing Persons (ICMP), Sarajevo, Bosnia and Herzegovina



procedures. Once the trial is over and the artefacts are no longer needed, they should be returned to their owners and in the case of Srebrenica, survivors and its relatives. This is a procedure followed by some district courts in national jurisdictions, including Australia. Prosecutor Dzenita Balic with the District Court in Brisbane, Queensland stated:

Certainly regarding criminal trials, when exhibits are used, they are tendered in trial. They are kept in the registry until the appeal period lapses. The exhibits are then returned back to the Crown at which time they are returned to the police by our office and they then distribute them back to their respective owners.³¹

The ICTY should have catalogued or stored the artefacts, and if this was not possible, returned them to the Bosnian authorities who could then return them to survivors. It is unclear why the ICTY did not ask survivors whether they wanted some of these to be returned to them. Possibly, this was because the artefacts are ICTY records and, as such, the UN may have considered them part of the UN archives, and thus determined that there was no need to consult anyone outside these institutions about their disposal.³² Although the ICTY was not legally required to ask survivors about the destruction of the artefacts, just as it did not need to ask them about preserving the materials in its archives, it has been argued that it should have informed the Bosnian government about its intention to destroy

³¹ The exhibits that would be destroyed would be those that are used in the commission of a crime and/or those where destruction orders are made (in case of weapons, drugs, perishable things). Email correspondence on file with author (April 24, 2012).

³² UN Security Council, *Report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat for the residual mechanism(s) for the Tribunals*, S/2009/258, 21 May 2009, para 15.

the artefacts.³³ Still, the survivors found it disturbing that they were given no warning that the ICTY had decided to destroy the artefacts.

No one informed us about the destruction. We found it by accident from people who work on exhumation sites and then decided to ask Brammertz [ICTY Prosecutor] about it in 2009. He told us it was a mistake, but no one bears responsibility for it. He told us that amongst destroyed artefacts there were hair, clothes, ID's, passports, photographs, even bones. However, last year [2010] he said here in Potocari that the things which the ICTY destroyed are not important and worthwhile. What is not important to him or others is piece of my child, and it is the most important to us. He should never say that, but I guess he had to under pressure that came from somewhere else.³⁴

In *Prosecutor v Momir Nikolic*, the court determined there was looting and property destruction in Prijedor Municipality and that these acts amounted to crimes against humanity.³⁵ However, not all property destruction is serious enough to constitute a violation of Article 5 of the ICTY Statute. For example, destruction of clothing and wallets, according to the ICTY, was not deemed grave enough.³⁶ Perhaps the ICTY was led by a similar thought in the case of Srebrenica artefacts destruction that such destruction could not amount to a serious crime. Indeed, those artefacts were not deemed to be worthy of being permanently preserved by the ICTY for their 'administrative, fiscal, legal, historical or informational value'.³⁷ Yet, for the survivors, the artefacts had multi-dimensional and life value attached to them.

The Imperative to Remember: The Importance of Memories and Memorialization

*The living owe it to those who no longer can speak to tell their story for them.*³⁸

Kazanjian and Nichanian suggest that genocide, understood in terms of the destruction of life, is not catastrophic.³⁹ Rather, genocide becomes catastrophic when understood in terms of the destruction of death: through denial, genocide dispossesses memory and precludes the very possibility of mourning.⁴⁰ By

³³ I am grateful to Mr Guido Acquaviva, for sharing his expertise on this topic. Email correspondence on file with author, 19 October 2011.

³⁴ Interview with Hatidža Mehmedović, above n 2.

³⁵ *Prosecutor v Momir Nikolic*, IT-02-60, Judgement, 2 December 2003.

³⁶ *Blagojevic and Jokic*, IT-02-60, Trial Chamber, Judgement, 17 January 2005, paras. 615 and 620.

³⁷ UN Security Council, above n 33, paras. 41 and 42.

³⁸ Czeslaw Milosz, *The Issa Valley* (Farrar, Straus and Giroux, 2000), 281.

³⁹ David Kazanjian and Marc Nichanian, 'Between Genocide and Catastrophe' in David L. Eng and David Kazanjian (eds.), *Loss: The Politics of Mourning* (University of California Press, 2003), 134.

⁴⁰ *Ibid.*

disposing of artefacts, the ICTY disposes memory and the process of mourning; it destroys the last effects of the dead and memory that these effects represent. As Minow argues, 'one of the goals of genocides has been the obliteration of the remembrance of individuals, their lives and dignity'.⁴¹ Forgetting becomes then, as Lenz would argue, 'the second death'.⁴² In so far as genocide destroys not only life but also death, Kazanjian and Nichanian argue that genocide destroys humanity.

Munira Subašić's 20-year-old son disappeared in Srebrenica genocide, and his remains have never been found. She has no old photographs, no old clothes and no remains, and her years as a mother could have been a dream. She cannot prove that her son ever existed. Munira reportedly stated:

If you don't have photographs, if you don't have a mezar [Muslim grave], if you don't have anything that belonged to that person, it's like the person never existed. Those things put us in a position to prove that we did have our children.⁴³

Thousands of pieces of clothing and small objects such as lighters, watches, tobacco boxes and glasses were found with the dead of Srebrenica when they were exhumed by a team of forensic criminologists.⁴⁴ These personal effects provide a narrative to the lives of the dead and rebuild a memory of what happened to Srebrenica and its people. Without this memory, the person as a unity, as having a life, 'the course of the life', drifts away.⁴⁵ It is important for survivors that they are able to have visible, tangible proof of their dead and missing and their past existence. They are concerned not only with remembering but also with documenting history by preserving the objects that belonged to their loved ones. Memorialization, thus becomes an important part of the process that satisfies the desire to honour those who died or suffered during the war and become a mean of examining the past.⁴⁶ In cases of genocide and mass killings, memorialization often revolves around human remains.⁴⁷ All activities that the Mothers support must acknowledge their suffering and their memories because they cling to the past, 'fight against the erosion of memory brought about the passage of time'; they simply refuse to let the 'past become the historical past, the past perfect.'⁴⁸ (2001), 777–790.

⁴¹ Martha Minow, *Between Vengeance and Forgiveness* (Beacon Press Boston, 1998), 1.

⁴² Siegfried Lenz, *Über das Gedächtnis* (Munich: DTV, 1992), 10.

⁴³ Kristin Deasy and Dzenana Halimovic, 'After Hague Destroys Srebrenica Evidence, Survivors Feel Pain Of Lost Memories', *Radio Free Europe*, 3 September 2009.

⁴⁴ Suzanne Bardgett, 'Memorial Room for Battery Factory at Potocari', *The Muslim News*, Issue 195, 29 July 2005, <http://www.muslimnews.co.uk/paper/index.php?article=2061>. Accessed 7 June 2012.

⁴⁵ W. James Booth, *Communities of Memory: On Witness, Identity, and Justice* (Cornell University, 2006), 31.

⁴⁶ Judy Barsalou and Victoria Baxter, *The Urge to Remember: The Role of Memorials in Social Reconstruction and Transitional Justice* (The United States Institute for Peace, 2007), 6.

⁴⁷ *Ibid.*, 6.

⁴⁸ W. James Booth, 'The Unforgotten: Memories of Justice,' *American Political Science Review* 95(4).

Fig. 9.3 Artefacts exhumed from Srebrenica mass graves. Courtesy of the International Commission on Missing Persons (ICMP), Sarajevo, Bosnia and Herzegovina



The Mothers want to find their missing, their remains, any piece that may identify them and acknowledged their loss and hopefully burial and final peace. Memory is the responsibility of living ones and is related to what Booth calls ‘bearing responsibility’, the way in which we assume the burdens of our past, acknowledge it as ours and not someone else’s, and accept that this ‘ours’ persists through time and change.⁴⁹

Memorialization is also an important reparation mechanism that can provide survivors with some solace in the transitional justice period. Reparations to survivors can be material or symbolic and individual or collective.⁵⁰ They are ‘attempts to provide benefits directly to the victims of certain types of crimes’⁵¹ and can be understood as ‘acts or objects, as things done or given’.⁵² According to the UN, reparations can include restitution, physical and mental rehabilitation, economic compensation, guarantees of non-repetition and a wide range of satisfaction including the recovery and reburial of remains, commemoration and memorialization.⁵³ Roht-Arriaza refers to these as moral reparations, and they

⁴⁹ W. James Booth, ‘The Work of Memory: Time, Identity and Justice’, *Social Research* 75 (1) 2008, 238.

⁵⁰ Naomi Roht-Arriaza, ‘Reparations decisions and dilemmas’, *Hastings International and Comparative Law Review* 27 (2) (2004), 157–219.

⁵¹ Pablo de Greiff, ‘Justice and Reparations’ in *The Handbook on Reparations* (Oxford University Press, 2000), 453.

⁵² Brandon Hamber and Ingrid Palmay, ‘Gender, Memorialization, and Symbolic Reparations’ in Ruth Rubio-Marín, *Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (Cambridge University Press, 2009), 325.

⁵³ General Assembly Resolution 60/147, *The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights Law and Serious Violations of International Humanitarian Law* (United Nations, 16 December 2005).

include, in addition to the above, finding missing bodies, assistance in reburials and appropriate rituals, and converting repressive sites into museums.⁵⁴ The Srebrenica survivors were hoping to open a museum and exhibit artefacts from their loved ones that would serve as a monument to the community's suffering and act as a catalyst for local political transformation as well as an educational tool and warning for future generations.

They initiated this process a few years ago when the Srebrenica-Potocari Memorial Room was opened containing twenty showcases aiming to shed light on the personal life stories of the dead boys and men. Each of the cases holds personal items found on or with the dead when they were exhumed from the mass graves⁵⁵, and the short texts about the dead can take the reader on a journey into the lives the men and boys once had. The personal stories of the dead have been researched and written about by Emir Suljagić, a survivor of the genocide who lost his father in a massacre. Emir has said that:

The objects were exhumed along with the bodies, and have been recognised by the families. The idea is to make a personal portrait out of each object. When you tell someone that 10,000 people died, they cannot understand or imagine that. What I want to say is that these people were peasants, car mechanics or masons. That they had daughters, mothers, that they left someone behind; that a lot of people are hurt by this person's death (Fig. 9.3).⁵⁶

The museum would serve as a reflection on a recent violent past and build a collective social memory and common legacy of suffering and trauma. The museum in the present would inform a relation between the living and the dead that would be marked and informed by loss.⁵⁷ As Perera argues:

[Courtney Brkic who worked in the graves at Srebrenica] recounts how the clothing found among the bones and shattered skeletons—hand-sewn shirts, knitted socks and scarves—spoke of homes and families left behind in a way that anonymous bones could not. These broken scraps and remnants form a bridge between the living and dead and between what can and cannot be known, or counted as evidence.⁵⁸

Thus, by transmitting memories to the new generation, survivors seek to keep memories of the past alive.⁵⁹ Refusal to bring the dead into the sanctuary of memory is to annihilate them for the second time.⁶⁰ Memory also occupies a vital

⁵⁴ Naomi Roht-Arriaza, 'Reparations decisions and dilemmas', above n 51.

⁵⁵ Suzanne Bardgett, above n 45.

⁵⁶ Ed Vulliamy, 'Srebrenica: genocide and memory', *Open Democracy*, 4 July 2005.

⁵⁷ Martine Hawkes, 'Containing Testimony: Archiving Loss After Genocide', *Continuum: Journal of Media and Cultural Studies* 26 (6) (2012).

⁵⁸ Suvendrini Perera, 'They Give Evidence: Bodies, Borders and the Disappeared', *Social Identities: Journal for the Study of Race, Nation and Culture* 12 (2006), 749. I would like to thank Martine Hawkes for bringing this quote and article to my attention.

⁵⁹ Lia Kent, 'Local Memory Practices in East Timor: Disrupting Transitional Justice Narratives', *The International Journal of Transitional Justice* (5) 2011, 444.

⁶⁰ W. James Booth, above n 49, 782.

place at the heart of justice and the struggle to keep the victims unforgotten.⁶¹ As Rodrigo argues, it has been generally understood that ‘memories can be encapsulated in solid objects, which come to represent memories...and preserve their life beyond their pure mental existence.’⁶² Such objects may be texts, images or artefacts that have the potential to trigger the recollection of individuals, events and relationship from the past.⁶³ Their exhibition may ensure that ‘private death is publicly present and transformed into public discourse and even into a communal commodity’.⁶⁴

Conclusion

BiH is like a shopping centre. The people come here to take what they need, good or bad, to take some photos and spend some time in it to gain some political status. It is like a circus.⁶⁵

So far, the Bosnian government has not made any official statement nor sent any request to the ICTY to explain why the court destroyed the artefacts, but according to survivors and their supporters, the government should have done so. Because the government officials sent the artefacts to the court, they are perceived to have a responsibility to follow up on what has happened to these objects. As discussed previously, it has been recognized that it is important for countries to have the objects which reflect their cultural heritage and national history in their own museums. Visiting such commemorative landscapes is a necessary act of witnessing that enables reverence, remembrance and reflection on the event and its victims.⁶⁶ More importantly, these objects often hold the key to the identification of dead bodies, as in Hatidža’s case, since the identification of the missing and dead is done by matching information from the deceased, such as clothes and other personal items, with information from individuals who are missing or presumed dead.⁶⁷

As I have argued in this chapter, artefacts which held a memory and remembrance of past lives were not deemed to have important value to the ICTY and

⁶¹ Ibid, 777.

⁶² Russell Rodrigo, ‘Between Remembrance and Recreation: Containing Memory in Urban Landscapes’ (1) (2011) *Memory Connection*, 273.

⁶³ Ibid.

⁶⁴ Philip Stone and Richard Sharpley, ‘Consuming Dark Tourism: A Thanatological Perspective’, *Annals of Tourism Research* 35 (2) 2008, 558.

⁶⁵ Interview with Hatidža Mehmedović, above n 2.

⁶⁶ Joy Sather-Wagstaff, *Heritage that Hurts: Tourists in the Memoryscapes of September 11* (Left Coast Press, 2011), 153.

⁶⁷ PAHO, WHO, ICRC and IFRC ‘Management of Dead Bodies after Disasters: A Field Manual for First Responders’ (Washington, D.C. 2006), 13.

were not judged to be worthy of being preserved. Choices as to what is remembered and forgotten have massive moral implications for individuals, groups and communities, and they often influence the direction in which a country moves.⁶⁸ It remains unclear whether there is a mechanism to clearly identify which materials and records of the ICTY should be preserved and archived and why, and which items will be disposed of. Also, a question remains as to whose interests should be acknowledged in making such decisions. Survivors, researchers and governments may have an interest in accessing materials, documents and archives for various reasons: to preserve a memory but also to raise new challenges to old cases.⁶⁹

While not relevant to the ICTY, the chapter argues that the artefacts were important to Srebrenica survivors for many reasons. As Belma stated:

These artefacts are important since they give an identity to skeletons and bones found in mass graves. They mean a lot in the process of identification but also as the last pieces of memory and proof of the lives taken so abruptly.

By ‘disposing them off’, the ICTY denied the Mothers’ claim to symbolic or moral reparation. As a consequence, the Mothers and their supporters signed a petition which gathered more than 4,000 signatures against the ICTY act of destruction. They have worked closely with a group of lawyers from London who are preparing the charges against the ICTY and Carla Del Ponte. They want to know, as Hatidža told me, ‘who gave them [ICTY] the right to destroy.’⁷⁰ Ultimately, they want to prevent the ICTY and other *ad hoc* tribunals from destruction of artefacts in the future, without consulting survivors and the national governments. To Hatidža and the Mothers, this act has been unnecessary and even genocidal, ‘The Serb army killed our children and the house of justice [ICTY] killed memories on our loved ones. They committed genocide of memories.’⁷¹

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⁶⁸ Elizabeth Porter, *Peacebuilding: Women in International Perspective* (Routledge, 2007), 126.

⁶⁹ For discussion on this theme, see Trudy Huskamp Peterson, ‘Temporary Courts, Permanent Records’ (United States Institute of Peace, August 2006), Special Report.

⁷⁰ Interview with Hatidža Mehmedović, above n 2.

⁷¹ *Ibid.*

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