



Spring 2015

Broken Promises: The Case of Mothers of Srebrenica vs. The State of the Netherlands

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Abstract

Critical discourse analysis of the legal proceedings of the Mothers of Srebrenica case brought against the UN and the Dutch government. This analysis explores the nature of culpability and blame-making among international actors.

Keywords

Srebrenica, Bosnia, massacre, genocide, Netherlands, Mothers of Srebrenica, Bośniaks, United Nations

Disciplines

Eastern European Studies | Feminist, Gender, and Sexuality Studies | Gender and Sexuality | International and Area Studies | Peace and Conflict Studies | Women's Studies

Comments

This paper was written for Professor Amy Evrard's course, *ANTH 304: Anthropology of Violence and Conflict*, Spring 2015.

Tori Mohr

Ethnography Project: final paper

5/8/15

Broken Promises: the case of Mothers of Srebrenica vs. The State of the Netherlands

On July 16th, 2014, BBC news published a story with the title "Dutch State Liable over 300 Srebrenica Deaths." Almost twenty years after the genocide at Srebrenica, the Dutch State acknowledged, to a small extent, their role in the massacre. This verdict was the result of eight years of appeals in the Dutch courts for the organization Mothers of Srebrenica, an NGO that represents the interests of survivors of the genocide. Though they had originally hoped for a much wider acknowledgment of the role of the Dutch UN peacekeepers, the Dutch Courts ruled that the peacekeepers were guilty of not doing more to protect the refugees they sheltered in their compound during the assault on Srebrenica.¹ This small victory was hard won, and a closer examination of the court documents reveals why. The structure and content of the court case, from evidence brought by the UN to the testimonies of the survivors reflects the power structures that the Mothers of Srebrenica took on in this court case. Further, the actions of the UN and the Dutch government, as revealed in court documents, tells about the ambiguous role and responsibility of the UN on the international stage.

¹ Holligan, Anna. 2014. 'Dutch State Liable Over 300 Srebrenica Deaths - BBC News'. *BBC News*. <http://www.bbc.com/news/world-europe-28313285>.

Background

The Bosnian genocide, in particular the massacre at Srebrenica is considered to be one of (if not *the*) greatest atrocity in Europe since World War II. In the months leading up to the July 1995 massacre, the United Nations Protection Force (UNPROFOR) in Bosnia had taken up the strategy of creating "safe areas" at several enclaves in Western Bosnia. Srebrenica became one of these "safe areas." Though the Serb army had taken a great deal of territory in what is today the Republika Srpska, or the predominantly Serb entity within Bosnia, there remained several key towns or "enclaves" that were predominantly composed of Bosnian Muslims, or Bošniaks. Once the "safe areas" were established, they were flooded with Bošniak refugees. Meanwhile, Serb forces cut off supply routes and the humanitarian situation in many of these supposedly safe towns quickly deteriorated.²

The UNPROFOR forces at Srebrenica consisted of the Dutchbat, or Dutch battalion, which consisted of approximately four hundred "lightly armed" peacekeepers. Following a brief period of demilitarization, on July 6th, 1995, Serb forces returned and began to encroach on the enclave. The Serb forces were led primarily by Ratko Mladic, whose trial for genocide and other war crimes is currently ongoing at the International Criminal Tribunal for the former Yugoslavia (ICTY).³ Despite repeated requests from the Dutchbat for reinforcements or air support, the enclave was quickly overrun and the Dutchbat and many of the refugees in the enclave fled to the Dutchbat's compound in the neighboring village of Potočari. A group of men who did not attempt to take shelter at Potočari fled into the woods surrounding the enclave, but were later captured and executed by the Serbs. At the compound the humanitarian situation further

² Haguejusticeportal.net, 2015. 'Srebrenica In Summary » The Hague Justice Portal'.
<http://www.haguejusticeportal.net/index.php?id=9564>.

³ General Krstić and Radovan Karadžić are also being tried for genocide and other war crimes related to Srebrenica at the ICTY.

collapsed. The Serb forces eventually reached the compound, and without any hope of support or the Dutchbat turned over the compound to Mladic. From the refugees present in and around the compound, women and children were crowded onto busses and "deported" to Bośniak territory in an act of ethnic cleansing. This deportation took several days, and in the intervening period many were raped, tortured, or otherwise harassed. Men of "fighting age" (anyone from teenage boys to elderly men) were detained by Mladic's forces on the pretense of screening the men for "war crimes." They were instead stripped of any sort of identification, executed en masse and buried in mass graves.⁴ At the time of my visit to the Potočari memorial cemetery in 2013, the remains of approximately 6,000 Bosnian men had been identified and re-buried there. Most estimates place the number dead at 8,000, though the court proceedings from the Mothers of Srebrenica case consistently use 7,000⁵. Some estimates run as high as 10,000.⁶

The massacre at Srebrenica was officially ruled a genocide by the ICTY in 2004.⁷ The Mothers of Srebrenica, an NGO representing the interests of survivors of Srebrenica, first brought their case to the Netherlands in 2007, with the first judgement given in 2008.⁸ This organization operates both in Bosnia and the Netherlands, where there is incidentally a significant Bosnian refugee community. They brought their case both against the Dutch government and the United Nations, and their case was dismissed on several appeals due to lack of jurisdiction over the UN, which enjoys absolute immunity. Their case was appealed up to the supreme court of the Netherlands, where they succeeded in a small but significant piece of their case. The Dutch government acknowledged the culpability of the Dutchbat in assisting with the

⁴ Mothers of Srebrenica vs. the State of the Netherlands and the United Nations, C/09/295247/ HA ZA 07 – 2973 (District Court in The Hague – 2014), Rechtspraak.nl

⁵ *Ibid.*

⁶ Personal communication, April 2013

⁷ Haguejusticeportal.net, Op.cit.

⁸ Mothers of Srebrenica vs. the State of the Netherlands and the United Nations (Judgment) 295247/ HA ZA 07 – 2973 (District Court in the Hague– 2008)

deportation of the refugees and not acting differently even though they could have reasonably expected that genocide may take place. However, the Dutch government only acknowledged responsibility for the approximately 300 men who were sheltered inside the Dutch compound – those refugees over which they had "effective control" - but later were turned over to the Serb forces. Formal recognition of this was given and small reparations were paid to the families of those 300 men.⁹

Positionality

I would be remiss if I did not acknowledge my personal interest in the Mothers of Srebrenica case. I studied abroad in Serbia and Bosnia in the spring of 2013, and during that time visited both the Potočari compound and the memorial cemetery, and had the opportunity to speak with those who maintain the memorial. I also during that time did research in North East Bosnia, not far from the Federation/Republika Srpska border, an area that had also suffered heavily during the war. On the edge of the town where I did my research was a facility for the identification of bodies found in mass graves, and only a few months after my departure from Bosnia, the largest mass grave ever found was discovered only a few towns over. Between the ongoing attempts to identify victims and the ongoing trials in The Hague, the war is still a very present piece of Bosnian life and society.

Though I have done my best to remain analytical in discussing the Mothers of Srebrenica case, I nevertheless maintain my own opinions and feelings on how the attempts to deal with the genocide have played out on an international scale. This is a topic that it is impossible to not become emotionally involved in, particularly when one has friends and colleagues who could be

⁹ Mothers of Srebrenica 2014, *op. cit.*

potentially affected by the outcomes of these kinds of cases. However, I feel that my time in Bosnia has also had a positive influence on this research in that I have a greater understanding of the multiple "sides" involved – or rather that this court case is far more complicated than picking a "side."

Legal Structures and Power Relations

Examining a court case entails a specific framework and its own set of specific discourses. First, one must contend with the form of the available materials. My research focuses primarily on the 2014 proceedings, the final appeal of the Mothers of Srebrenica court case that produced the ruling on the culpability of the Dutchbat. As mentioned, there were three prior rulings, in 2008¹⁰, 2010¹¹, and 2012¹², but these all resulted in the case being dismissed based on the immunity of the United Nations. In general, the materials published from these cases are structured first with the facts of the case, the claims and desired outcome from each side, a discussion of testimony and information brought forward during the court proceedings, and finally the judgement. The materials from the 2014 case are the most involved, as actual court proceedings were dismissed relatively quickly in the previous cases. It should be noted that I am working with the English translation of these materials, the official and original court proceedings are in Dutch, however English is used widely in the Netherlands and I consider this to be a fairly accurate translation. Nonetheless, it is important to keep this in mind.¹³

¹⁰ Mothers of Srebrenica 2008, *op. cit.*

¹¹ Mothers of Srebrenica vs. the State of the Netherlands and the United Nations (Judgment), 200.022.151/01 / HA ZA 07 - 2973 (Appeal Court in The Hague – 2010), rechtspraak.nl

¹² Mothers of Srebrenica vs. the State of the Netherlands and the United Nations (Judgment) 10/04437 (Supreme Court of the Netherlands – 2012), rechtspraak.nl

¹³ Mothers of Srebrenica 2014, *op.cit.*

Much of my analysis comes from the section titled the "facts of the case." It is important here to deconstruct the set of assumptions that are made within the context of a legal setting. The assumption within this particular structure of establishing "the facts of the case" is that there are certain facts, or rather truths that can be unequivocally stated. Further it is important to examine what is deemed unquestionably factual by the courts.

The facts of the case in the 2014 proceedings detail the events leading up the genocide at Srebrenica, including records of communications between the Dutchbat and their superiors at UNPROFOR, as well as excerpts from resolutions about the situation made by the UN Security Council. Some of this information appears to come from facts established by ICTY proceedings, and utilized here. After approximately five pages of this information, the facts that can be established from each member of the Mothers of Srebrenica directly involved in the case (the 10 "claimants") is listed. The facts pertaining to each of the ten claimants takes up approximately a page and a half. After the great amount of detail given to the official "story" of the events at Srebrenica, the sections devoted to the claimants is striking:

"Before the war Claimant [Claimant1] lived with her husband and son in the town of Srebrenica. On July 11th 1995 the husband of [Claimant1] fled into the woods and was never found again. [Claimant 1] and her son sought refuge in the part of the mini safe area that lay outside the compound. On July 13th 1995 she and her son became separated. She has not seen him again since."¹⁴

This is the first Claimant's "facts" in their entirety. While given the prior information one can infer that both Claimant 1's son and husband were killed by the Serb forces, this is not written

¹⁴ *Ibid.*, 2.45.1

here, as that could be deemed speculation. They do not even go so far as to note whether or not they are assumed to be deceased. Further, one can also infer that she was part of the "deportation" from Srebrenica, and that it was during this process that she and her son were separated, but this is not detailed. Her story, and the stories of the other claimants, has been stripped down past its most essential elements.

While of course one must take into account that what is being examined in this case are the actions of the Dutchbat and the Dutch government, the literal amount of space given to the "official story" versus the personal experiences of the claimants represents the power imbalance between an independent organization composed primarily of women, versus large, male-dominated government and international structures. The documentation and records of these "official structures" are first and foremost deemed more factual and therefore more valued than the personal experiences of the mothers of Srebrenica women. Second, though it is indeed a quirk of legal language, the women are referred to as "claimants." While this supports the kind of neutrality that legal negotiations aim for, in that it does not acknowledge the women's claims as true until fully examined by the court, it subtly undermines their position. This inequality, particularly in reference to the claims made against the UN, is even mentioned in the argument made by the Mothers of Srebrenica's legal team:

"Claimants argue that the States adopted course of action during the proceedings was 'improper' and 'from a legal, humane and moral point of view unacceptable'. In their view this has led to the legal proceedings having a lack of equilibrium that must be restored."¹⁵

¹⁵ *Ibid.*, 4.17

The improper course of action here being the multiple dismissals of the case based on the decisions regarding lack of jurisdiction and the immunity of the UN, rather than addressing the claims of the case itself. The Mothers of Srebrenica's initial claim against the UN and its reasoning in trying to overcome the UN's immunity is based on the European Convention on Human Rights statute that gives all individuals right to access to a court.¹⁶ Further, much of the Mothers of Srebrenica's argument lies in their appeal to a moral sense of right and wrong, as opposed to a strict interpretation of existing legal structures. Based on several precedents, the Dutchbat and the Dutch government apparatuses behind it could claim immunity based on the idea that it acted as an "organ" of the UN.¹⁷ ¹⁸Therefore much of the language surrounding the Mothers of Srebrenica's claims and legal arguments carry an air of moral outrage and an acute sense of their powerlessness in the context of international law.

This powerlessness is further exacerbated by the use of the term "refugee." All the occupants of Srebrenica at the time of the genocide are referred to throughout the court documents as refugees. The court does acknowledge that it uses

"the term 'refugee' to indicate the members of the Muslim population who found themselves in the *safe area*...In doing so the District Court makes no judgment as to whether they are refugees in the sense in which that is understood by the Geneva Convention on Refugees."¹⁹

¹⁶ Faith, Kimberly. 2015. 'Stichting Mothers Of Srebrenica V. Netherlands: Does U.N. Immunity Trump The Right Of Access To A Court?'. *Tulane Journal Of International And Comparative Law* 22.

¹⁷ See *Behrami v. France and Saramati v. France*

¹⁸ Spijkers, Otto. 2014. 'Responsibility Of The Netherlands For The Genocide In Srebrenica'. *Journal Of International Peacekeeping* 18 (3-4): 281-289.doi:10.1163/18754112-1804009.

¹⁹ Mothers of Srebrenica 2014, op. cit. 4.14

Indeed a more accurate term may be internally displaced persons, regardless, the term implies people that are not – or can't be – where they are supposed to be. While it is, in most cases an important term that can assist individuals when seeking support or aid, that is not the case here. It is used as a point of further marginalizing the Mothers of Srebrenica group by placing them under a label that is not necessarily accurate. Indeed it is noted in the court proceedings that the majority of the claimants were residents of Srebrenica or the surrounding villages at the time that the "safe area" was established, if not prior to the war. While it is uncertain whether or not the majority of Srebrenica's occupants at the time of the massacre were original residents, the exclusive use of the word refugee erases the existence and history of the town prior to and outside the context of conflict. It minimizes the dual nature of the ethnic cleansing that occurred, in that not only were people seeking safety further displaced, but that residents were forcibly removed from their home town. In the 2014 case, the Dutch government acknowledged culpability exclusively for cooperating in the deportation of "refugees" – this could have been a very different legal conversation if it had been acknowledged that they assisted in the deportations of residents as well as refugees.

Key Terms

By the very nature of this case, it contains a variety of contested language. Both the Mothers of Srebrenica and the Dutch agree on the general nature of the events as Srebrenica, particularly due to the fact that this case comes after several key cases at the ICTY. However, as shown above, the language used by each side, down to the choices of single words, represents some key underlying issues.

The most obvious of these is how the events at Srebrenica are referred to in and of themselves. Throughout the court proceedings, it is referred to consistently as "The fall of Srebrenica." While at first this phrasing appeals to the neutrality of the court setting, it is important to note that at the time the case was first brought to the Dutch court in 2007, the events at Srebrenica had already been ruled a genocide by the ICTY.²⁰ Therefore referring to the events as "the fall of Srebrenica" is interesting and perhaps contentious. Common phrasings include "the Srebrenica massacre," "The Srebrenica genocide" or "The genocide at Srebrenica"²¹ or simply "Srebrenica" as it has become more well-known. The use of the phrase "the fall of Srebrenica" therefore creates a distancing and minimizing effect, where as many other common phrases emphasize the tragedy and gravity of the event. Further, the use of this phrase is part of a larger theme of distancing from the language of the Dutch government. Indeed the use of the word "fall" implies a certain element of inevitability that permeates the language of the UN and the Dutch government. This sense of inevitability is a tactic in distancing them from any sort of culpability – a sense of "there was nothing we could do."

In contrast to the stark, emotionally charged language used by the Mothers of Srebrenica and their legal counsel, the language used by the Dutch court and government, as well as that language cited from the UN, gives a sense of being disconnected from the events that are being discussed. Indeed, much of this reflects physical distance, as decisions from the UN about the actions of the Dutchbat were being made remotely, as well as temporal distance, as these court proceedings occurred almost two decades after the massacre at Srebrenica. This is in stark contrast to the nearness of traumatic events for the survivors.

²⁰ Costalli, Stefano. 2013. 'Does Peacekeeping Work? A Disaggregated Analysis Of Deployment And Violence Reduction In The Bosnian War'. *Brit. J. Polit. Sci.* 44 (02): 357-380. doi:10.1017/s0007123412000634.

²¹ "Genocid u Srebrenici" in Bosnian

This distancing theme is further reflected in the phrase "fell into Bosnian Serb hands." This phrasing is used consistently to refer to the men that fled not to the Potočari compound but into the woods:

"Around 10,000 to 15,000 men from the safe area did not flee to the *mini safe area with factory* but to the woods in the vicinity of the town of Srebrenica...About 6,000 of these men fell into Bosnian Serb hands."²²

It should be noted that there are some accounts that members of the Dutchbat advised groups of men to flee into the woods. What is fascinating in the case of this particular phrase is the obscuring of the consequences of "falling" into enemy hands. While of course the fate of certain men is still uncertain, the deaths of a large number of men who fled into the woods are not explicitly acknowledged. Moreover the use of the word "fell" is interesting – it appears to imply that being captured by Serb forces was somehow a result of the men making a misstep or stumbling of their own accord, rather than being hunted down and rounded up by Serb forces.²³ In many ways the choice of this phrase serves to subtly shift blame both away from the Dutchbat and the even the Serb forces.

Another highly contentious and significant phrase that is, by necessity, used throughout the court documents is "safe area." While the term "enclave" is sometimes used, "safe area," despite its inaccuracy, is almost always used, and no alternative phrase has been proposed or utilized. The term is even extended into the phrase "mini safe area," which is used to refer to the Potočari compound and the abandoned factory where the refugees fled after Srebrenica was overrun by the Serb forces. "Safe area" is either written between scare quotes or italicized

²² Mother of Srebrenica 2014, *op. cit.* 2.36

²³ *A Cry From The Grave*. 1999. DVD. Bosnia: Leslie Woodhead.

throughout the court documents, in an interesting contrast to the distancing language mentioned above.²⁴ The use of quotes is a method of acknowledging the irony and inaccuracy of the term. While this is acknowledged, the lack of an alternative term is also a consistent reminder of the original (good) intentions of the Dutchbat and the UNPROFOR mission in Bosnia.

Broken Promises

The court materials, particularly the "facts of the case" section, document a great deal of UN resolutions and other communications related to Srebrenica. The UN, or representatives thereof, make a few key promises that were obviously not met. A few months prior to the Srebrenica massacre, the then commander of UNPROFOR, the French general Morillon "addressed a crowd of Bosnian Muslims in Srebrenica and promised them that they were under the protection of the UN and that he would not abandon them."²⁵ This promise was "reaffirmed" through April and June through a series of Security Council resolutions related to the "safe areas" in Bosnia. Resolution 819 stated that the UN "demands that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or other hostile act..." and Resolution 836 states that the Security Council "decid[ed] to ensure full respect for the safe areas referred to..."²⁶ While these promises were obviously not kept, they were also rather transparent in that the force placed at Srebrenica was woefully unprepared to fulfill these promises. Additionally, they become part of the contradictory nature of the UN communications and directives.

The UN and Dutch leadership frequently uses a mix of distancing or tentative language with strong promises, often in the same sentence. For example, in Resolution 836 as mentioned

²⁴ Mothers of Srebrenica 2014, *op. cit.*

²⁵ *Ibid.*, 2.6

²⁶ *Ibid.*, 2.12

about, the mandate of the UNPROFOR is extended to "enable" the protection of the safe areas, "deter attacks...monitor the cease fire, and to promote the withdrawal of paramilitary units..."²⁷ Deter, monitor, and promote all suggest a certain degree of detachment from the conflict, perhaps rightly so. The UN seems to be clearly outlining UNPROFOR's role as an outside mediator, not a direct actor in the conflict. This language is also intentionally vague, denoting the distance between the Security Council's decision making and the troops on the ground. However, in the same resolution, "the use of force" and "all necessary measures"²⁸ are authorized. The UN's language carefully toes the line of national sovereignty, but their language also reflects the confusion inherent in where national sovereignty falls, particularly in the case of a state becoming several states through violent conflict.

Assigning Blame and Negotiating Immunity

The Convention of the Privileges and Immunities of the United Nations, officially adopted in 1946 states that

"The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity shall extend to any particular case it has expressly waived its immunity."²⁹

This is an extension and extrapolation of Articles 104 and 105 of the Charter of the United Nations. Further, under Article V111, Settlements of Disputes, this Convention states that "The

²⁷ *Ibid.*, 2.12

²⁸ *Ibid.*, 2.12

²⁹ UN General Assembly, "Convention on the Privileges and Immunities of the United Nations," Feb. 13, 1946, <http://www.un.org/en/ethics/pdf/convention.pdf>

United Nations shall make provisions for appropriate modes of settlement."³⁰ Thus far the "appropriate modes of settlement" have only been applied to internal disputes within the UN. Though summoned to the Dutch courts throughout the appeals process, the UN is always marked in the court documents as simply "failing to appear."³¹ Particularly in this case, the UN has interpreted this immunity to mean only engaging with those who object to its actions on its own terms. Though I have not conducted an exhaustive search, I was not able to find any example of the UN waving its immunity on an international scale.

Though the UN has refused to engage in the Mothers of Srebrenica case, they have publically acknowledged the Srebrenica massacre in a press release:

"The United Nations experience in Bosnia was one of the most difficult and painful in **our** history. It is with the deepest regret and remorse that we have reviewed our own actions and decisions in the face of the assault on Srebrenica. Through error, misjudgment and an inability to recognize the scope of the **evil** confronting us, we failed to do our part to help save the people of Srebrenica from the Serb campaign of mass murder...The tragedy of Srebrenica will haunt **our** history forever." (Emphasis mine)³²

The use of the pronoun "our" is very interesting here – while it may have been intended to universalize the feeling of "remorse" or grief on behalf of the Bosnian people, it instead serves to re-center the conversation from the suffering of the Bosnian people to the difficulties faced by those in the UN who made the "error" and "failed to do [their] part." The use of the word "evil" is also significant – it is a complete othering and caricaturing of the Serbs, one which erases the fact that Serbs and Bošniaks lived peacefully together for many years under Yugoslavia. While

³⁰ *Ibid.*

³¹ Mothers of Srebrenica 2008,2010,2012,2014, op. cit.

³² Faith, *op. cit.*, p. 4

the word "evil" is certainly deserved by many Serbian war criminals, it is important to discuss that the blanket blame placed on the Serbs is part of an international discourse that has attempted to simplify narratives about the conflict in Bosnia. Much of the international discourse emerging out of the ICTY unequivocally places "blame" on the Bosnia Serb forces, and by extension the Serbian government for the conflict. The international narrative, as opposed to the multiple narratives maintained within Bosnia, clearly outlines "aggressors" or "perpetrators" and victims. Further, by placing the UN in direct conflict to "evil" it implicitly reasserts the UN as "good."

A very similar statement is made in the court proceedings, this time emanating from the Dutch government:

"The State sticks to its position emphasizing the fact that the fall of Srebrenica and the many dead is a matter of regret and constitutes a "black page" in the history of Europe and that the international community did not succeed in preventing this drama from playing out. Moreover the state points out that it was the Bosnian Serbs who were responsible for committing the genocide. The District Court notes that nevertheless in this regard if unlawful acts did take place that are attributable to the State it may be held liable."³³

In both of these "acknowledgments" or perhaps "apologies" both the Dutch State and the UN intentionally distance themselves from the violence that occurred. Indeed the state is correct in stating that it did not commit genocide, but the emphasis is placed on the actions of the Serbs over the promises that it made and broke. Similar to the equivocation in the promises and resolutions leading up to Srebrenica, it maintains its role as a force outside of the conflict when

³³ Mothers of Srebrenica., *op. cit.*, 4.13

convenient and minimizes its active involvement. This statement from the Dutch State even goes so far as to minimize the violence of the Srebrenica massacre by referring to it indirectly as a "drama" that "played out." Further the use of the phrase "played out" implies a certain inevitability, further absolving the international presence of its role in the massacre.

Conclusion

It is difficult to say whether or not the Mothers of Srebrenica knew what they were taking on when they decided to sue the UN and the Dutch government. They were taking on two entities that, while holding a great deal of power, are also often unsure of how exactly to use that power. For the UN in particular, the ambiguity of its role in international conflict is displayed through contradictory and vague language, couched in goals that look surprisingly like promises. The Dutch government as well wavers between its particular role and the desire to push blame towards the UN. Both of these entities, though never directly denying their role, subtly push blame away from themselves. When set in contrast to the direct and emotionally charged language of the Mothers of Srebrenica, this equivocal language points to the power structures and imbalances that preclude accountability for large international organizations.

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