

International Law in The Hague:

At the frontiers of public and private international law

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The Judgement of the International Court of Justice (ICJ) in the *Genocide Case*¹ earlier in the year has already led to quite a number of reviews and discussions.² In this issue, the HJJ-JJH also continues its contribution. Following Terry Gill's review and commentary in the previous issue,³ this time Christian Tomuschat and Lennert Breuker discuss two specific aspects of the judgement. Professor Tomuschat comments on the form of reparation the Court has decided that Bosnia and Herzegovina is entitled to. The ICJ found that Serbia violated its obligation to prevent genocide. Tomuschat criticises the Court's judgement where it states that declaring Serbia's violation of this obligation is "in itself appropriate satisfaction" for Bosnia and Herzegovina.

Lennert Breuker examines the way the ICJ has approached the crime of genocide. The Court found that the 'crime of crimes' cannot only be committed by individuals but also by states. Although the Court does not explicitly have jurisdiction in criminal cases, it did consider itself competent to decide whether Serbia has committed genocide. Breuker points out some important consequences of such a competence, among them that it might require the ICJ to engage much more in autonomous fact- and truth-finding.

In April and May of this year, the International Criminal Tribunal for the former Yugoslavia (ICTY) produced a number of remarkable decisions in cases that have drawn less attention than they perhaps should have: the cases against *Bralo*, *Brđanin* and *Blagojević*.⁴ Two of these cases are discussed here. Matteo Fiori analyses the contribution that the *Brđanin* judgement has made in particular for the further development of the important but also complicated legal concept of 'joint criminal enterprise'.

¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v. Serbia and Montenegro), International Court of Justice, 26 February 2007.

² See, for example, the *Journal of International Criminal Justice*, Volume 5, Number 4, September 2007; and the *European Journal of International Law*, Volume 18, Number 4, 2007.

³ Terry Gill, 'The "Genocide" case: Reflections on the ICJ's Decision in Bosnia-Herzegovina v Serbia', *Hague Justice Journal*, Volume 2, Issue 1, (Spring) 2007. Available at: <http://www.haguejusticeportal.net/eCache/DEF/7/515.html>.

⁴ *Prosecutor v. Miroslav Bralo*, Judgement on Sentencing Appeal, 2 April 2007; *Prosecutor v. Radoslav Brđanin*, Appeals Judgement, 3 April 2007; *Prosecutor v. Vidoje Blagojević and Dragan Jokić*, Appeals Judgement, 9 May 2007.

Nicholas Walbridge has explored and explained the serious dilemmas the Tribunal faced in the *Bralo* case. Miroslav Bralo, accused of horrendous crimes, repented completely and has co-operated as ideally as a Court could wish. What implication does this co-operation by the defendant have for, in particular, the sentence?

The Hague Conference on Private International Law is the oldest of all The Hague's international organisations. The Conference is thriving now more than ever as Hans van Loon, its Secretary General, convincingly demonstrates in his article. His review of the impressive and important range of activities of the Hague Conference shows that this unique, international legislative body is reaching out further in the world than its founder, Tobias Asser, would ever have imagined. Van Loon's essay is particularly timely in that 2007 marks the year in which the European Community became a Member Organisation, the first regional economic integration organisation to do so, opening up a new phase in the long history of the Conference. For the Hague Justice Journal, his contribution also indicates the wish to stimulate the discussion about Hague events in the field of international private law.

Two recent decisions in domestic courts of law in The Hague have raised complicated questions of domestic jurisdiction in respect to international crimes committed outside the Netherlands. Even in the 'monistically' inclined Dutch legal system, such jurisdiction is not always as straightforward and easy as would perhaps be expected. The so-called 'Afghan cases' revolved around limits to exercising jurisdiction under international law; in the 'Rwandan cases' the District Court of The Hague had to decide on the opportunities international jurisdiction might offer in cases where explicit domestic jurisdiction is lacking. Cedric Ryngaert compares the complex issues involved and comprehensively assesses their importance.

This issue of HJJ-JJH provides the usual overview of the once more remarkable number of decisions taken in the previous months by courts and tribunals based in The Hague. It furthermore contains the commentaries, articles and essays just introduced; some written by very experienced authors, others by somewhat younger writers working in the field of international law. I believe this mixture provides an interesting and relevant contribution from The Hague to the state of international law.