

Dutch court upholds UN, Dutch immunity in Srebrenica case

By *Hermione Gee*

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The United Nations and the Dutch state cannot be prosecuted for failing to protect Bosnian victims of the 1995 Srebrenica genocide, a Dutch appeals court ruled today, rejecting a suit filed against both parties by a victims rights' group.

"The Dutch judge in this case upholds the UN's immunity," the ruling stated, adding that it accepts "the (Dutch) state as a joint party at the side of the UN."

During the Bosnian War (1992-1995) Srebrenica was a UN safe haven in Bosnia and Herzegovina, protected by Dutch peacekeepers. But in July 1995, Serbian forces entered the area, resulting in the massacre of close to 8,000 Muslim men and boys.

'Totally helpless'

The victims rights group the Mothers of Srebrenica filed a civil suit against the UN and The Netherlands in 2007. Marco Gerritsen, who represents the group before the Dutch court, said: "Troops were sent to protect these people, but they did not do what was in their power to protect the civilians. These people were left totally helpless against the Serbs. It was a UN mission so, primarily, the responsibility of what happened lays with the UN."

But he says the Dutch government is also to blame: "At a critical point, Dutch ministers called the UN and explicitly asked them - or forced them - to stop the air attacks on the Serbs because they were afraid that Dutch soldiers might be hurt."

After the verdict Axel Hagedorn, another lawyer for the group, said he was "disappointed because the appeal court didn't submit this case to the European Court of Justice in Luxembourg."

"We have to recognise that this case reaches far beyond the interest of the Mothers of Srebrenica. This case is all about fundamental European rights," he said.

The next step, Hagedorn said, will be to appeal the decision to a high court in the Netherlands, and ask that the case be heard in Luxembourg's European Court of Justice.

Absolute immunity

In 2008, a Dutch court ruled that, while the group could continue with its suit against The Netherlands, it could not sue the UN: "In international law and practice, the absolute immunity of the UN is the norm and is respected," the ruling stated.

But the plaintiffs appealed the decision, arguing that the organization cannot be above the law. "It is the responsibility of the United Nations, the most important organization in the world to stand up for human rights. If they take their task seriously, they should come forward and explain what happened before a judge," Gerritsen says.

The UN has so far refused to participate in the case. But lawyers for the Dutch government have argued on behalf of the international body, saying that the risk of prosecution could have a chilling effect on UN operations around the world.

Gerritsen disagrees: "I think it will have a positive impact because in future the UN will have the obligation to make better preparations for intervention so I think it will make them stronger."

"People say, if you could start legal proceedings against the UN then no country will be willing to send troops. However, I don't think it's true because you can sue a state, but still a state can function. For example, if the police makes a mistake you can sue the state and nobody is saying, well, the police can't do their job anymore. So I think it will have a positive effect for future situations."

International legal scholar Guido den Dekker of the University of Utrecht says the cases points to a fundamental problem with UN immunity: victims of peacekeeping organizations stay empty handed after crimes have been committed.

"There is no international court which can be addressed by victims. There is no standing complaints commission which could handle this type of complaint," Den Dekker said.

"The victims have no access to an effective remedy consisting of an independent and impartial tribunal and therefore, it's important - at least the signalling function of this trial is important -- that something has to happen within the UN organization because they cannot shield behind immunity for ever."

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