

## Srebrenica Victims Suit Against U.N. Won't Proceed, Dutch Court Rules

Posted by Brian Baxter

A day before the twelfth anniversary of the 1995 Srebrenica massacre in the former Yugoslavia, a Dutch court has ruled that survivors cannot hold the [United Nations](#) liable for damages in the Netherlands.

A three-judge panel of a Dutch district court in The Hague said it does not have the jurisdiction to allow a civil suit against the U.N.--filed in June 2007 by a group of 6,000 survivors and their relatives--to proceed. The ruling does not pertain to the Dutch state, which remains a defendant in the case.

Srebrenica, located in the Serbian enclave of Bosnia-Herzegovina, was declared by the U.N. to be a safe zone during the violent breakup of Yugoslavia in the early to mid-nineties. Defended by 400 Dutch soldiers, thousands of Bosnian Muslim refugees sought shelter in Srebrenica but found themselves quickly surrounded by Serbian troops and paramilitaries.



In July 1995, an estimated 8,000 Bosnian Muslims were killed as Bosnian Serb forces deported refugees to other parts of the country. Subsequent reports by both [the U.N.](#) and [the Dutch government](#) determined that the massacre was the worst mass killing in Europe since World War II [a memorial site is pictured above].

The plaintiffs--represented by Marco Gerritsen and Alex Hagedorn of Amsterdam's [Van Diepen Van der Kroef](#)--asked the Dutch court to establish jurisdiction in the Netherlands and waive the U.N.'s claims of immunity, allowing them to seek compensatory damages.

The Am Law Daily caught up with Gerritsen to discuss the strategy behind the case.

**You must be disappointed with the ruling.**

Unfortunately the district court concluded that the U.N.'s immunity is absolute and that it has no jurisdiction. But we will appeal to the Dutch court of appeals [in The Hague]. The case will work its way through the national court system in the Netherlands and in the end perhaps make its way to the [European Court of Human Rights](#) in [Strasbourg](#). That can take years but we're looking to see if we can get there quicker. Some of the mothers are quite old and can't wait that long for this to be resolved.

**How did you come to represent the plaintiffs?**

In 2004 I was approached by a Bosnian lawyer from [Mostar](#) named Semir Guzin who represented some of the [plaintiffs]. They were looking for a law firm in the Netherlands [to handle] the lawsuit. He had contacted several firms and ours was chosen despite the fact that we were the most hesitant to do this case.

**Why was the case brought in the Netherlands? Is it because there were Dutch peacekeepers in Srebrenica?**

Yes. The Dutch troops [in Srebrenica] were sent by the government in connection with the U.N.'s [peacekeeping role].

**What type of immunity did the U.N. claim, sovereign immunity?**

The [U.N. charter of 1946](#) states that the U.N. has immunity, however that immunity is not boundless. It's a functional immunity that the U.N. uses to fulfill its purposes but it is not without restriction. It's clear that without immunity, the U.N. could not function, but this is such an exceptional case in which the U.N. made so many mistakes and didn't fulfill its mandate and obligations towards these people. So we are convinced that in this specific case immunity cannot be upheld.

**The Dutch state is a defendant as well, correct?**

Yes. Today's ruling does not pertain to the involvement of the Dutch state--there's no question as to the court's jurisdiction [in that matter]. The Dutch state has appeared as a party to the proceedings while the U.N. has not.

**You say the U.N. didn't adequately reinforce the Dutch peacekeepers, who themselves did not intervene, so both the U.N. and the Dutch state are liable for damages resulting from the massacre?**

Yes. The Dutch state says, "Listen, we are not responsible. It was a U.N. mission. So you

should not hold us liable, you should go to the U.N." But the U.N. [claims immunity]. It's difficult to determine which decisions were made by the U.N. and which were made by the Dutch state. But we can prove in general that the U.N. had the obligation to fulfill their mandate and they didn't do that. You can see that in the [Srebrenica report by \[former U.N. Secretary-General\] Kofi Annan](#).

While the U.N. resolutions were very clear that these people should be protected, that wasn't done. Some of the U.N. soldiers helped Bosnian Serb soldiers with the deportation of men and women. The Dutch state exerted a lot of influence to prevent fighting and air strikes in the region. Even Kofi Annan said there was absolutely no reason not to use air strikes. So [we believe] both should be held liable before a court.

**What amount of damages are you seeking?**

I honestly don't know. It's not primarily about damages and money. The important thing is for this story to be heard. Nobody can deny that almost 10,000 civilians were killed. [The plaintiffs] want to know what happened. Why were the air raids stopped? Why did nobody help them? Why were they not protected?

**What remedy do you propose?**

Most of [the plaintiffs] have a monthly income of only \$100-\$200. They've lost everything. Eventually we'll get to the point where we talk about compensation, but first we need the court to find [the defendants] liable for their many mistakes. [Note: *In court filings, plaintiffs' lawyers have cited \$4 billion as a starting point for any future negotiations.*]

**Who is representing the Dutch state in this matter?**

The state attorney's office--Bert Jan Houtzagers and Allaart van Blankenstein are two of the state attorney's. We're working with a team of 14 lawyers and the Dutch state has a [legal team] of similar size. The implications are enormous not only for the state but also for the U.N. [on future missions] if immunity is not upheld.

**If an appeals court rules in your favor on the immunity issue, will the trial be back in the district court?**

Yes. It's a civil case at the district court level and there are some issues concerning international human rights. We will certainly appeal because it's important for us that the U.N. stay in this proceeding. [If not], the Netherlands can default its responsibility onto the U.N. The [Dutch state] will say, "Well, it's terrible what happened and we totally agree but you should take this up with the U.N."

If the U.N.'s immunity is absolute, that would mean the U.N. is the only international organization in the world that no matter what happens, it cannot be held responsible or accountable in a court or through some other alternative legal remedy. These relatives have no alternative remedy. In a way [the U.N.] would have absolute power. I don't think that would

be a wise decision. It's not democracy if someone cannot be held to account for any claim or charge.

**Have you been criticized for suing the state?**

There are a lot of skeptics in Holland, as [Srebrenica] is not a very popular thing to talk about. I served in the military myself but you can't deny what happened. All countries face these type of situations, whether it's the U.S. or Holland. Mistakes are made and we learn from our faults.

But if you keep using [nuanced] legal arguments to deny, deny, deny, it never goes away. We put [all of our court documents and filings on our Web site](#) for the deniers to read and see what the actual facts are. All of our statements are based on official reports. So we link to those reports and say, 'Look, here it is, it's right here. This is from the U.N., this is from the French Parliament.' You can access the information in multiple languages.

**So do you think you will eventually prevail?**

The political pressure in this case is enormous. For example, some have said that [Dutch national television] is being pressured not to broadcast reports about this. And I'm sure there's pressure on the court, too. Barring a settlement, this case still has years to go. But from a legal point of view, I'm absolutely convinced that we are right. It's only a question of time and we will not