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FALLING ON DEAF EARS

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Fourteen years after the genocide of Srebrenica, where 8,000 to 10,000 were brutally killed, one of its main architects, Radovan Karadžić, finally faces trial.

The Mothers of Srebrenica, 6,000 family members of victims of this first genocide on European soil since World War II, have joined together to found a Dutch foundation and have mixed feelings about the start of these proceedings.

On the one hand, they are content the criminal proceedings at the International Criminal Tribunal for the former Yugoslavia (ICTY) have begun. On the other hand, the Mothers of Srebrenica cannot accept that the other main suspect, Ratko Mladić, is still at large. It is difficult to believe Mladić is not protected by the Serbian government, or worse, by other national secret services. This and other things leave the Mothers of Srebrenica feeling abandoned by the international community.

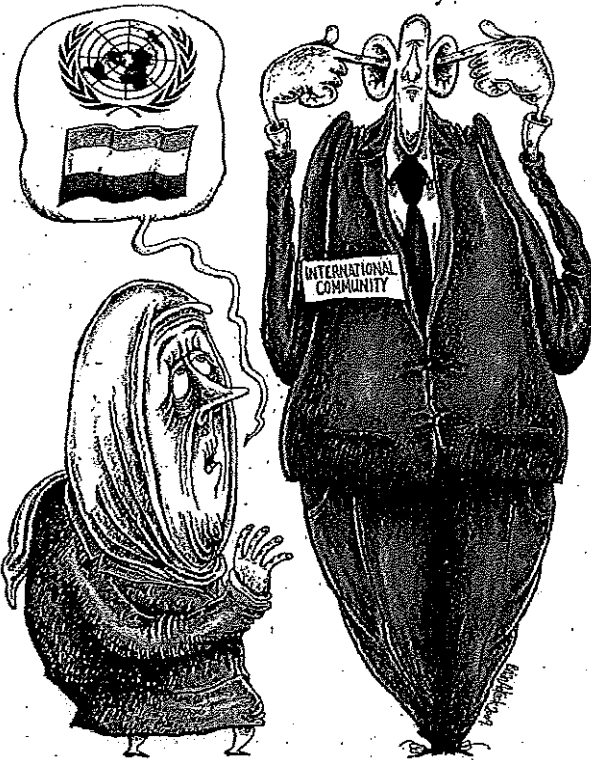
It is not only because Karadžić gets the opportunity to use all kinds of legal tricks to delay his trial, as he has in recent weeks. Although the ICTY has imposed a lawyer on Karadžić, he still succeeded with his intention to further delay his trial. In the eyes of the Mothers of Srebrenica, they are again left alone by the international community and the United Nations in particular.

To understand this, one has to take a closer look to what has happened since July 1995. In 2001, the judgment of the ICTY against the Bosnian Serb General Radislav Krstić summarized the atrocities shortly and clearly:

"Despite a UN Security Council resolution declaring that the enclave was to be 'free from armed attack or any other hostile act,' units of the Bosnian Serb Army ('VRS') launched an attack and captured the town. Within a few days, approximately 25,000 Bosnian Muslims, most of them women, children and elderly people who were living in the area, were uprooted and, in an atmosphere of terror, loaded onto overcrowded buses by the Bosnian Serb forces and transported across the confrontation lines into Bosnian Muslim-held territory. The military-aged Bosnian Muslim men of Srebrenica, however, were consigned to a separate fate. As thousands of them attempted to flee the area, they were taken prisoner, detained in brutal conditions and then executed. More than 7,000 people were never seen again."

The United Nations had sent troops to the so-called safe area Srebrenica, because, as early as April 1993, the former president of Serbia, Slobodan Milošević, ordered that dreadful massacres would occur if Srebrenica fell to the Bosnian Serbs. The UN itself reported the expectation of a massacre of 25,000 people if there was no protection by the UN in a safe area. In July 1995, when all these atrocities happened, Dutch soldiers serving under a UN mandate called "Dutchbat" were stationed in Srebrenica to protect the people of Srebrenica against attacks by the Bosnian Serbs. In spite of the obligations following from clear UN resolutions, Dutchbat gave no humanitarian relief; they did not defend the safe area against the attacks by the Bosnian Serbs, Dutchbat surrendered military positions without resistance, and refused to return weapons to the inhabitants of Srebrenica that had previously been impounded, leaving the Bosnians unable to defend themselves. Even worse, Dutchbat justified its refusal to give back the weapons with the comment

The Karadžić trial is the latest sign that the victims of the Srebrenica massacre have been forgotten by the international community



that the UN troops would come to the civilians' defense. Air support was consistently postponed, and, shortly before the fall of the safe area, the air support was directly obstructed by the Dutch government itself. Finally, Dutchbat helped the Bosnian Serbs with the separation of men, boys and women for deportation, despite the expectation that atrocities would be committed against men and boys. Most of the men and boys, predictably, did not survive.

Unfortunately, many people remain ignorant of the facts. Therefore, I add one additional quote from the ICTY in the Krstić case to show the UN soldiers knew what was to come:

"... at the stage when Bosnian Muslim men were divested of their identification en masse, it must have been apparent to any observer that the men were not screened for war crimes. In the absence of personal documentation, these men could no longer be accurately identified for any purpose. Rather, the removal of their identification could only be an ominous signal of atrocities to come."

All this led the Mothers of Srebrenica to sue the UN and the State of the Netherlands at a civil court in The Hague, the Netherlands, in 2007. The Mothers of Srebrenica hold the United Nations and the State of the Netherlands jointly responsible for not preventing the genocide that took place. If these parties would have fulfilled their obligations to protect the people of Srebrenica, Mladić and his troops could have never executed the genocide.

One has to know the reaction of the United

Nations and the State of the Netherlands against this lawsuit to fully understand why the Mothers of Srebrenica feel again abandoned by the international community. It is the State of the Netherlands that, over the past 14 years, has repeatedly declared that Dutchbat was acting as a UN force and therefore cannot be held liable for this disaster. In a civil case brought forth by two victims' families, the State of the Netherlands used this argument, and did so again in a district court in 2008. The court ruled the family had to sue the UN, not the Dutch government. The chairman of the chamber for that ruling is now the chairman for the case of my client, the Mothers of Srebrenica.

The Dutch State argued in our proceedings for the 6,000 Mothers of Srebrenica against the UN and the State of the Netherlands, saying it is impossible to sue the UN as it is granted absolute immunity. Conveniently enough, the District Court, with the same chairman, accepted the same argument by the Dutch State that the UN has absolute immunity and therefore can never be sued anywhere. First he judged that victims should sue the UN, and, two weeks later, he ruled it is impossible to sue the UN.

In our proceedings, the State of the Netherlands has taken over the role of actually pleading for absolute immunity for the UN, while the United Nations has chosen not to appear in court at all. If the UN is granted immunity in this case, the State of the Netherlands can much more easily put forward the argument that they only delivered troops for the UN and cannot be held liable. The result would be that nobody is liable. The Mothers

of Srebrenica would be abandoned again, and justice for all the admitted failures of the UN would not be served.

The Mothers of Srebrenica feel a strange coincidence that the UN and the State of the Netherlands are using legal tricks, much like Radovan Karadžić is at the ICTY, a UN court. They feel the Genocide Convention and the legal system do not protect the victims of genocide, and that the legal system mainly protects the State of the Netherlands and the UN. Is that the reason for absolute immunity for the UN? Whatever violation of human rights is committed by the UN, the victims are virtually punished twice: first humiliated and secondly deprived of their human rights and legal access to courts. We are convinced this is morally and legally wrong, but this first must be established by a court in the Netherlands.

In early 2010, there will be a hearing at the appeal court in The Hague, where we will argue against absolute immunity for the UN. Immunity is allegedly granted to the UN so it can complete the tasks necessary to fulfill its official roles. The involvement of the UN in the genocide in Srebrenica is and can never be a task of the UN.

Two obligations under international law are in direct conflict: the prevention of genocide versus the immunity of the UN. The prevention of genocide is an imperative obligation (*ius cogens*) while immunity of the UN has a subordinated status. Therefore, the Genocide Convention should outweigh the immunity of the UN. The UN's founding charter gives the UN the obligation to set up alternative means for victims to pursue court cases. The UN has failed to do so for more than 60 years. As a consequence, the UN is the only organization in the world that stands above the law. In short, if the UN is granted absolute immunity, Article 6 of the European Convention on the Protection of Human Rights (ECHR) is brushed aside. Article 6 provides the right of every civilian to go to court for civil matters against state authorities. Absolute immunity for the UN ignores Article 6 of the ECHR.

It is remarkable that the UN as the gatekeeper and self-anointed protector of human rights argues that it is not bound to these human rights whatsoever. There is much more than only legal proceedings at stake. This is all about the credibility of the UN as the self-declared human rights organization.

Even worse, the UN and the State of the Netherlands until now have refused any communication about recognition and satisfaction for the Mothers of Srebrenica. The UN has left such requests unanswered for years.

If there remains any question about the injustice that persists for victims of the Srebrenica massacre, both in the court cases the Mothers of Srebrenica continue to pursue and the proceedings under way for Karadžić, one need look no further than a speech given by the president of the ICTY, Judge Patrick Robinson, before the UN General Assembly Oct. 8:

"It is a matter which I strongly believe must be addressed if there is to be lasting peace and reconciliation in the region — namely compensation to victims for the atrocities they suffered during the conflicts in the former Yugoslavia, ... With respect to their right to compensation, I must agree that the international community has forgotten them."

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