

The Dutch Court ruling against the Netherlands over Srebrenica is consistent with international law

blogs.lse.ac.uk/europpblog/2014/07/22/the-dutch-court-ruling-against-the-netherlands-over-srebrenica-is-consistent-with-international-law/

22/07/2014

A civil court in The Hague ruled on 16 July that the Netherlands is liable for the deaths of around 300 men who died during the Srebrenica massacre in 1995. [Bérénice Boutin](#) assesses the ruling and what it means for the wider issue of state liability for the actions of UN peacekeepers. She writes that from the point of view of international law, the decision was sound and does not unreasonably extend the responsibility of troop-contributing states for the conduct of their soldiers in peacekeeping missions.



On 16 July, 19 years after the genocide of Srebrenica, a Dutch court issued a [decision](#) holding the Dutch State responsible in relation to the death of 300 men killed by the Bosnian Serb Army (Army of Republika Srpska) in Srebrenica after being evicted from a compound where Dutch peacekeepers were stationed. The decision sparked some [debate](#) on the extent to which states and/or the United Nations should be held responsible in relation to atrocities that they failed to prevent. It is important to note straight away that the judicial decision did not assert any responsibility for a general failure to prevent genocide, but concerned a specific limited set of facts, whereby a number of individuals who had fled massacres were evicted by peacekeepers from the area where they took refuge.

Background: the Srebrenica massacre

It is not the first time that Dutch courts have been faced with claims of responsibility against the Netherlands in relation to the massacre of Srebrenica. In July 1995, in the midst of the Yugoslav conflict, the Dutch contingent to [UNPROFOR](#) (Dutchbat) was in charge of protecting the city of Srebrenica, which UN Security Council [Resolution 819](#) had deemed a 'safe area' to be protected by peacekeepers. It is notorious that the means available to the blue helmets did not match the ambition of their mandate (see [UN Doc A/54/549](#), para 263).

On 11 July 1995, the city of Srebrenica fell into the hands of the Bosnian Serb Army led by Ratko Mladić. Dutchbat retreated to the industrial compound where it was based nearby the city in Potočari, and were soon followed by a flow of refugees seeking shelter in and around the compound. It is estimated that between 20,000 and 25,000 men, women and children took refuge there, 5,000 of which could be accommodated within the compound itself.

Considering that the enclave was lost and the mission had failed, the Dutch government decided, in agreement with the UN, to withdraw its contingent and evacuate the compound and its surroundings. At that time, reports started to emerge that the Bosnian Serb Army was committing widespread crimes against the population, but the evacuation went on. It progressively became clear that the individuals evicted from the compound, specially the able-bodied men, were killed by the Bosnian Serb Army in what was later qualified as [genocide](#). It is with regard to this eviction of individuals that responsibility of the Netherlands was sought.



Srebrenica memorial, Credit: Martijn Munneke (CC-BY-SA-3.0)

The case against the Netherlands

The association Mothers of Srebrenica, which successfully brought the claim at hand, had previously failed to obtain a ruling of responsibility against the United Nations. Both [Dutch Courts](#) and then the [European Court of Human Rights](#) rejected the claims on the grounds of the immunity that the UN enjoys (pursuant to [Article 105 of its Charter](#) and the [1946 Convention](#) on the Privileges and Immunities of the United Nations). Unable to obtain redress from the UN, they pursued a claim against the Dutch State.

In other proceedings brought against the Netherlands in relation to the events of Srebrenica, the Dutch Supreme Court had concluded in the [cases of Nuhanović and Mustafić](#) last September that responsibility could be attached to the Netherlands with regards to the eviction of three victims from the Dutchbat compound. Following these decisions, the association Mothers of Srebrenica launched a claim against the Dutch State on similar grounds.

In terms of international law, the main issue when addressing responsibility for the conduct of peacekeepers is to determine whether the United Nations or the contributing states should bear responsibility for the wrongful conduct of soldiers. That states and international organisations bear responsibility for the violations of international law committed by their organs is well accepted (see [ARS](#) and [ARIO](#)). When the soldiers of a state are fighting under a UN flag, however, it becomes difficult to determine whether their conduct should be attributed to the UN or to their state, or possibly to both. The international law criteria for attributing such conduct is the one of 'effective control' (that is, *actual* control) over the conduct of peacekeepers, as formulated in Article 7 of the [ARIO](#).

In peacekeeping operations, contributing states transfer operational control over their troops to the UN. As a matter of principle, it is thus the UN which holds effective control and thus should bear responsibility. The Dutch decision does not depart from this principle, and therefore does not set a precedent for holding states responsible when their troops were acting under UN orders. Indeed, the situation of Dutchbat after the fall of Srebrenica was, as the Court pointed out, different from the 'normal' setting of peacekeeping operations (para 4.80). During the transitional period after it was decided to withdraw the Dutch contingent, control over the soldiers shifted back to the Netherlands, which was closely involved in the modalities of the evacuation of troops and refugees. It is because the Netherlands had resumed control over its troops that the conduct of Dutchbat could legitimately be attributed to it in accordance with international law (para 4.87).

In the cases of *Nuhanović* and *Mustafić*, the Dutch Supreme Court had recognised these specific circumstances, but left open the question of the limits of Dutch responsibility in relation to Srebrenica. Setting these limits is what the decision of the District Court did. Again, the decision does not hold the Netherlands liable for a general passive reaction to prevent genocide, but concerns the forcible eviction of a limited number of people at a moment where Dutchbat was aware that abuses were happening.

As a first limit, the District Court considered that it is only within the compound which was controlled by Dutchbat that the Netherlands could bear responsibility. Beyond this area, the troops could not be expected to protect human rights (para 4.161). Second, it is only when Dutchbat became aware of abuses that it could be held responsible for the fate of evicted refugees. As specified by the Court, it is from the end of the afternoon of 13 July 1995 that Dutchbat had knowledge that able-bodied men were being killed upon leaving the area (para 4.257). Accordingly, the 300 recognised victims amongst the 20,000 to 25,000 refugees were the men which had taken refuge within the Dutchbat compound and were evicted from it after Dutchbat became aware of the serious risk of genocide if they left (para 4.338).

From the point of view of international law, this decision is sound and does not unreasonably extend the responsibility of troop-contributing states for the conduct of their soldiers in peacekeeping missions. Issued by a first instance court, it is expected that the decision will be appealed. But being in line with previous decisions of the Supreme Court on similar facts, it carries a relatively strong weight.

For a more detailed legal analysis of the decision, see [here](#)

Please read our comments policy before commenting.

Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

Shortened URL for this post: <http://bit.ly/1rwSpbN>

About the author

Bérénice Boutin – *University of Amsterdam*

[Bérénice Boutin](#) is a PhD candidate in the SHARES project at the University of Amsterdam. She is writing her thesis on the topic of Responsibility in International Military Operations.



-