

Srebrenica Survivors Sue Dutch and UN

Author: [Lisa Clifford](#)

Families of victims take legal action against the Netherlands and the UN for their alleged responsibility for the fall of the enclave and mass executions that ensued.

Families of those who died in the Srebrenica massacre this week filed a lawsuit against the Dutch government and the United Nations, accusing them of failing to protect residents of the enclave.

The group of 6,000 surviving relatives – known as the Mothers of Srebrenica – hold the government and the UN jointly responsible for the fall of Srebrenica and the genocide that followed.

More than 8,000 Bosnian Muslim men and boys died when Bosnian Serb forces overran Srebrenica in July 1995. The Dutch airborne battalion – in the so-called safe area under a UN mandate to protect the residents – failed to stop the massacre or protect the thousands of refugees.

The filing of the lawsuit – which will be heard in The Hague District Court in the Netherlands – took place just days after the arrest of Hague tribunal fugitive general Zdravko Tolimir. Tolimir, a close aide to general Ratko Mladic, was indicted in 2005 for his alleged role in the massacre.

It also came in the same week that tribunal chief prosecutor Carla Del Ponte visited Belgrade, followed by news that the European Union would resume talks with Serbia on closer ties. Serbia hopes to eventually join the EU.

About 200 relatives of Srebrenica victims travelled from Bosnia to accompany lawyers as they delivered their summons on June 4. The suit has been in the works for six years and includes a legal team of 14 lawyers in Bosnia and the Netherlands.

They want a judicial declaration that the UN and the Dutch government breached their obligations to prevent genocide as laid down in the Genocide Convention and damages to be determined by the court for loss and injury.

Axel Hagedorn from the Dutch firm Van Diepen Van Der Kroef has been on the case for three years. He maintains that the fall of the enclave was only possible because the Dutch battalion and the UN didn't do their jobs.

"If you have a UN resolution, a safe area, and say 'we are protecting you' then you do it. If you take such a responsibility you have to fulfil it. It's as simple as that," Hagedorn told IWPR.

"We can prove that the fall of the enclave was only possible, because the Dutch battalion and the UN didn't do what they said they would do and also what they had to do, and therefore the genocide could take place."

Hagedorn said the aim of the lawsuit is not only financial but rather to generate discussion about the issues raised and recognition of the mistakes made.

“How can you learn about the faults made if you don’t talk about it? Here lots of mistakes were made,” he said.

A UN spokesman in New York refused to comment, saying the UN had yet to receive formal notification of the lawsuit. He did say, however, that “the UN regrets the incidents in Srebrenica”.

IWPR sought comment from the Dutch ministry of foreign affairs, but as Tribunal Update went to press none was forthcoming.

A government-commissioned report on the massacre by the Netherlands Institute for War Documentation described the Dutch battalion assignment in Srebrenica as an “ill-conceived and virtually impossible peace mission”. It went on to say its mandate was unclear and the troops – lightly-armed combat soldiers – not properly trained for the job at hand.

It also laid some of the blame at the feet of politicians, forcing the resignation of the government of Dutch prime minister Wim Kok in 2002.

Observers told IWPR that suing the UN will be difficult, as it is protected by immunity and in principle – and in most cases – cannot be sued in court.

Hagedorn disagrees. He says that under its founding charter, the UN is granted immunity “for the fulfilment of its purposes”. “The Bosnian genocide is not the fulfilment of the purposes of the UN,” he said.

In the lawsuit, the lawyers say that one of the UN’s objectives is to promote respect for human rights. Invoking immunity would run contrary to that, affecting the UN’s credibility, the suit says.

Hagedorn also points out there are no alternative legal remedies for disputes to which the UN is party.

“The UN [is] a legislative organ – they make the resolutions and tell everybody what to do and what not to do, then they go in with their troops and enforce it,” he said. “Without some legal redress it makes the UN look like a dictatorial system, and I believe no one intended that.”

Lisa Clifford is an IWPR reporter in The Hague.

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