



# The End of the Road: State Liability for Acts of UN Peacekeeping Contingents After the Dutch Supreme Court's Judgment in *Mothers of Srebrenica* (2019)

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## Abstract

This article provides an analysis of the Dutch Supreme Court judgment in the *Mothers of Srebrenica* case, placing it in its context, and comparing it with earlier and related decisions, in particular the judgments in the cases of *Nuhanović* and *Mustafić*. The *Mothers of Srebrenica* is a foundation established to represent the interests of the approximately 6000 surviving relatives of the victims of the fall of Srebrenica during the conflict in the former Yugoslavia (1995). The foundation holds the Netherlands responsible for not having done enough to protect the victims of the Srebrenica genocide. This contribution addresses the attribution of the conduct of the United Nations peacekeeping contingent to the troop-contributing State (the Netherlands), followed by the wrongfulness of the peacekeepers' conduct and the State's attendant liability for damages suffered by the victims. It is argued that the Dutch State's international responsibility was only engaged because of the exceptional circumstances present in Srebrenica at the time. In the ordinary course of events, the liability of troop-contributing States is unlikely to be engaged if the Supreme Court's review standard were to be applied.

**Keywords** Srebrenica · State responsibility · Attribution · Peacekeeping · Wrongfulness · Liability · United Nations

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## 1 Introduction

On the 19th of July 2019, the Dutch Supreme Court ('Hoge Raad') delivered its judgment in the case initiated by the Mothers of Srebrenica more than 10 years ago.<sup>1</sup> The Mothers of Srebrenica is a foundation, established under Dutch law, whose *raison d'être* is to represent the interests of the approximately 6000 surviving relatives of the victims of the fall of Srebrenica during the conflict in the former Yugoslavia (1995). With this judgment, lengthy legal proceedings finally came to a close.

It is recalled that in its initial application to the Dutch courts, the Mothers of Srebrenica had held both the United Nations (UN) and the Netherlands, which placed the Dutchbat (an abbreviation of 'Dutch Battalion') contingent at the disposal of the UN peacekeeping force, responsible for some of the events taking place in the context of the fall of Srebrenica. However, after the District Court, the Court of Appeal, the Supreme Court, and the European Court of Human Rights (ECtHR) had upheld the immunity of the United Nations from the jurisdiction of the Dutch courts,<sup>2</sup> the proceedings continued against the Netherlands only.

The District Court and the Court of Appeal delivered their judgments in these proceedings in respectively 2014 and 2017,<sup>3</sup> and held the Netherlands liable for specific acts of cooperation with the Bosnian Serbs, at whose hands Bosnian Muslims perished. The District Court held the State liable for Dutchbat's cooperation in the deportation of male refugees who were deported from a mini safe area controlled by Dutchbat, whereas the Court of Appeal held the State liable for facilitating the separation of the male refugees by the Bosnian Serbs who killed them, as well as for not giving the male refugees who were inside the large vehicle halls within the Dutchbat compound the choice of staying there and thus denying them the 30% chance of not being exposed to the inhumane treatment and executions by the Bosnian Serbs. In its 2019 judgment, the Supreme Court set aside the judgment of the Court of Appeal and held the State liable for not offering the male refugees who were in the compound the choice of remaining there, thus depriving them of the 10% chance of not being exposed to inhumane treatment and execution by the Bosnian Serbs.

It is also recalled that in related proceedings, Dutch courts, including the Supreme Court, held the Netherlands liable for sending away two Bosnian Muslim men who had sought refuge on the compound of Dutchbat, and who were later killed (the

<sup>1</sup> *Mothers of Srebrenica Association et al. v. The Netherlands*, Supreme Court, judgment of 19 July 2019, ECLI:NL:HR:2019:1223 (English translation: ECLI:NL:HR:2019:1284). This was preceded by the Opinion of the Advocate General of 1 February 2019, ECLI:NL:PHR:2019:95 (English translation: ECLI:NL:PHR:2019:785).

<sup>2</sup> *Mothers of Srebrenica Association et al. v. The Netherlands and the United Nations*, The Hague District Court, decision of 10 July 2008, ECLI:NL:RBSGR:2008:BD6795; The Hague Court of Appeal, decision of 30 March 2010, ECLI:NL:GHSGR:2010:BL8979; Supreme Court of the Netherlands, decision of 13 April 2012, ECLI:NL:HR:2012:BW1999; European Court of Human Rights (ECtHR), *Stichting Mothers of Srebrenica and Others v. The Netherlands*, Appl. No. 65542/12, decision of 11 June 2013.

<sup>3</sup> *Mothers of Srebrenica Association et al. v. The Netherlands*, The Hague District Court, judgment of 16 July 2014, ECLI:NL:RBDHA:2014:8748, ECLI:NL:RBDHA:2014:8562; The Hague Court of Appeal, ECLI:NL:GHDHA:2017:1761, judgment of 27 June 2017.

cases of *Nuhanović*<sup>4</sup> and *Mustafić*<sup>5</sup>).<sup>6</sup> Much has been written about earlier Srebrenica decisions of Dutch courts,<sup>7</sup> also in this review.<sup>8</sup> The present contribution builds on these writings, but does not repeat them. The focus is on the Supreme Court's judgment in the *Mothers of Srebrenica* case, while placing it in its context, and comparing it with the earlier decisions.

Our commentary on the judgment is structured around the constituent elements of State responsibility: attribution and wrongful conduct. This is, by and large, also the structure followed by the Supreme Court in its judgment. Thus, Sect. 2 addresses the attribution of the conduct of the Dutchbat peacekeeping contingent to the Netherlands, whereas Sect. 3 tackles the wrongfulness of Dutchbat's conduct and the State's attendant liability for damages suffered by the victims. Section 4 concludes.

## 2 Attribution

There is a great variety in the ways the Dutch courts have dealt with the attribution of Dutchbat's conduct to the Netherlands, in both *Nuhanović* and *Mothers of Srebrenica*. All courts have referred to a combination of Articles 4 and 8 of the International Law Commission (ILC)'s Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARS),<sup>9</sup> and Articles 6 and 7 of the ILC's Draft Articles on the Responsibility of International Organizations (DARIO).<sup>10</sup> However, they have interpreted, applied and combined these Draft Articles in different ways. In this section, the applicable law on attribution is introduced first (Sect. 2.1), followed by an analysis of the application of this law to the facts of Srebrenica by the Supreme Court in the *Nuhanović* case (Sect. 2.2), and by the lower courts in the

<sup>4</sup> Hasan Nuhanović worked as an interpreter for Dutchbat. When the enclave fell, Nuhanović was permitted to leave with Dutchbat, but they refused to protect his relatives. Nuhanović's father and brother were handed over to the Bosnian Serb Army and were killed.

<sup>5</sup> Rizo Mustafić was working as an electrician for Dutchbat, and was thus on the list of local staff members who were permitted to evacuate with Dutchbat. However, because of some administrative misunderstanding, members of Dutchbat at the crucial time were not aware that his name was on the list, and told him to leave the compound. This led to his death at the hands of the Bosnian Serbs.

<sup>6</sup> See *Mustafić v. The Netherlands* and *Nuhanović v. The Netherlands*, District Court of The Hague, 10 September 2008, ECLI:NL:RBSGR:2008:BF0187 and ECLI:NL:RBSGR:2008:BF0184; Court of Appeal of The Hague, 5 July 2011 and 26 June 2012, ECLI:NL:GHSGR:2011:BR0132/ECLI:NL:GHSGR:2012:BW9014 and ECLI:NL:GHSGR:2011:BR0133/ECLI:NL:GHSGR:2012:BW9015 (the Appeal was dealt with in two stages); Supreme Court, 6 September 2013, ECLI:NL:HR:2013:BZ9228 and ECLI:NL:HR:2013:BZ9225. The cases of *Mustafić* and *Nuhanović* are formally separate, but the judgments in the two cases are almost identical.

<sup>7</sup> See e.g., Okada (2019); Ekanayake and Rimmer (2018); Spijkers (2016).

<sup>8</sup> See e.g., Ryngaert (2017); Palchetti (2015); Ryngaert (2014).

<sup>9</sup> Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, adopted by the International Law Commission at its fifty-third session, in 2001. See *Yearbook of the International Law Commission*, 2001, vol. II, Part Two, and UN Doc. A/56/10 (DARS).

<sup>10</sup> Draft Articles on the Responsibility of International Organizations, with commentaries, adopted by the International Law Commission at its sixty-third session, in 2011. See *Yearbook of the International Law Commission*, 2011, vol. II, Part Two, and UN Doc. A/66/10 (DARIO).

*Mothers of Srebrenica* case (Sect. 2.3). This section ends with an analysis of the Supreme Court's judgment in *Mothers of Srebrenica* (Sect. 2.4).

## 2.1 International Law on Attribution of Peacekeepers' Conduct

Before we look at the judgments of the Dutch courts, we briefly provide an overview of the applicable law on attribution of conduct in the context of UN peace operations. Such operations are complex, in that they involve troops placed at the disposal of the UN by UN Member States. The question arises whether conduct by peacekeepers should be attributed to the UN, to troop-contributing States, or to both.

Attribution to the UN is in principle governed by the DARIO, most relevantly Articles 6 and 7. Pursuant to Article 6 DARIO, the conduct of an organ of an international organization is attributable to that organization. It was the view of the Netherlands that Article 6 DARIO applied to Dutchbat's conduct, as, being a peacekeeping force, it ought to be considered as an organ of the UN. This was also the view of the UN itself, for that matter. According to the UN Legal Counsel and the UN Secretariat, 'as a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization'.<sup>11</sup> The ILC had sympathy for this position, but disagreed. In the ILC's view, 'while it is understandable that, for the sake of efficiency of military operations, the United Nations insists on claiming exclusive command and control over peacekeeping forces, attribution of conduct should [...] be based on a factual criterion'.<sup>12</sup> For attribution in peacekeeping operations, the ILC drafted another article, Article 7 DARIO, which states that 'the conduct of an organ of a State that is placed at the disposal of an international organization shall be considered under international law an act of the organization if the organization exercises effective control over that conduct'.

Attribution to the troop-contributing State, in this case the Netherlands, is in principle governed by the DARS, most relevantly Articles 4 and 8. Article 4 DARS states that 'the conduct of any State organ shall be considered an act of that State under international law'. According to Article 8 DARS, 'the conduct of a group of persons shall be considered an act of a State under international law if the group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct'. If Dutchbat is considered to be—and to remain—an organ of the Netherlands, then one would assume that Article 4 DARS applies. If Dutchbat is no longer to be considered an organ of the Netherlands after it is placed at the disposal of the UN, then one would assume that Article 8 DARS applies.

Thus, two possible approaches can be identified. If Dutchbat is the UN's organ, there is a rebuttable presumption that the UN is responsible for Dutchbat's conduct

<sup>11</sup> 'Comments and observations on Responsibility of International Organizations received from international organizations', UN Doc. A/CN.4/545, 25 June 2004, comments from United Nations Secretariat, p. 28.

<sup>12</sup> See 'Report of the International Law Commission of its Sixty-third session (26 April–3 June and 4 July–12 August 2011)', UN Doc. A/66/10, p. 90.

(based on Article 6 DARIO), unless the troop-contributing State, exceptionally, has effective control over specific acts (Article 8 DARS). If Dutchbat is and remains an organ of the Netherlands, there is a rebuttable presumption that the Netherlands is responsible (based on Article 4 DARS), unless the UN has effective control over specific acts (Article 7 DARIO).

However, as is demonstrated in the subsections below, the Dutch courts opted instead for a rather difficult combination of Article 8 DARS and Article 7 DARIO. If we follow this approach, then Dutchbat is basically no one's organ, and whoever exercises effective control over specific acts of Dutchbat is responsible for those acts.

## 2.2 The Supreme Court Judgment in the *Nuhanović* Case

Before turning our attention to the Supreme Court judgment in *Mothers of Srebrenica*, it is appropriate to analyse how the Dutch courts approached the question of attribution in UN peacekeeping operations in the earlier case of *Nuhanović*. Hasan Nuhanović was an interpreter working for Dutchbat, who lost his brother and father upon the fall of Srebrenica, and held the Netherlands responsible for this. The District Court's judgment in the *Nuhanović* case predated the adoption of the DARIO, and thus the District Court relied exclusively on the DARS.<sup>13</sup> The Court of Appeal, which rendered its judgment shortly after the adoption of the DARIO, based its ruling primarily on Article 7 DARIO.<sup>14</sup> The Supreme Court did the same, but it relied more heavily on Article 8 DARS to complete the picture.<sup>15</sup> The Supreme Court first concluded that 'it is apparent from the Commentary on Article 7 DARIO [...] that this attribution rule applies, *inter alia*, to the situation in which a State places troops at the disposal of the United Nations in the context of a UN peace mission, and command and control is transferred to the United Nations, but the disciplinary powers and criminal jurisdiction (the "organic command") remain vested in the seconding State'.<sup>16</sup> That was the situation in this particular case. On the basis of Article 7 DARIO, read together with Article 8 DARS, the Supreme Court confirmed in *Nuhanović* that Dutchbat's disputed conduct could be attributed to the Netherlands because it exercised effective control over the specific acts.<sup>17</sup>

A close analysis of the Supreme Court's judgment in *Nuhanović* reveals that the Court did not consider Dutchbat to be an organ of the UN (per Article 6 DARIO) nor of the State (per Article 4 DARS). Ultimately, for the Court, attribution depended on whoever exercised effective control over the acts complained of, whether on the basis of Article 7 DARIO or Article 8 DARS.<sup>18</sup>

<sup>13</sup> *Nuhanović* District Court.

<sup>14</sup> *Nuhanović* Court of Appeal.

<sup>15</sup> *Nuhanović* Supreme Court.

<sup>16</sup> *Idem*, para. 3.10.2. See also para. 3.11.3.

<sup>17</sup> *Idem*, para. 3.13.

<sup>18</sup> Regarding State responsibility under the DARS, the Court held that Dutchbat's conduct could only be attributed to the Netherlands if (1) Dutchbat should be considered an organ of the State (Art. 4 DARS); or (2) if Dutchbat in fact acted on the instructions or under the direction or control of the State (Art. 8

### 2.3 Judgments of the District Court and the Court of Appeal in the *Mothers of Srebrenica Case*

In the *Mothers of Srebrenica* case, the District Court largely followed the approach of the Supreme Court in *Nuhanović*, and relied on Article 7 DARIO, and the ‘effective control’ criterion proposed therein.<sup>19</sup> There was not a single reference in the 80-page judgment of the District Court to Articles 4 and 8 DARS, nor to Article 6 DARIO. Nowhere in its judgement did the District Court explicitly refer to Dutchbat as an organ of the United Nations. It referred to Dutchbat consistently as troops placed at the UN’s disposal, ‘placed under UN orders and operat[ing] as a contingent of UNPROFOR’.<sup>20</sup>

The Court of Appeal noted that it was not disputed between the parties that acts performed by UN peacekeepers are normally attributed to the UN. Only in exceptional circumstances can such acts be attributed (also) to the troop-contributing State, i.e. only when the State actually exercised effective control over those specific acts.<sup>21</sup> This general rule also applied to Dutchbat. Because ‘the command and control over Dutchbat had been transferred [from the Netherlands] to the UN, the UN exercised effective control over Dutchbat, in principle’, and ‘whether in one or more specific instances the exceptional situation occurred that the State also exercised effective control over certain aspects of acts performed by Dutchbat is something that the Association et al. must argue’.<sup>22</sup> In other words, the burden of proof regarding the exercise of effective control by the Netherlands was on the Mothers of Srebrenica.

The Court of Appeal held that it was ‘not in dispute in this case’ that a national contingent of soldiers, placed at the disposal of the UN for peacekeeping, is normally to be considered an ‘organ’ of the UN.<sup>23</sup> This is remarkable, because, as explained just above, the District Court did not explicitly consider Dutchbat to be a UN organ. In any case, the Court of Appeal drew this conclusion from Article 7 DARIO, but it is difficult to understand how the Court of Appeal could conclude from this provision that a national contingent of soldiers transforms from a State organ into a UN organ when placed at the disposal of the UN. A literal reading of Article 7 DARIO suggests the exact opposite, namely that the contingent is and remains an organ of the troop-contributing State. It is temporarily placed at the disposal of the UN, but it does not thereby become an organ of the UN. If the Court of Appeal wanted to treat Dutchbat as a UN organ, it should have referred to Article 6 DARIO instead.

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Footnote 18 (continued)

DARS). *Idem*, para. 3.8.2. In its conclusion, the Supreme Court no longer referred to Art. 4 DARS, and thus it must be assumed that attribution was based solely on Art. 8 DARS.

<sup>19</sup> *Mothers of Srebrenica* District Court, especially paras. 4.32–4.34.

<sup>20</sup> *Idem*, para. 4.37. See also e.g., paras. 4.26, 4.58, 4.59, and 4.80.

<sup>21</sup> *Mothers of Srebrenica* Court of Appeal, para. 12.1.

<sup>22</sup> *Idem*, para. 12.1.

<sup>23</sup> *Idem*, para. 15.2.

The District Court and Court of Appeal also addressed attribution in the context of *ultra vires* acts, in response to the argument of the Mothers of Srebrenica that acts of Dutchbat not compliant with orders from their UN superiors should be attributed to the Netherlands on the basis of being *ultra vires*. The District Court accepted this argument,<sup>24</sup> but the Court of Appeal did not, and for good reason.<sup>25</sup> The Court of Appeal rightly concluded, from Article 8 DARIO, that the entire conduct of members of Dutchbat must be considered to be the conduct of the UN if it took place ‘in an official capacity and within the overall functions’ of the UN, even if it ran counter to UN instructions.<sup>26</sup> Only if members of Dutchbat acted beyond their ‘official capacity’ or ‘overall functions’ as a UN peacekeeper can it be concluded that their acts cannot be attributed to the UN pursuant to Article 8 DARIO.<sup>27</sup> In other words, *ultra vires* acts are normally attributable to the UN. Only acts that have absolutely nothing to do with the peacekeeping mission cannot be attributed to the UN.<sup>28</sup>

In the end, the Court of Appeal concluded that all operational (military) combat operations by Dutchbat troops deployed in the vicinity of Srebrenica fell within ‘the official capacity’ and ‘within the overall functions’ of UN peacekeeping troops; thus, these acts performed by Dutchbat could not be attributed to the Netherlands, also not on the basis of *ultra vires*.<sup>29</sup> However, the Court held that the situation was different as regards the transition period, which started after the Netherlands and the UN jointly decided to evacuate Dutchbat and the Bosnian Muslim refugees from Srebrenica (on the night of 11 July 1995), following the fall of Srebrenica.<sup>30</sup> The Court held as follows:

In the newly developed situation in which Srebrenica had fallen and the UN mission had essentially failed, the State decided together with the UN to evacuate the population from the *mini safe area*.<sup>[31]</sup> The Dutch government participated in this decision-making process at the highest level. With this decision a transition period set in, in which operations in Potočari were wound up and Dutchbat would focus on its humanitarian task and the preparation of the evacuation of Dutchbat and the refugees from the *mini safe area*. To that extent, the State had effective control.<sup>32</sup>

<sup>24</sup> *Mothers of Srebrenica* District Court, paras. 4.56–4.60 (discussion of the applicable law), and paras. 4.67–78, and 96–98 (application to the facts).

<sup>25</sup> See also Ryngaert (2017), pp 455–456.

<sup>26</sup> *Mothers of Srebrenica* Court of Appeal, para. 15.2.

<sup>27</sup> *Idem*, para. 15.3.

<sup>28</sup> That does not mean that such conduct can always be attributed instead to the troop-contributing State. Some conduct of individual soldiers cannot be attributed to either; the only option is to hold the individual soldier responsible.

<sup>29</sup> *Mothers of Srebrenica* Court of Appeal, para. 32.1.

<sup>30</sup> *Idem*, para. 23.8.

<sup>31</sup> This *mini safe area* consisted of the compound in Potočari, and a nearby area to the south thereof with halls and an abandoned coach depot. See also *Mothers of Srebrenica* Supreme Court, para. 2.1.2(41).

<sup>32</sup> *Mothers of Srebrenica* Court of Appeal, paras. 24.1–24.2.

According to the Court of Appeal, because ‘the State had effective control over acts performed by Dutchbat in relation to the humanitarian aid and the evacuation of refugees in the *mini safe area*’, these acts could be attributed to the Netherlands.<sup>33</sup>

## 2.4 The Supreme Court Judgment in the *Mothers of Srebrenica* Case

As regards attribution, the Advocate General (AG), who provides advice to the Supreme Court, referred in his opinion in *Mothers of Srebrenica* to the considerations of the Supreme Court in the earlier case of *Nuhanović*, confirming that Article 7 DARIO applied to peacekeeping missions.<sup>34</sup> At the same time, however, the AG implied that Dutchbat, after being placed at the disposal of the UN, had become an organ of the UN,<sup>35</sup> arguably according to Article 6 DARIO.<sup>36</sup>

The Supreme Court in *Mothers of Srebrenica*, for its part, somewhat surprisingly hardly referred to Article 6 or 7 DARIO, and based its judgment almost exclusively on Article 8 DARS. The Supreme Court began by emphasizing that since the Netherlands had transferred command and control over Dutchbat to the UN when placing its soldiers at the latter’s disposal, it was up to the Mothers of Srebrenica to prove that, exceptionally, the Netherlands had effective control over specific acts by Dutchbat troops.<sup>37</sup> The Supreme Court followed the AG’s opinion, and held that Dutchbat was—and at all times remained—an ‘organ’ of the UN, explicitly rejecting the view that Dutchbat was an organ of the State in the sense of Article 4 DARS.<sup>38</sup> Thus, the key question for the Supreme Court was ‘whether Dutchbat’s conduct in fact took place under the direction or control of the State within the meaning of Article 8 DARS’.<sup>39</sup> Based on ICJ case law, in particular the *Nicaragua*<sup>40</sup> and *Bosnia*<sup>41</sup> cases, the Supreme Court held that conduct by Dutchbat could only be attributed to the State if the State in fact exercised effective control over that specific conduct. If

<sup>33</sup> *Idem*, para. 32.2.

<sup>34</sup> *Mothers of Srebrenica* AG Opinion, paras. 4.7–4.8 and para. 4.10, referring to para. 3.11.3 of the Supreme Court in *Nuhanović*, as well as para. 4 of the Commentary to Art. 7 DARIO.

<sup>35</sup> *Idem*, para. 4.19 (‘When command and control over peacekeeping forces is transferred to the UN, the premise is that the UN, to the exclusion of the sending State, exercises command and control over the operational execution of the peacekeeping forces’ mandate. That is also not in dispute in the present case. In principle, therefore, the operational actions of UN peacekeeping forces are *not* actions of the sending State.’) (footnotes omitted).

<sup>36</sup> The AG went on to consider that ‘the operational conduct of UN peacekeeping forces can only be attributed to the sending State [...] if the State, through an active form of control that is directly aimed at a specific operation or operational conduct, obtains factual control over the relevant operation or operational conduct’. *Idem*.

<sup>37</sup> *Mothers of Srebrenica* Supreme Court, para. 3.1.2.

<sup>38</sup> *Idem*, para. 3.3.3.

<sup>39</sup> *Idem*, para. 3.3.4.

<sup>40</sup> *Idem*, para. 3.4.2, referring to International Court of Justice, *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v. United States of America*), Judgment on the Merits of 27 June 1986, especially para. 115.

<sup>41</sup> *Idem*, para. 3.4.3, referring to International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment on the Merits of 26 February 2007, especially paras. 400–401, and 406.

the conduct was carried out pursuant to overall instructions provided by the State, then that was not enough to qualify as 'effective control'.<sup>42</sup> The Supreme Court concluded that the Netherlands had no such effective control over any specific conduct of Dutchbat *before* the fall of Srebrenica,<sup>43</sup> while '[i]n the period starting from 23:00 on 11 July 1995, after Srebrenica had been conquered and after it was decided to evacuate the Bosnian Muslims who had fled to the *mini safe area*, the State did have effective control of Dutchbat's conduct', 'conduct [which] can be attributed to the State for that reason'.<sup>44</sup>

Why did the Supreme Court in *Mothers of Srebrenica* rely on Article 8 DARS, when its ruling in *Nuhanović* was based mostly on Article 7 DARIO, with some support from Article 8 DARS? The Supreme Court explained this difference as follows:

It should be noted that in these proceedings, unlike in the [*Nuhanović* case], the question of whether making Dutchbat available to the UN implies that Dutchbat's conduct can exclusively be attributed to the UN and not to the State, or that dual attribution (attribution to both the UN and the State) is possible, is not at issue. It was found in [*Nuhanović*] that the latter was the case. This is why the provisions in DARIO concerning the attribution of conduct to an international organization are not directly relevant in these proceedings.<sup>45</sup>

This argument is not fully convincing. After all, in *Nuhanović*, only the responsibility of the Netherlands was at issue, not that of the UN. The UN was not a party to these proceedings, and thus the Court could not address the UN's responsibility. In the *Mothers of Srebrenica* case, the Court found itself in exactly the same situation.

On a final note, on the question of the attribution of *ultra vires* acts, both the AG<sup>46</sup> and the Supreme Court agreed with the Court of Appeal. On the basis of Article 8 DARIO, the Supreme Court concluded that '*ultra vires* conduct is in principle attributed to the international organization', and that 'the challenged conduct of Dutchbat can only be attributed to the State if the requirements of Article 8 DARS are satisfied'.<sup>47</sup>

<sup>42</sup> *Idem*, para. 3.5.2.

<sup>43</sup> *Idem*, para. 3.5.

<sup>44</sup> *Idem*, para. 5.1. The part of the Court of Appeal judgment on effective control *after* the fall of Srebrenica was in fact not challenged at the Supreme Court level.

<sup>45</sup> *Idem*, para. 3.3.5.

<sup>46</sup> *Mothers of Srebrenica* AG Opinion, para. 4.25.

<sup>47</sup> *Mothers of Srebrenica* Supreme Court, para. 3.6. Art. 8 DARIO is meant to be applied only to organs of the international organization; and thus, the choice of the Court of Appeal and Supreme Court to attribute *ultra vires* acts of Dutchbat to the UN based on Art. 8 DARIO is further confirmation that Dutchbat was indeed considered to be a UN organ. See also Dannenbaum (2019), who, for that matter, does not agree with this part of the reasoning of the Court.

### 3 The Dutch State's Liability for Wrongful Acts

For a State's liability to be engaged, not only should the relevant conduct be attributed to the State, but also a *wrongful act* committed by the State should be identified. In domestic tort proceedings, whether or not an act is wrongful is normally determined on the basis of the forum State's principles relating to civil liability. *Mothers of Srebrenica* is no exception, as the claim against the State was in the first place grounded on Dutch liability law, namely the tort-based duty of care codified in Article 6:162 BW (Dutch Civil Code).<sup>48</sup> Nonetheless, the Supreme Court, following the Court of Appeal, gave particular shape to this duty of care by assessing Dutchbat's conduct in light of positive obligations under Articles 2 and 3 of the European Convention on Human Rights (ECHR), which concern the protection of the right to life and the right to physical integrity, considering these standards to be 'inherent in the duty of care' laid down in Article 6:162 BW.<sup>49</sup> As the Supreme Court reviewed Dutchbat's conduct in light of obligations enshrined in treaties, the Court indeed ascertained whether this conduct amounts to an *internationally* wrongful act. Accordingly, the Court's considerations regarding the liability of the Dutch State also pertain to the responsibility of the Dutch State in international law, making them relevant for analysis in an international law review.

In this section, we address four issues. We start with an exposition of the review standard applied by the Supreme Court to assess the wrongfulness of conduct in complicated international peace operations of the Srebrenica type (Sect. 3.1). We proceed to discuss the two 'acts' of Dutchbat (sets of facts) which the Supreme Court subjected to a legality review: the formation of a 'sluice' by Dutchbatters, which allowed the refugees to go in groups to buses provided by the Bosnian Serbs and led to the separation of the male refugees of military age by the Serbs (Sect. 3.2), and the evacuation of male refugees from the Dutchbat compound (Sect. 3.3). The Supreme Court held that the former act was not wrongful, but that the latter was.<sup>50</sup> However, even if the Court considered the evacuation to be wrongful, it only held the State liable for 10% of the damages suffered (Sect. 3.4).

#### 3.1 The State's Margin of Appreciation

A central consideration informing the Supreme Court's assessment of the wrongfulness of Dutchbat's conduct, both as regards the formation of the sluice and the evacuation from the compound, pertains to the special circumstances facing

<sup>48</sup> *Idem*, para. 4.1; *Mothers of Srebrenica* Court of Appeal, para. 33.

<sup>49</sup> The Supreme Court also observed that '[t]he same is true if the [International Covenant on Civil and Political Rights] is applied'. Supreme Court, para. 4.2.2. Compare also Court of Appeal of The Hague, *State of the Netherlands v. Stichting Urgenda*, judgment of 9 October 2018, ECLI:NL:GHDHA:2018:2591, paras. 39 et seq. (reviewing the State's failure to sufficiently reduce greenhouse gas emissions in light of the duty of care under Art. 6:162, and relying in this respect on Arts. 2 and 8 ECHR).

<sup>50</sup> Note that the AG considered that Dutchbat had not acted wrongfully in respect of the two sets of facts, and thus that the State was not liable. See below for the AG's considerations.

Dutchbat in Srebrenica. According to the Supreme Court, ‘account must be taken of the fact that Dutchbat was acting in a war situation, that operational choices had to be made on the basis of priorities and the available resources, and that human conduct is unpredictable’.<sup>51</sup> For this margin of appreciation which the Court allows the State, the Supreme Court relied on the judgment of the ECtHR in *Finogenov et al./Russia*, pursuant to which positive obligations of the State under Article 2 ECHR (the right to life) must be interpreted ‘in a way which does not impose an impossible or disproportionate burden on the authorities, bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources’.<sup>52</sup> This contextual (some might even say ‘light touch’) approach also featured prominently in the AG’s opinion, which warned against the *Hineininterpretierung* of decisions taken in difficult circumstances, and on that basis denied legal liability for the State.<sup>53</sup>

The margin of appreciation-based approach may at first sight be difficult to align with the Supreme Court’s observation in its judgments in *Mustafić* and *Nuhanović* that there is ‘no basis for the exercise of judicial restraint’ in assessing what happened in Srebrenica.<sup>54</sup> The AG, however, was of the view that, by allowing States a margin of appreciation in line with relevant ECtHR case law, ‘the court is not acting in a manner that the Supreme Court qualifies as unacceptably reticent’.<sup>55</sup> There is support for this reading in the very text of *Mustafić* and *Nuhanović*, where the Supreme Court held that ‘the court should indeed make allowance for the fact that this concerns decisions taken under great pressure in a war situation, but this is not something that has been disregarded by the Court of Appeal’.<sup>56</sup>

One may wonder why the Supreme Court at the time did not refer to the ECtHR case of *Finogenov*, which had already fleshed out the State’s margin of appreciation. After all, *Finogenov* was decided after the Court of Appeal rendered its judgments in *Mustafić* and *Nuhanović*, but before the Supreme Court heard the case. Regardless of this, at the end of the day, there appears to be a very fine line between exercising judicial restraint (not allowed) and allowing the State a margin of appreciation (allowed). In any event, the takeaway of *Mothers of Srebrenica* is that in situations of war or armed conflict, the bar for a liability finding is high.

<sup>51</sup> *Mothers of Srebrenica* Supreme Court, paras. 4.2.5, 4.4.2.

<sup>52</sup> ECtHR, *Finogenov et al./Russia*, Appl. No. 18299/03, judgment of 20 December 2011, para. 209.

<sup>53</sup> *Mothers of Srebrenica* AG Opinion, para. 5.21 (averring that ‘the ECtHR allows the authorities a certain margin of appreciation in the military and technical aspects when taking operational decisions, even when it can be doubted according to current insight whether the authorities took the right decision at the time’).

<sup>54</sup> *Nuhanović* Supreme Court, para. 3.18.3.

<sup>55</sup> *Mothers of Srebrenica* AG Opinion, para. 5.27.

<sup>56</sup> *Nuhanović* Supreme Court, para. 3.18.3.

### 3.2 Formation of the Sluice

The first set of relevant facts pertains to Dutchbat allowing the Bosnian Muslim refugees to go in groups to buses provided by the Bosnian Serbs, and Dutchbat troops forming a ‘sluice’ to manage this process. The Court of Appeal had ruled that, in so doing, Dutchbat had facilitated the separation of the male refugees of military age and exposed them to a real risk of violations of Articles 2 and 3 ECHR; according to the Court of Appeal, Dutchbat knew or at least ought to have known of this risk.<sup>57</sup> The AG opined that Dutchbat’s command did *not* know or could not have known that the male refugees awaited a certain death or a violation of their physical integrity,<sup>58</sup> but the Supreme Court confirmed the view of the Court of Appeal that ‘Dutchbat’s command knew of the real risk that the Bosnian Serbs would violate the male refugees’ rights to life and physical integrity’.<sup>59</sup> However, unlike the Court of Appeal, the Supreme Court eventually found that Dutchbat did *not* act wrongfully towards the refugees. According to the Supreme Court, ‘[g]iven the war situation in which decisions had to be taken under considerable pressure, and given the fact that decisions had to be taken based on a weighing of priorities, Dutchbat was reasonably entitled to opt to continue to cooperate in the evacuation by designating groups and forming a sluice, in order to—in any event—prevent chaos and accidents involving the most vulnerable people (women, children and elderly)’.<sup>60</sup>

Tom Dannenbaum has severely criticized this finding, as, in his opinion, this ‘whitewashes the participation of UN peacekeepers in genocidal sorting on the grounds that they made no difference and good order was maintained’.<sup>61</sup> However, the Court’s finding appears to be an inevitable consequence of the application of the high liability bar set in *Finogenov*, which allows the State a margin of appreciation and prevents a subsequent second-guessing of decisions taken by the State in particularly challenging circumstances. Moreover, if it is indeed true that the formation of the sluice was not likely to make any difference for the fate of the male refugees, but was likely to protect vulnerable people, it is not incomprehensible for the Supreme Court to hold that Dutchbat’s cooperation in the evacuation was not wrongful.<sup>62</sup> It is not entirely clear what alternative course of action was available to Dutchbat at the time, with the knowledge and resources it had at its disposal.

<sup>57</sup> *Mothers of Srebrenica* Court of Appeal, paras. 61.3 and 61.5.

<sup>58</sup> *Mothers of Srebrenica* AG Opinion, para. 5.45.

<sup>59</sup> *Mothers of Srebrenica* Supreme Court, para. 4.2.3.

<sup>60</sup> *Idem*, para. 4.5.4.

<sup>61</sup> Dannenbaum (2019).

<sup>62</sup> *Mothers of Srebrenica* Supreme Court, para. 4.5.4 (‘Although the Court of Appeal has rightly ruled that, briefly put, the latter interest (obviously) carries “less weight” than the real risk the men were facing (para. 61.6 at d), this does not mean, contrary to the opinion of the Court of Appeal, that Dutchbat should have opted to disregard the interest of the women, children and elderly by ceasing to cooperate in the evacuation. As it was clear to Dutchbat that ceasing to cooperate would not affect the risk the male refugees outside of the compound were facing, continuing to cooperate in the evacuation was not wrongful under the circumstances of the case, taking into account the war situation, the options available to Dutchbat and the interests of the women, children and elderly.’).

### 3.3 Evacuation of Refugees in the Compound

The second set of facts to be reviewed by the courts in *Mothers of Srebrenica* concerned the evacuation of male refugees from the vehicle halls within the Dutchbat compound where they had sought refuge. The Court of Appeal had ruled that Dutchbat acted wrongfully by allowing these men to walk from the compound into the hands of the Bosnian Serbs, knowing that they ran a real risk of being exposed to inhumane treatment or being executed.<sup>63</sup> The AG opined that Dutchbat did *not* act wrongfully as the male refugees ‘ran a very high risk of being killed or treated inhumanely’ anyway if they had been kept in the compound.<sup>64</sup> The Supreme Court, however, confirmed the Court of Appeal’s finding, holding that they should have been offered the option of remaining in the compound.<sup>65</sup>

### 3.4 State Liability for Damages

While the Court of Appeal and the Supreme Court held that the State had committed a wrongful act by evacuating the male refugees from the vehicle halls within the compound, they did not hold the State fully liable for the damages suffered by the evacuation. The Court of Appeal determined the chance of the male refugees staying alive at 30%, and thus limited the liability of the State to 30% of the damage suffered.<sup>66</sup> The Supreme Court lowered this chance to 10%, however, on the grounds that the Bosnian Serbs ‘probably would have done everything within their power to remove the men from the compound or to have them removed’, and that there was little reason to expect that air strikes would make a difference.<sup>67</sup> The Supreme Court held as follows:

the prospects of the male refugees were very bleak, even if they were to remain in the compound. It must be assumed that the Bosnian Serbs, after discovering that some 350 male refugees had stayed behind in the compound, would have been greatly displeased. They probably would have done everything within their power to remove the men from the compound or to have them removed. The Bosnian Serbs could exert heavy pressure to that end, either by continuing the shut-down of the supply route to the compound or by threatening to use violence, because they largely outweighed Dutchbat in terms of both the number of troops and strength of the weaponry [...]. On the other hand,

<sup>63</sup> *Mothers of Srebrenica* Court of Appeal, para. 63.7.

<sup>64</sup> *Mothers of Srebrenica* AG Opinion, para. 5.58 (adding that ‘following that course of action would entail the men staying behind in a deplorable situation, which was visibly deteriorating, while, as argued by the State, there was no insight on 13 July 1995 as to when Dutchbat itself would be able to leave and the stock of supplies was being detained’).

<sup>65</sup> *Mothers of Srebrenica* Supreme Court, para. 4.6.6 (finding that Dutchbat had acted wrongfully, by failing to cooperate in the evacuation of ‘the approx. 350 men staying in the compound without offering them the option of remaining in the compound, even though Dutchbat knew that the men would run a real risk of being exposed to inhumane treatment and being executed’).

<sup>66</sup> *Mothers of Srebrenica* Court of Appeal, para. 68.

<sup>67</sup> *Mothers of Srebrenica* Supreme Court, para. 4.7.9.

it cannot be completely ruled out that if Dutchbat had been able to withstand the threat of violence, the Bosnian Serbs would not have been willing to risk attacking the compound in order to deport the male refugees. [...] All in all, it must be ruled that the chance that the male refugees, had they been offered the choice of remaining in the compound, could have escaped the Bosnian Serbs, was indeed small, but not negligible. In view of all of the circumstances, the Supreme Court estimates that chance at 10%.<sup>68</sup>

According to the Supreme Court, the 10% chance that the male refugees would have survived meant that the liability of the Dutch State is ‘limited to 10% of the damage suffered by the surviving relatives of these male refugees’.<sup>69</sup> In the 2017 *NILR* commentary on the Court of Appeal’s judgment, which limited the liability of the State to 30%, it had already been signalled that a 30% chance determination is inherently subjective or even arbitrary, and amounts to informed guesswork.<sup>70</sup> This critique of subjectivity has been repeated with respect to the judgment of the Supreme Court. Van Oenen, for instance, wrote that the 10% private law calculation amounts to legal cleverness rather than a moral or political benchmark.<sup>71</sup> However, while linking the chances of survival to the amount of compensation may seem incongruent, it is noted that the ‘loss of a chance’ concept is inherent in tort law: in tort cases, it is common that less than the full amount of compensation is granted to the victim. The private lawyer Gijs van Dijck observed in respect of the Court of Appeal’s judgment as follows:

[T]ort law compares the situation the victim is in with the situation it would have been in had the wrong not occurred. Although the 30% number is arbitrary, the court does justifiably apply the ‘loss of a chance’ concept by considering that the fate might have been (but not necessarily would have been) different had Dutchbat taken other measures. There was a realistic chance that the compound would have been overtaken and the men would have been deported and possibly killed had Dutchbat offered resistance. Consequently, it is logical from a tort law perspective that the victims are not entitled to the full amount of damages.<sup>72</sup>

This observation applies with equal force to the Supreme Court’s determination as to the 10% chance of survival. It appears that this cold calculus is the inevitable consequence of framing the case as one in tort, whereas tort law may not have been designed ‘for repairing historic injustice like the Srebrenica genocide’.<sup>73</sup> It should

<sup>68</sup> *Idem*.

<sup>69</sup> *Idem*, para. 5.1, *in fine*.

<sup>70</sup> Ryngaert (2017), p 461.

<sup>71</sup> Van Oenen (2019)

<sup>72</sup> Van Dijck (2017).

<sup>73</sup> *Idem*.

not be overlooked, however, that the Supreme Court did hold the Dutch State liable for wrongful acts; thus, at least partially, it recognized the victims' suffering.<sup>74</sup>

The Supreme Court's correction of the Court of Appeal has not just been criticized because of the arbitrariness of the 10% chance determination, but also because the Supreme Court does not normally reassess facts, and could thus have left intact the factual assessment by the Court of Appeal.<sup>75</sup> It has been suggested that this correction may have been informed by concerns that the Netherlands may possibly no longer wish to participate in international peace operations, and that only a 10% 'own risk' (the deductible excess in insurance terms) would be acceptable.<sup>76</sup> However, the Supreme Court has by no means laid down a general 10% rule that would govern the Dutch State's liability for wrongful acts in international peace operations. That the Dutch State's liability was engaged for only 10% in *Mothers of Srebrenica* relates to the very specific facts of the case: the male refugees in the compound allegedly had little chance of survival anyway, regardless of Dutchbat's conduct. Such a scenario appears exceptional.

Immediately following the Supreme Court's judgment, the Dutch State recognized its liability for the damages suffered.<sup>77</sup> The amount of compensation which the surviving relatives will receive is unlikely to be made public. In the earlier *Mustafić* and *Nuhanović* cases, the Dutch State initially offered € 20,000 per relative (full compensation), but the relatives did not agree with this. Subsequently, the State offered a non-disclosed higher amount which was considered as acceptable.<sup>78</sup>

None of the individual plaintiffs in *Mothers of Srebrenica* are surviving relatives of male refugees in the compound, however. Accordingly, other claimants may have to come forward for compensation to be offered by the State. Of note is that the Court of Appeal had issued the order to pay damages also to the Foundation supporting the surviving relatives (*Stichting Mothers of Srebrenica*), but the Supreme Court held that the Foundation, being an interest group, 'cannot lodge a claim seeking monetary compensation', and that '[c]onsequently, no order to pay damages may be issued to the benefit of the Foundation'.<sup>79</sup>

<sup>74</sup> Compare idem ('[I]t is unlikely that the plaintiffs were looking for a correct application of the concept of "loss of a chance", or that they were in any way seeking to restore the situation had the wrong not occurred—no relief will make their relatives return or undo the pain and suffering. Instead, and as empirical research indicates, plaintiffs were likely to have been seeking recognition, an acknowledgment, information about what happened and why, and the opportunity to have a voice.').

<sup>75</sup> NRC Handelsblad (2019).

<sup>76</sup> Idem.

<sup>77</sup> Netherlands Ministry of Defence (2019).

<sup>78</sup> NOS (2015).

<sup>79</sup> *Mothers of Srebrenica* Supreme Court, para. 4.8.2, citing Art. 3:305a BW (Dutch Civil Code).

## 4 Concluding Observations

In *Mothers of Srebrenica*, just as in *Nuhanović* and *Mustafić*, the Supreme Court held the Dutch State liable for wrongful acts committed in the context of a peace-keeping operation. While some doctrinal questions could be raised regarding the Supreme Court's method of attributing conduct to the State, as well as regarding its application of the standard of wrongfulness and its determination of damages, *Mothers of Srebrenica* stands out as a rare case of domestic courts holding a UN troop-contributing State liable for wrongful conduct.

However, *Mothers of Srebrenica* is unlikely to usher in an era of courts holding States increasingly liable for wrongful conduct committed in the context of peace operations. One has to bear in mind that the Supreme Court implied that, in UN peace operations, acts of peacekeepers will normally be attributed to the UN rather than to the Dutch State. It was only because of the exceptional circumstances present in Srebrenica at the time that the Dutch State was considered to exercise effective control,<sup>80</sup> thereby engaging its potential liability. In the ordinary course of events, the liability of troop-contributing States will *not* be engaged. Accordingly, if the Supreme Court's judgment in *Mothers of Srebrenica* were to lead the way, States need not be overly concerned about adverse liability findings as a result of their participation in UN peace operations.

It is nonetheless not excluded that the Mothers will challenge the judgment before the ECtHR, just like they challenged (although in vain) the Supreme Court's decision on the UN's immunity.<sup>81</sup> An application to the ECtHR is likely to allege a violation of positive obligations arising under Articles 2 and 3 of the European Convention on Human Rights. Given the ECtHR's deferential approach to States confronted with 'difficulties [...] in policing modern societies',<sup>82</sup> and involved in situations of armed conflict,<sup>83</sup> it appears unlikely, however, that the ECtHR will hold the Netherlands (the Supreme Court in the case) responsible for misinterpreting the relevant review standard.

In the meantime, litigation before Dutch courts in respect of the events in Srebrenica continues. A week before the Supreme Court's judgment in *Mothers of Srebrenica*, Dutchbat veterans sued the Dutch State for having been sent on an 'impossible mission', seeking rehabilitation, apologies and symbolic compensation.<sup>84</sup>

<sup>80</sup> See Sect. 2. See also Dannenbaum (2019) ('The rarity (and in this case brevity) of that scenario does not portend significant [troop-contributing country] responsibility for peacekeeping abuses going forward. On the Supreme Court's *Mothers of Srebrenica* approach, the acts of UN peacekeepers will ordinarily be attributed exclusively to the United Nations.').

<sup>81</sup> Van den Berg (2019).

<sup>82</sup> ECtHR, *Finogenov et al. v. Russia*, Appl. No. 18299/03, judgment of 20 December 2011, para. 209.

<sup>83</sup> ECtHR, *Hassan v. United Kingdom*, Appl. No. 29750/09, judgment of 16 September 2014, para. 103 (holding that the Court is not prevented 'from taking account of the context and the provisions of international humanitarian law when interpreting and applying Article 5 [ECHR]'). See also *Mothers of Srebrenica* AG Opinion, para. 5.16.

<sup>84</sup> Trouw (2019).

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## References

- Dannenbaum T (2019) A disappointing end of the road for the Mothers of Srebrenica litigation in the Netherlands. *EJIL:Talk!*, 23 July 2019. <https://www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/>. Accessed 8 Oct 2019
- Ekanayake Ch, Rimmer SH (2018) Applying effective control to the conduct of UN forces: connecting factual complexities with legal responsibility. *Int Organ Law Rev* 15(1):9–38
- NRC Handelsblad (2019) Staat redt onverwacht meer van z'n blazoen in Srebrenica-zaak (editorial) [State unexpectedly saves more of its reputation in Srebrenica case]. *NRC Handelsblad*, 22 July 2019. <https://www.nrc.nl/nieuws/2019/07/22/staat-redt-onverwacht-meer-van-zn-blazoen-in-srebrenica-zaak-a3967801>. Accessed 8 Oct 2019
- Netherlands Ministry of Defence (2019) Staat erkent aansprakelijkheid schade nabestaanden Srebrenica [State recognizes liability damages next-of-kin Srebrenica]. <https://www.defensie.nl/actueel/nieuws/2019/07/19/staat-erkent-aansprakelijkheid-schade-nabestaanden-srebrenica>. Accessed 31 Aug 2019
- NOS (2015) Vergoeding en excuses voor nabestaanden weggestuurde Srebrenica-slachtoffers (editorial) [Compensation and apologies for next-of-kin Srebrenica victims who were sent away]. <https://nos.nl/artikel/2043421-vergoeding-en-excuses-voor-nabestaanden-weggestuurde-srebrenica-slachtoffers.html>. Accessed 31 Aug 2019
- Okada Y (2019) Effective control test at the interface between the law of international responsibility and the law of international organizations: managing concerns over the attribution of UN peacekeepers' conduct to troop-contributing nations. *Leiden J Int Law* 32(2):275–291
- Palchetti P (2015) Attributing the conduct of Dutchbat in Srebrenica: the 2014 judgment of the District Court in the Mothers of Srebrenica case. *Neth Int Law Rev* 62(2):279–294
- Ryngaert C (2014) Srebrenica continued: Dutch District Court holds the Netherlands liable for cooperating with Bosnian Serbs. *Neth Int Law Rev* 61(3):365–454
- Ryngaert C (2017) Peacekeepers facilitating human rights violations: the liability of the Dutch State in the Mothers of Srebrenica cases. *Neth Int Law Rev* 64(3):453–535
- Spijkers O (2016) Questions of legal responsibility for Srebrenica before the Dutch courts. *J Int Crim Justice* 14(4):819–843
- Trouw (2019) Dutchbat-veteranen stappen naar de rechter om 'onmogelijke missie' Srebrenica (editorial) [Dutchbat veterans go to court over 'impossible mission' Srebrenica]. *Trouw*, 11 juli 2019. <https://www.trouw.nl/binnenland/dutchbat-veteranen-stappen-naar-de-rechter-om-onmogelijke-missie-srebrenica-b86c0e0e/>. Accessed 8 Oct 2019
- Van den Berg S (2019) Srebrenica-uitspraak van Hoge Raad is uniek (editorial) [Srebrenica decision of Supreme Court is unique]. *NRC Handelsblad*, 19 July 2019. <https://www.nrc.nl/nieuws/2019/07/19/unieke-uitspraak-hoge-raad-over-verantwoordelijkheid-van-staat-voor-doden-srebrenica-a3967662>. Accessed 8 Oct 2019
- Van Dijk G (2017) When historic injustice meets tort law: the case of the Srebrenica genocide. <https://www.maastrichtuniversity.nl/blog/2017/07/when-historic-injustice-meets-tort-law-case-srebrenica-genocide>. Accessed 31 Aug 2019
- Van Oenen G (2019) Een rekening doet 'Srebrenica' geen recht [A calculation does not do justice to 'Srebrenica']. *NRC Handelsblad*, 26 July 2010. <https://www.nrc.nl/nieuws/2019/07/26/een-rekening-doet-srebrenica-geen-recht-a3968344>. Accessed 8 Oct 2019

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