

Dutch leaders involved in NATO bombing of Yugoslavia testify at The Hague

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The first Western leaders involved in the NATO bombing of Yugoslavia in 1999 have appeared before The Hague District Court in Holland. This is the first time since the Second World War that Western politicians have testified in a national court about their alleged crimes against humanity.

Wim Kok, former Dutch prime minister and Labour Party (PvdA) leader and Jozias van Aartsen, former foreign minister gave evidence at a preliminary hearing at the end of January. Former defence minister Frank de Grave is set to appear this month, while Jelte van Nieuwenhoven, former chair of parliament, has so far refused to appear.

Kok's coalition government was in power when NATO bombed Yugoslavia in 1999, adopting the pretext of stopping the Yugoslav Army from driving out the majority ethnic Albanian population from Kosovo. The year before, violence had erupted in the autonomous province of Kosovo in Serbia, when the Kosovo Liberation Army took up arms against Serbian rule. Dutch fighter jets took part in the NATO air strikes that resulted in 500 to 2,500 civilian deaths.

Two years ago—in a case brought by a Dutch organisation, the Permanent Commission with Respect to Western War Crimes—the Amsterdam Court of Appeal ruled that the government (and by implication NATO) should not have used United Nations Security Council Resolution 474 to justify the use of military force against Yugoslavia. The court concluded that the Dutch state had probably violated international law by using force.

Shortly after the appeal court judgement the Permanent Commission initiated a civil damages case on behalf of the relatives of 16 civilians killed in the attack on Radio Television Serbia on April 23, 1999 and the cluster bombing of Nis marketplace on May 7, 1999.

At first The Hague District Court rejected the case, but The Hague Appeals Court ruled in March 2003 that the four government leaders had to appear in court to answer the charges.

The four former ministers argued in court that the TV station was a legitimate target and that the use of cluster

bombs was not prohibited at the time. Kok told the hearing that although NATO member states had agreed to air strikes against particular types of targets including communications facilities, the Dutch government "did not have any influence on the choice of individual targets." He added, "The fact that there were civilian victims is regrettable.... It was due to a technical fault that the targets were not hit."

Van Aartsen defended the bombing on the basis that NATO spokesmen had warned several times at a March 1999 press conference that communication centres including TV stations were considered legitimate targets. He added that NATO officials had warned the human rights organisation Amnesty International about a possible attack, but did not know if they had given any direct warnings to the civilian population of Serbia.

Undoubtedly, because of its wide international significance, substantial pressure is being brought to bear on the Dutch authorities to drop the case against Kok and his associates. Democratic presidential candidate General Wesley Clark, Supreme Commander of NATO forces during the bombing campaign, is known to have boasted, for example: "We've struck at [former Yugoslav President Slobodan Milosevic's] TV stations and transmitters because they're as much a part of his military machine prolonging and promoting this conflict as his army and security forces."

It is, therefore, unlikely that the case against the four ministers will be allowed to proceed much further. In the past, lawsuits against NATO have been filed in a number of countries and at the International Tribunal for the Former Yugoslavia (ICTY), but none has been successful.

The Dutch state is also trying to prevent legal action against it for the actions of Dutchbat—the elite Dutch battalion that served as part of the UN Protection Force in Bosnia when the massacre at Srebrenica took place in July 1995. It is believed that Bosnian Serb soldiers commanded by General Ratko Mladic killed more than 7,000 Bosnian-Muslim men and boys. Central to the case is the extent of Dutchbat's responsibility for the massacre.

At the time, TV stations and newspapers showed pictures

of Dutch Commander Thomas Karremans drinking a toast with Mladic as his troops supervised the departure of the Bosnian Muslims from the UN safe zone, and drunken Dutchbat troops celebrating in Zagreb afterwards.

Hasan Nuhanovic, a former UN employee who watched as Dutch troops handed his brother and parents over to the Bosnian Serbs, and a second unnamed plaintiff backed by Zene Srebrenica (the Women of Srebrenica association) are taking the legal action against the Dutch state. They accuse Dutchbat of failing to protect over 240 people under their direct supervision in the UN compound. The plaintiffs' lawyer, Liesbeth Zegveld, argues that no one "entered the UN compound where the Dutch battalion were deployed in 1995. No Serb ever went in. It was the decision of Dutchbat to send away the people who had sought refuge in the compound and turn them into the hands of the Serbs."

In November 2003, a Dutch court refused to hear the survivors' testimony, saying it first had to determine if the case was admissible. Zegveld criticised the court's decision saying, "In 99 percent of similar cases the court agrees to hear preliminary witness [testimony]. The court obviously wasn't inclined to take this case seriously anyway. That's the only thing you can say about it." Zegveld appealed the decision not to hear the testimony and a ruling is imminent.

The government argued that individuals cannot take legal action against a state for the actions of its soldiers when they serve in a UN force. The Dutch government's lawyer Bert-Jan Houtzagers said, "If the state is to be held responsible, this usually results in obligations towards another state. Not towards civilians."

The Srebrenica massacre led to several investigations by the Dutch government, parliamentary inquiries and many reports. The most wide-ranging investigation was commissioned by Kok's government from the Netherlands Institute for War Documentation (NIOD).

The NIOD report proclaimed Dutchbat not guilty, but the battalion was "blamed" along with the international community and the UN for the massacre. It criticised the troops for supervising the exodus of refugees, calling it "tantamount to collaborating with ethnic cleansing."

The report points out that the Dutch government originally wanted to provide the biggest troop contingent in the Balkans so that Holland could "show its worth and Dutch prestige would be enhanced in the world." The deployment would also allow sections of the Dutch army to demonstrate the capabilities of an elite new unit. Instead, Holland "played no role at all" in the Dayton agreement that partitioned Bosnia and "was even banned from the conference table."

Whilst the NIOD report did produce some political casualties—Kok's government resigned—the main result has

been to strengthen the state apparatus.

One such instance—the creation of a new Dutch Foreign Intelligence Directorate (DIB)—was reported by Radio Netherlands on January 23, which noted it had "been largely ignored by the mainstream Dutch media."

The NIOD report highlighted the lack of foreign intelligence, particularly about the build-up of Serbian troops around Srebrenica. Eighteen months before the massacre—in January 1994—the government headed by Ruud Lubbers had dissolved the Foreign Intelligence Service (IDB) after several scandals, including claims of illegal phone tapping, had appeared in the media.

NIOD complained: "The US had the strongest intelligence position in Bosnia. The Netherlands could have benefited from this, but lack of interest and the negative attitude of the military and political leadership stood in the way."

This view was confirmed by Cees Wibies, an intelligence expert at Amsterdam University, who stated in a Radio Netherlands article, "I think the government realised quite soon that certain sources had dried up. Information from foreign intelligence services was no longer available because we did not have a service of our own any more."

To make matters worse, Holland's imperialist rivals stepped in to areas the IDB had vacated. Britain's MI6 tried to take over former Dutch networks in several eastern European countries using former IDB agents. This is believed to have led to the MI6 representative in Holland being told to leave the country in 2000.

Far from providing a means of recompense to the victims of Srebrenica, as many human rights organisations had hoped, the NIOD report has resulted in the creation of a new IDB, as well as increased powers for the domestic spying agencies to intercept and monitor communications.



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