

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 16, 2013  
CORRESPONDENTS' REPORTS

THE NETHERLANDS<sup>1</sup>

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*Cases — War Crimes Nexus – War Crimes in NIAC*

☛ *Prosecutor v Yvonne B.*, District Court of The Hague, 1 March 2013

Yvonne Basebya, the defendant and a resident of the Netherlands of Rwandese origin, was charged with abetting genocide, attempted genocide, murder, conspiracy to genocide, incitement to genocide and war crimes, committed in Rwanda during the period from October 1990 up to and including July 1994. She was convicted of incitement to genocide, but not of war crimes.

Concerning the issue of universal jurisdiction over war crimes committed in the context of a non-international armed conflict, the Court reasoned as follows. The alleged crimes were committed outside the territory of the Netherlands and took place before the *International Crimes Act* of 2003 came into force (which provides for jurisdiction of Dutch courts with regard to genocide, crimes against humanity and war crimes). At the time of the alleged crimes in this case, the *War Crimes Act* ('WOS') of 1952 was in force and that Act criminalized violations of the 'laws and customs of war' and established the jurisdiction of Dutch courts over 'any' person committing such crimes, thereby establishing universal jurisdiction. Although the WOS was enacted before the entry into force for the Netherlands of the *Geneva Conventions* of 1949 and the *Additional Protocols* of 1977, the Court considered that the WOS nevertheless included reference to Common Article 3 of the *Geneva Conventions* and to *Additional Protocol II*. Therefore, the Court found universal jurisdiction over war crimes in non-international armed conflict to exist despite the lack of an explicit reference to non-international conflicts in the WOS.

The defendant was found not guilty of war crimes due to the absence of a nexus between the alleged crimes and the non-international armed conflict in Rwanda at the time. The Court clarified that for a nexus, it is not necessary that:

- the defendant is part of a military or has a special relationship with one of the parties to the conflict;
- the crime takes place at the same time and/or in the immediate vicinity of the hostilities between the parties to the conflict;
- the crime is part of a policy or practice officially endorsed or tolerated by one of the parties to the conflict;

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- the crime is in furtherance of the conduct of war or in the actual interest of a party to the conflict;
- the crime is caused by the armed conflict.

However, the Court pointed out that a nexus cannot be established merely on the basis of the general circumstances in Rwanda. The evidence needs to prove that a close relationship existed between the culpable acts committed by the defendant on the one hand, and the armed conflict on the other. In this case, the Court claimed that the evidence for the nexus presented by the prosecution was of a general nature, explaining the circumstances in the area and acts of the Coalition pour la Défense de la République (CDR) and militiamen, but not regarding the acts of the defendant. Her actions, not being related to military action and as a member of the political party CDR, not of a military party, could therefore not be seen as sufficiently closely related to the armed conflict between the Forces Armées du Rwanda (FAR) and Rwandan Patriotic Front (RPF).

*Cases — Reparations for Damages for War Crimes under National Civil Law*

☛ *17 claimants v van Anraat*, District Court of The Hague, 24 April 2013

In this civil case seventeen claimants of Iranian and Iraqi origin claimed damages for wrongful acts committed against them by Frans van Anraat. Van Anraat had been irrevocably convicted of war crimes for supplying the regime of Saddam Hussein with mustard gas used to bomb civilians in a separate criminal case.<sup>2</sup> Subsequently, the Court determined that civil liability and claims for damages stemming from these violations of IHL as wrongful acts should be treated in a civil case and according to Iraqi and Iranian law, as the facts took place in those jurisdictions.<sup>3</sup> The Court considered the applicable rules defining a wrongful act, the damage suffered, and statutes of limitation in force in those jurisdictions. This resulted in one case of expiration under the statute of limitations, while the other claims gave rise to financial compensation.

*Cases — Participation in Preparatory Acts to Participate in the Syria Conflict*

☛ *Prosecutor v Mohammed G.*, District Court of Rotterdam, 23 October 2013

This case concerned preparatory acts of a Dutch national intending to travel to Syria. The subsidiary claim of the prosecutor was that the defendant was a co-perpetrator of preparatory acts for murder. The defence argued that a non-international armed conflict is ongoing in Syria and therefore these acts, committed in the context of the conflict, would not be criminal. The Court rejected this defence for lack of proof that the preparatory acts were committed in the context of the non-international armed conflict.

*Government Policy — Targeted Killings*

☛ Government Responses to Parliamentary Questions concerning Targeted Killings, 17 December 2012

In response to questions on the legality of targeted killings involving the use of armed drones, the Minister of Foreign Affairs urged caution in the determination of whether such attacks

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<sup>2</sup> Court of Appeal of The Hague 9 May 2007.

<sup>3</sup> District Court of The Hague, 13 April 2011.

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were illegal, given the limited information available concerning the facts of specific cases. The Minister also made reference to legal advice obtained by the government, which highlighted differences between the views of the US and the Netherlands concerning the applicability of IHL and the right to self-defence in relation to the use of drones in the context of counter-terrorism activities.

The Minister affirmed that persons protected under IHL may not be attacked and that human rights treaties prohibit extrajudicial killings. The Minister also expressed his support for more transparency regarding the use of drones, targeted killings and the legal basis claimed for such acts. The obligation either to investigate and prosecute or to extradite suspects of grave breaches of IHL resulting from such attacks lies with the State on whose territory the suspects are present.

*Government Policy — Right to Safe Termination of Pregnancy for War Victims*

- Government Response to Parliamentary Questions concerning Abortion for Rape Victims in War Zones, 8 March 2013

The Minister of Foreign Affairs and the Minister of Trade and Development Cooperation pointed out that it is Dutch policy that girls and women who have been raped in war zones have a right to all necessary medical care, including safe termination of pregnancy. Under IHL, victims of armed conflict are entitled to receive the medical assistance that their situation requires, as soon and as extensively as possible. Although IHL does not specifically foresee abortion, under certain circumstances, this might be considered necessary medical care, regardless of restrictions under national law. The Ministers emphasised that this position will be advocated actively and consistently within the EU, the UN and other relevant forums.

*Government Policy — Use of Armed Drones*

- Government Response to Advisory Report on Armed Drones, 27 September 2013

On 17 July 2013, an advisory body to the government, the Advisory Committee on Issues of Public International Law (CAVV), presented a report on armed drones, which had been drafted at the request of the Minister of Foreign Affairs. In its formal response to the report, the government stated that it shared the CAVV's conclusion that armed drones are not prohibited weapons as such. In particular, the government noted that armed drones do not differ from any other weapon system and that the most important legal regimes applicable to their use are international humanitarian law (IHL) and human rights law (HRL). Although the government noted that a number of areas of IHL had not yet crystallized, it pointed out that these areas were not specific to the use of armed drones. As an example, the government cited the ill-defined relationship between IHL and HRL. The government indicated that when IHL and HRL both apply, the provision which is more specific to the case at hand will take precedence. In certain circumstances this could be a provision from another legal regime than IHL.

*Government Policy — Lethal Autonomous Robots*

- Letter to the Parliament from the Minister of Defence, 26 November 2013

The Minister of Defence explained in a letter to Parliament that Dutch armed forces apply the principle that all weapon systems and their use in an armed conflict must comply with all

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criteria of international law. The Netherlands considers that existing law is fully applicable to all autonomous weapon systems. This includes the obligation under *Additional Protocol I to the Geneva Conventions* that new weapons and methods of warfare comply with international law, including international humanitarian law. The Minister pointed out that the Netherlands created the Advisory Committee on International Law and Conventional Weapon Use (AIRCW) for this purpose in 1978, and that it would gladly share the experience of this Committee with other States.

*Government Policy — Discouragement of Activities of Private Companies in Occupied Palestinian Territory*

- Government Response to Parliamentary Questions concerning Activities of a Dutch Company in East Jerusalem, 16 September 2013

The Minister of Foreign Affairs answered questions concerning plans by a Dutch company to build a water purification installation in East Jerusalem. The Minister responded that the government had not advised the company to stop its activities, but rather that it had informed the company of the occupation by Israel of the occupied Palestinian Territory (OPT) and of the rights and obligations of Israel as an occupying power. The government reiterated that it considers the Israeli settlement in the OPT unlawful and an obstacle to peace and therefore discourages Dutch companies from investing or from entering into other forms of economic relationships in or for the benefit of Israeli settlements. Entering into such relationships is however not prohibited and the responsibility for any such action remains with the companies.

MARTEN ZWANENBURG AND NELLEKE VAN AMSTEL