

YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW — VOLUME 15, 2012
CORRESPONDENTS' REPORTS

THE NETHERLANDS

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Cases — Immunity of the UN Not Set Aside in Case of Allegation of Failing to Prevent Genocide

- *Association Mothers of Srebrenica and others v. the State of the Netherlands*, Supreme Court, 13 April 2012, LJN BW1999

The Supreme Court was called upon to determine whether the United Nations is immune from the jurisdiction of the civil courts of the Netherlands in a case brought by relatives of men killed in Srebrenica in July 1995. The plaintiffs held the UN and the Netherlands responsible for not adequately protecting those men. They argued that this amounted to negligence in preventing genocide. In the view of the plaintiffs, the immunity of the UN should yield to the right to a fair trial in case of such an alleged violation of *jus cogens*, where no alternative judicial review was offered by the organisation. The Supreme Court held that the immunity accorded to the UN is directly linked to the public interest involved in maintaining international peace and security. For this reason, it is important that the UN possesses as strong an immunity as possible, which should be subject to as little debate as possible. Only imperative reasons can therefore lead to the conclusion that the immunity of the UN is not proportionate to the aim pursued, and would thus breach the right to a fair trial. According to the Supreme Court, the plaintiffs' allegation that the UN was negligent in preventing genocide is a serious allegation, but not so compelling that it justifies not upholding immunity.

Legislation — Prohibition on Investments in Companies that Produce, Sell or Distribute Cluster Munitions

- Amendment of 21 December 2012 to the Decree on Market Abuse, Prohibiting Investment in Companies Producing, Selling or Distributing Cluster Munitions

As part of a broader amendment of implementing legislation based on the *Law on Oversight of Financial Institutions* [Wet op het Financieel Toezicht], an amendment was made to the *Decree on Market Abuse*. The amendment adds a new Article 21a to the Decree that prohibits financial institutions in the Netherlands, including their foreign branches, from investing in or providing loans to companies that produce, sell or distribute cluster munitions or vital parts of cluster munitions as defined in the *Convention on Cluster Munitions*.

Other — Legality of the Use of Drones

- Government responses to Parliamentary questions concerning drones

The government responded to a number of written questions from members of parliament concerning the legality of, and accountability for, the United States' policy and practice of

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targeted killings using drones. It stated that the responsibility to investigate and prosecute, or extradite, lies with the State on whose territory the suspects of grave breaches violations of international humanitarian law find themselves. In response to a question concerning the use of drones by the US in Pakistan, Yemen and Somalia, the government recognized that IHL could be applicable to certain actions of the US in so far as they relate to an armed conflict with non-State actors. In response to another question, the government reiterated that the use of unmanned and automated systems is subject to the same set of rules as any other weapons and weapon platforms, including rules of IHL such as the principles of distinction and proportionality.

Other — Cyber Warfare

• Government Response of 6 April 2012 to Advisory Report on Cyber Warfare

On 17 January 2012, a joint committee of members of two advisory bodies to the government, the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV), presented a report on cyber warfare. The government responded to the report in a letter to parliament, stating that it shares the AIV/CAVV's conclusion that applying the rules of international humanitarian law to hostilities in cyberspace is 'technically feasible and legally necessary'. However, it also agrees with the AIV/CAVV's view that armed attacks in cyberspace only fall under the laws of war if they are carried out in the context of an armed conflict by the parties to that conflict. This constitutes an important distinction with regard to other cyber attacks. The advisory report examines the issue of armed conflict initiated by a cyber attack and gives some useful examples of the practical application of the basic principles of the laws of war to cyber warfare. The government regards the AIV/CAVV's elaboration of the concept of neutrality in relation to the deployment of cyber weapons as a useful starting point for further thinking on this subject. In an armed conflict involving other parties, the Netherlands could protect its neutrality by impeding the use of infrastructure and systems (e.g. botnets) by such parties on Dutch territory. Constant vigilance, as well as sound intelligence and a permanent scanning capability, are required here.

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