



## **STATE RESPONSIBILITY AND INTERNATIONAL ORGANIZATIONAL IMMUNITY: A CASE STUDY OF THE MOTHER SREBRENICA IN THE UN SAFE ZONE**

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### **Abstract**

This research aims to analyze form of legal responsibility of the Dutch state and the United Nations (UN) for the failure to protect civilians in the Srebrenica genocide tragedy, emphasizing the principle of due diligence, concept of effective control, and the doctrine of loss a chance. The method used is normative juridical with a case approach, through study of the decision Dutch Supreme Court and analysis of international legal instruments such as Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA) and Articles on the Responsibility of International Organizations (ARIO). The results show that the Dutch state can be held legally responsible for actions of its troops (Dutchbat) because it had effective control during the evacuation of victims, while the UN cannot be held legally responsible due to institutional immunity barriers. These findings indicate an accountability gap in the international legal system that hinders the fulfillment rights to justice and reparations of victims. Therefore, reforms to immunity structure of international organizations are needed to strengthen accountability mechanisms in peacekeeping missions.

**Keywords:** *State Responsibility, Due diligence, UN Safe Zone, Srebrenica Genocide, Mother of Srebrenica.*

## Abstrak

Penelitian ini bertujuan untuk menganalisis bentuk pertanggungjawaban hukum negara Belanda dan Perserikatan Bangsa-Bangsa (PBB) atas kegagalan perlindungan warga sipil dalam tragedi genosida Srebrenica, dengan menekankan pada prinsip *due diligence*, konsep *effective control*, dan *doktrin loss of a chance*. Metode yang digunakan adalah yuridis normatif dengan pendekatan kasus, melalui studi terhadap putusan Mahkamah Agung Belanda dan analisis terhadap instrumen hukum internasional seperti *Articles on the Responsibility of States for Internationally Wrongful Acts* (ARSIWA) dan *Articles on the Responsibility of International Organizations* (ARIO). Hasil penelitian menunjukkan bahwa negara Belanda dapat dimintai pertanggungjawaban hukum atas tindakan pasukannya (*Dutchbat*) karena memiliki kontrol efektif pada saat evakuasi korban, sementara PBB tidak dapat dimintai tanggung jawab secara hukum karena hambatan imunitas kelembagaan. Temuan ini menunjukkan adanya kesenjangan akuntabilitas dalam sistem hukum internasional yang menghambat pemenuhan hak korban atas keadilan dan reparasi. Oleh karena itu, diperlukan reformasi terhadap struktur imunitas organisasi internasional untuk memperkuat mekanisme pertanggungjawaban dalam misi penjaga perdamaian.

**Kata Kunci:** *Tanggung Jawab Negara, Due diligence, Zona Aman PBB, Genosida Srebrenica, Mother of Srebrenica.*

## INTRODUCTION

Srebrenica is a small town in eastern Bosnia with majority Bosnian Muslim population, was declared a "safe area" by UN Security Council Resolution 819 of 1993.<sup>1</sup> This designation brought with the promise of international protection of civilian population from armed violence, implemented through the deployment of Dutch peacekeepers in the United Nations Protection Force (UNPROFOR) mission. However, the promise of protection turned into fatal failure when genocide occurred in July 1995.<sup>2</sup>

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<sup>1</sup> Bríd Ní Ghráinne, "Safe Zones and The Internal Protection Alternative," *International and Comparative Law Quarterly* 69, no. 2 (2020): 335–64, <https://doi.org/10.1017/S0020589320000019>.

<sup>2</sup> Francesca Cleverly, "What Happened in Srebrenica | Remembering Srebrenica," June 24, 2021, <https://srebrenica.org.uk/what-happened/history/happened-srebrenica>.

Since 1992, Bosnian Serb forces have waged military campaign to seize strategic areas in eastern Bosnia and Herzegovina as part of an ethnic cleansing agenda against the Bosniak community.<sup>3</sup> In March 1995, Bosnian Serb leader Radovan Karadžić issued military orders aimed at creating total insecurity in Srebrenica, including food and logistics embargo that exacerbated humanitarian crisis in the area.<sup>4</sup> A strategic meeting on June 28, 1995 between Karadžić, Momčilo Krajišnik, and Radislav Krstić accelerated the planning of a military attack on the town that was supposed to be under international protection.<sup>5</sup>

The attack on Srebrenica began on July 6, 1995, when Bosnian Serb forces launched an offensive from the south, accompanied by the burning of settlements that triggered mass exodus civilians to village of Potocari where approximately 200 Dutch peacekeepers (Dutchbat) were stationed.<sup>6</sup> Despite the safe zone status attached to this area, the Dutch contingent was unable, or unwilling, to prevent Serbian military penetration. They lacked logistics, a firm mandate, and sufficient military support to withstand escalation of the offensive. Some troops even reportedly surrendered or retreated, while none put up fight against the aggressors.<sup>7</sup> On July 11, 1995, Ratko Mladić symbolically seized the city of Srebrenica and delivered a speech charged with revenge against Muslims.<sup>8</sup>

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<sup>3</sup> A. Klike, "The Suffering and Defense of Kotor Varos Bosniaks and Croats in 1992," *Historijski Pogledi* 2022, no. 7 (2022): 379–422, <https://doi.org/10.52259/historijskipogledi.2022.5.7.379>.

<sup>4</sup> R. Jeffrey Smith, "Srebrenica Genocide | Facts, History, Map, & Photos | Britannica," 2024, <https://www.britannica.com/event/Srebrenica-genocide>.

<sup>5</sup> United Nations International Residual Mechanism for Criminal Tribunals (IRMCT), "Srebrenica: Timeline of Genocide," accessed May 19, 2025, <https://www.irmct.org/specials/srebrenica/timeline/en>.

<sup>6</sup> K. Boon, "The State of the Netherlands v. Respondents & Stichting Mothers of Srebrenica," *American Journal of International Law* 114, no. 3 (2020): 479–86, <https://doi.org/10.1017/ajil.2020.36>.

<sup>7</sup> S. Mønnesland, "Srebrenica 25 years after - How could the genocide happen?," *Internasjonal Politikk* 78, no. 2 (2020): 195–206, <https://doi.org/10.23865/intpol.v78.2317>.

<sup>8</sup> E. Rijdsdijk, "Reconstituting the Dutch State in the NIOD Srebrenica Report," in *The Palgrave Handb. of State-Sponsored History After 1945* (Palgrave Macmillan, 2018), 713–25, [https://doi.org/10.1057/978-1-349-95306-6\\_38](https://doi.org/10.1057/978-1-349-95306-6_38).

Among two weeks, more than 8,000 Bosnian Muslim men and boys were systematically executed worst mass slaughter since the Holocaust in Europe.<sup>9</sup> UN peacekeeping forces that equipped with light weapons and in a protected area, failed to act. To erase traces of atrocities, the bodies of the victims were buried in mass graves, then moved to other locations to obscure evidence of the crimes.

To hide evidence of the massacre, victims were buried in mass graves, which were later exhumed and moved to other locations in an attempt to eliminate traces of the crime.<sup>10</sup> Occurring in a supposedly safe zone under UN protection, these events exposed failures in protecting civilians and prompted serious questions about the effectiveness of international missions. Recognized as genocide by the International Criminal Court for former Yugoslavia (ICTY), the ICTY subsequently tried and convicted some of Bosnian Serb military and political leaders, including Radovan Karadžić and Ratko Mladić, for their role in massacre.<sup>11</sup>

The Dutch government was legally recognized having limited responsibility for the events almost two decades after the tragedy, in 2014. A lawsuit filed by the survivors group Mother of Srebrenica resulted in a court ruling in the Netherlands holding the Dutch state liable for 10% of the lost opportunities to prevent the massacre of 350 refugees who were in the Dutch military camp in Potočari.<sup>12</sup> This decision opened up an international legal debate on the responsibility

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<sup>9</sup> K. Istrefi, "The Right to Life in the Mothers of Srebrenica Case: Reversing the Positive Obligation to Protect from the Duty of Means to That of a Result," *Utrecht Journal of International and European Law* 36, no. 2 (2021): 141–51, <https://doi.org/10.5334/UJIEL.544>.

<sup>10</sup> G. Duijzings, "Commemorating Srebrenica: Histories of Violence and the Politics of Memory in Eastern Bosnia," in *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society* (Taylor and Francis, 2016), 141–66, <https://doi.org/10.4324/9781315555256-16>.

<sup>11</sup> O. Manojlović Pintar, "The Use of History, Denial of Crimes, and Concept of Impunity in Republika Srpska, 1992–2022," *Tokovi Istorije* 2024, no. 1 (2024): 301–38, <https://doi.org/10.31212/tokovi.2024.1.man.301-338>.

<sup>12</sup> Anna Holligan, "Dutch State Liable over 300 Srebrenica Deaths," *BBC News*, July 16, 2014, sec. Europe, <https://www.bbc.com/news/world-europe-28313285>.

of states and international organizations, particularly the UN, for failing to protect civilians in zones that have been declared safe areas.<sup>13</sup>

The Srebrenica case marks one of the most tragic failures in the history of modern humanitarian intervention. Although the area had been designated as a safe area by the UN Security Council through Resolution 819 (1993), more than 8,000 Bosnian Muslim men and boys were systematically massacred by Bosnian Serb forces in July 1995. The Dutch contingent of peacekeepers (Dutchbat), serving in Potočari, made no meaningful intervention to prevent the attack, even turning over refugees to invading forces. Such failures raise serious legal and moral questions, not only for the Dutch state, but also for institutional structure and mandate of the UN.

The legal action taken by Mother of Srebrenica survivor group against the Dutch state and the UN was turning point in discourse of the international responsibility. In the 2014 decision, a Dutch court held the Dutch state partially responsible (10%) for the deaths of a number of refugees, based on the possibility that Dutchbat forces could have taken preventive measures to save lives. Although the decision excluded due to the immunity doctrine of the UN liability, the juridical argumentation in the case opened up space to assess the negligence of international actors through the lens of due diligence principle.

The principle of due diligence in international law developed as a standard governing the responsibility of states and international organizations to prevent serious violations of human rights, including genocide and crimes against humanity. The concept emphasizes that those jurisdiction or effective control over a territory or population must take active, proportionate and rational steps to prevent serious violations. In the context of Srebrenica, this doctrine raises the question: did passive actions of Dutchbat or structural failures of the UN reflect a violation the due diligence obligation it should have fulfilled in carrying out its civilian protection mandate?

International legal literature shows that there is a sharp debate limits in application of the due diligence principle. Some scholars argue

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<sup>13</sup> Getty, "Pembantaian Muslim Srebrenica: Tentara Belanda ikut bertanggung jawab atas pembunuhan massal 350 orang," BBC News Indonesia, July 19, 2019, <https://www.bbc.com/indonesia/dunia-49045045>.

that due diligence is contextual and cannot be generalized as it depends on the actual capacity of an entity. This view tends to shield international actors from being held fully accountable when they operate within logistical and political constraints. However, other approaches reject the idea that operational limitations can justify negligence in carrying out protection mandates. In this framework, due diligence not only demands action, but also assesses institutional reluctance to act when rescue opportunities are still available.

In the case of Mother of Srebrenica, the Dutch failure to defend the refugee camp, and the UN's silence on the massacre, can be seen as a form of neglect the due diligence standard. Therefore, use of this principle in academic analysis is not merely a theoretical discourse, but an attempt to normatively and even ethically assess whether international actors have fulfilled the minimum obligations that should be carried out in the context of a safe zone. The literature examining this concept increasingly encourages the reinterpretation of international responsibility, especially when international organizations or states replace the role of host state and claim authority over the protection of civilians (functional replacement). Due diligence thus becomes an essential analytical lens in assessing failures not just as operational inefficiencies, but also as violations of fundamental principles in international law.

This research uses a normative juridical method with a qualitative approach, which relies on the analysis of international legal norms and relevant jurisprudential practices. This study aims to evaluate the legal responsibility of states and international organizations in the context of UN safe zone protection failures through Mother of Srebrenica case study. The case approach is used to examine the Dutch court's decision on the responsibility of the Dutch state for the negligence of Dutchbat forces in the Srebrenica tragedy. Meanwhile, a conceptual approach is used to examine the principle of due diligence in international law as a normative basis for assessing the negligence and responsibility of international actors, both states and international organizations.

The data sources in this research consist of primary and secondary legal materials. Primary legal materials include international legal instruments such as Draft Articles on the Responsibility of States

for Internationally Wrongful Acts (ARSIWA), Draft Articles on the Responsibility of International Organizations (DARIO), ICTY Statute, UN Security Council resolutions, and court decisions related to the Srebrenica case. Meanwhile, secondary legal materials include academic literature, scientific journal articles, and expert comments that discuss the concept of due diligence, state responsibility, and immunity of international organizations. The analytical technique used is normative-qualitative analysis, namely by interpreting and evaluating the relevance of international legal norms to civilian protection practices in safe zones and assessing the extent which the principle of due diligence can be used to establish legal liability in the context of peacekeeping mission failure.

Based on the above background, this research examines the form of legal responsibility assumed by the Dutch state and the United Nations (UN) for the genocide in Srebrenica, as a consequence of their failure to protect civilians in the safe zone that has been established according to international law. This research also examines the extent to which the Dutch court decision in Mother of Srebrenica case can serve as a precedent or legal reference in shaping the liability of states and international organizations for negligence in carrying out peacekeeping missions.

## **DISCUSSION**

### **State Responsibility in Peacekeeping Operations**

United Nations (UN) peacekeeping operations are important instrument in maintaining international peace and security. However, complexity command and control structures in these missions raises legal questions regarding the attribution of responsibility for abuses that occur during the performance of duties.

According to Articles on the Responsibility of International Organizations (DARIO) drafted by the International Law Commission (ILC), the attribution of responsibility for the actions of peacekeeping troops relies on the principle of "effective control". If an act is committed under effective control of the UN, then responsibility for the act is attributable to the UN. Conversely, if effective control rests with the

troops contributing state, then that state can be held accountable for acts committed by its troops.<sup>14</sup>

The Mothers of Srebrenica case sets an important precedent in this context. The Dutch High Court ruled that although Dutch forces (Dutchbat) were under a UN mandate, certain acts committed by them during the Srebrenica tragedy were attributable to the Dutch state due to the existence of effective control at the time of the incident. This ruling confirms that troop contributing state cannot completely disclaim responsibility on the grounds that troops were under UN command.<sup>15</sup>

Furthermore, in the context protection of civilians, the UN Security Council has often emphasized that the primary responsibility lies with the host state. However, when that state fails to carry out its obligations, the responsibility may shift to the international community, including peacekeeping contributing states.<sup>16</sup>

The principle of "responsibility to protect" developed by the International Commission on Intervention and State Sovereignty (ICISS) is also very important in state protection.<sup>17</sup> This principle states that when a state fails to protect its citizens from crimes against humanity, the international community has responsibility intervene, including through peacekeeping operations.

In practice, challenges remain in balancing between the principle of state sovereignty and the need to protect human rights. It is therefore important for troop contributing countries to ensure that their troops are equipped with adequate training and understand the legal responsibilities attached to their duties in peacekeeping operations.<sup>18</sup>

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<sup>14</sup> DPL Forum, "International Humanitarian Law and Peacekeeping", 11 May 2022, Lihat dalam [https://www.dlpforum.org/2022/05/11/international-humanitarian-law-and-peacekeeping/?utm\\_source=chatgpt.com](https://www.dlpforum.org/2022/05/11/international-humanitarian-law-and-peacekeeping/?utm_source=chatgpt.com), diakses pada 28 Mei 2022, Pukul 19.32.

<sup>15</sup> Sahla, A. (2024). Tinjauan Yuridis Terhadap Hak Imunitas Organisasi Internasional dalam Pertanggungjawaban atas Pelanggaran Hukum Internasional. *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 2(1), 191-204.

<sup>16</sup> Morris, T. "The Language of the Protection of Civilians Mandate and the Primary Responsibility of the State: A Legal Norm for Peace and Security." *Journal of international humanitarian legal studies*. 14 (2023) 349–376

<sup>17</sup> Jennifer M Welsh, Norm Robustness and the Responsibility to Protect, *Journal of Global Security Studies*, Volume 4, Issue 1, January 2019, Pages 53–72, <https://doi.org/10.1093/jogss/ogy045>

<sup>18</sup> CEDRIC RYNGAERT, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the



## **Legal Responsibility of the Dutch State and the UN in the Srebrenica Case under International Law**

The bloody tragedy of Srebrenica in July 1995 symbolizes the failure of international institutions to fulfill their responsibility to protect civilians in conflict zones. The Safe Zones declared by the UN through Resolutions 819 and 836 turned out to be neither operationally nor normatively effective.<sup>19</sup> This situation shows that the declaration of a safe zone without the support of adequate military force is merely juridical symbolism without substantive protection.

According to international law, both states and international organizations have responsibility to protect civilians if they have jurisdiction or factual control over that population.<sup>20</sup> The principle of due diligence asserts that international actors are obliged to take reasonable precautions against foreseeable human rights violations. In this context, the presence of Dutchbat troops under UNPROFOR creates a relationship of responsibility between the troop sending country (the Netherlands) and the UN as the strategic controller of the peace mission.<sup>21</sup>

The Dutch High Court decision in 2017 confirmed that Dutchbat was liable for not giving the male refugees the option to remain in the protection compound. By failing to provide this alternative, Dutchbat had lost a chance of rescue that was estimated at 30% by the court of appeal, and later revised to 10% by the Dutch Supreme Court in

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Context of International Military Operations", *Utrecht Journal of International and European Law*, Volume 32, Issue 2, July 2021, Pages 171-180

<sup>19</sup> C. Ryngaert and O. Spijkers, "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)," *Netherlands International Law Review* 66, no. 3 (2019): 537–53, <https://doi.org/10.1007/s40802-019-00149-z>.

<sup>20</sup> A. Islam, *Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Accountability*, *Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Accountability*, Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Accountability (Taylor and Francis, 2024), <https://doi.org/10.4324/9781032657707>.

<sup>21</sup> J. Hoekema, "Srebrenica, Dutchbat and the Role of the Netherlands' Parliament," in *The "Double Democratic Deficit": Parliamentary Accountability and the Use of Force Under International Auspices* (Taylor and Francis, 2017), 73–89, <https://doi.org/10.4324/9781351147125-5>.

2019.<sup>22</sup> This is an example of the application loss of a chance doctrine in the realm of international liability.

Meanwhile, the failure of UN reflects not only operational, but also structural weaknesses in fulfilling its international obligations.<sup>23</sup> The resolutions designating Srebrenica as a safe zone were not followed by measures to strengthen the command, logistics, or mandate systems that would allow peacekeepers to act decisively against military threats. The UN recognized this, as reflected in Secretary General Kofi Annan's statement that "we failed to do our part to help save the people of Srebrenica from the Serbian campaign of mass murder".<sup>24</sup>

While the UN is protected by immunity under the 1946 Convention, the principle of due diligence still demands form of substantive accountability.<sup>25</sup> The Immunity cannot be used as a shield to avoid legal obligations in the situations involving gross violations of human rights, especially if international organization fails to provide redress mechanisms or access to justice for victims.<sup>26</sup> This creates an accountability gap that further undermines trust in the international legal system.

In international law doctrine, the principle of attribution of acts is key to determining the responsibility of states or organizations.<sup>27</sup> Based on Article 7 of the Articles on the Responsibility of International

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<sup>22</sup> De Rechtspraak, Court Of Appeal At Den Haag: Mothers of Srebrenica v. State of the Netherlands, No. ECLI:NL:GHDHA:2017:3376 (Hof Den Haag June 27, 2017).

<sup>23</sup> N. Nedeski and B. Boutin, "The Continuing Saga of State Responsibility for the Conduct of Peacekeeping Forces: Recent Practice of Dutch and Belgian Courts," in *Netherlands Yearb. Int. Law*, vol. 50 (T.M.C. Asser Press, 2021), 309–32, [https://doi.org/10.1007/978-94-6265-403-7\\_25](https://doi.org/10.1007/978-94-6265-403-7_25).

<sup>24</sup> Smith, "Srebrenica Genocide | Facts, History, Map, & Photos | Britannica."

<sup>25</sup> N.D. White, "In Search of Due Diligence Obligations in Un Peacekeeping Operations Identifying Standards for Accountability," *Journal of International Peacekeeping* 23, no. 3–4 (2020): 203–25, <https://doi.org/10.1163/18754112-02303005>.

<sup>26</sup> V. Terzieva, "State Immunity and Victims' Rights to Access to Court, Reparation, and the Truth," *International Criminal Law Review* 22, no. 4 (2022): 780–804, <https://doi.org/10.1163/15718123-bja10139>.

<sup>27</sup> S. McArdle, "International Organisations and the Pluralist International System: Threatening the Role of Human Rights?," in *Hum. Rights and Power in Times of Glob.* (Brill, 2018), 173–95, [https://doi.org/10.1163/9789004346406\\_008](https://doi.org/10.1163/9789004346406_008).

Organizations for Internationally Wrongful Acts (ARIO) and Article 8 of the Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), the Dutch High Court ruled that during the evacuation of July 11-13, 1995, the Dutch state had effective control over the actions of Dutchbat.<sup>28</sup> Therefore, the state was not only complicit, but the main actor in the negligent protection of the refugees under responsibility.

The attitude of the Netherlands and the UN in recognizing their failures only on a moral level, without reparation mechanisms, shows the actual limitations of the international system in guaranteeing victims' rights. The principle of due diligence, which should be oriented towards proactive measures to prevent violations, in this context turned into a retrospective recognition of past failures without adequate legal implications. As a result, protection standards become rhetorical rather than normative.

Finally, Mother of Srebrenica lawsuit presents a sharp contrast between marginalized victim group (in this case a community of women survivors) and two institutional actors with global power. Although successful in forcing the national court to recognize state responsibility, this lawsuit also shows power imbalance in the international legal system that still tends to protect structures, not victims. In this case, the principle of due diligence is not only a normative framework, but also a critique of global legal structures that have not fully favored substantive justice.

### **Legal Precedents and Significance of the Dutch Supreme Court Decision on the Responsibility of States and International Organizations**

The July 19, 2019 decision of the Dutch Supreme Court in Mother of Srebrenica v. The Netherlands is an important milestone in development of the doctrine state responsibility in the context of peacekeeping missions. In this judgment, the court held that the Dutch state was liable for Dutchbat's actions that led to loss of a chance in life

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<sup>28</sup> Cedric Ryngaert, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations," *Utrecht Journal of International and European Law*, July 2021, <https://doi.org/10.5334/ujiel.546>.

for 350 Bosnian Muslim men who were inside the UNPROFOR compound.<sup>29</sup> The Court concluded that the refugees were not given the option to remain, and that decision to evacuate them to the Bosnian Serb forces eliminated a 10% chance of safety.<sup>30</sup>

This approach presents a significant juridical innovation in the realm of liability law, where states can be held liable on the basis of probability, rather than direct causality. This expands scope of state responsibility in complex multilateral situations, particularly in the context of omission liability, that failure to act that causes an adverse impact on the rights of victims.<sup>31</sup> Using this principle, the court recognized that although Dutchbat was not the direct perpetrator of the massacre, its passive actions contributed significantly to the tragedy.

In addition, this judgment reinforces the importance of the principle effective control as the basis for the attribution of state responsibility in peacekeeping missions.<sup>32</sup> The Dutch court concluded that since July 11, 1995, the Netherlands had factual control over Dutchbat operations, as the UN command had weakened and field decisions were taken more by national authorities. This shows that attribution is not solely based on formal structures, but also on actual control in crisis situations.

Furthermore, the debate on action attribution in the context of UN peacekeeping resulted two evolving approaches: presumptive and preventive attribution. The Dutch Supreme Court ruling affirmed the presumptive approach, which state responsibility is assumed when they have factual capacity to take important decisions.<sup>33</sup> This approach

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<sup>29</sup> Z. Ratniece, "Fair Trial in Mothers of Srebrenica et al.: Guessing as a Form of Reasoning," *Utrecht Journal of International and European Law* 36, no. 2 (2021): 181–91, <https://doi.org/10.5334/UJIEL.547>.

<sup>30</sup> De Rechtspraak, Court Of Appeal At Den Haag: Mothers of Srebrenica v. State of the Netherlands.

<sup>31</sup> W. Arévalo-Ramírez, "State Responsibility," in *Public International Law: A Multi-Perspective Approach* (Taylor and Francis, 2024), 333–45, <https://doi.org/10.4324/9781003451327-11>.

<sup>32</sup> T. Morris, "State Responsibility and Accountability in UN Peacekeeping: The Case of The Mothers of Srebrenica v. The Netherlands," *International Peacekeeping* 29, no. 2 (2022): 204–34, <https://doi.org/10.1080/13533312.2021.1989304>.

<sup>33</sup> E. Tobias and I. Mulyana, "The Rule of Attribution for Peacekeepers Post-Dutch Supreme Court's Rulings on Mothers of Srebrenica in 2019: A Discourse on Presumptive v. Preventive Interpretation," *Padjadjaran Jurnal Ilmu Hukum* 10, no. 2 (2023): 214–33, <https://doi.org/10.22304/pjih.v10n2.a4>.

differs from preventive attribution which emphasizes who has the power to prevent violations, previously advocated in the Nuhanović judgment.

However, while these judgments broaden the horizon of state responsibility, Ryngaert and Spijkers also underline the limitations of international legal system in holding international organizations accountable.<sup>34</sup> Challenges against the UN have consistently been rejected on grounds of immunity by both the Dutch national courts and European Court of Human Rights. This absolute immunity creates a significant accountability gap, as it denies victims access to substantive justice mechanisms for failure of the UN to fulfill its protection mandate.

Criticism of the immunity international organizations is strengthened when decisions such as these show that states can be held accountable, but the organization leading the mission remains immune.<sup>35</sup> In the context of functional replacement, where the UN takes over the functions of state in the management of civil security, legal liability should also be attached.<sup>36</sup> Without immunity reform or the creation of an independent claims mechanism, such rulings will only result in partial justice.

The Mother of Srebrenica judgment also has important implications for other troop contributing countries. It warns that involvement in UN missions does not automatically remove domestic responsibility if the state is found to be in control of its troops in certain situations. This requires troop contributing countries to clarify internal protocols and maintain legal accountability for their troops, especially in conflict situations with risks of gross human rights violations.<sup>37</sup>

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<sup>34</sup> Ryngaert and Spijkers, "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)."

<sup>35</sup> I. Mammadli, "International Organisations and Accountability for Human Rights Abuses: Obstacles Caused by Jurisdictional Immunity," *Baku State University Law Review* 9, no. 1 (2023): 66–91.

<sup>36</sup> S. Mathur and S. Agarwal, "Balancing Jurisdictional Immunity and Responsibility of International Organisations – Challenges and Reforms," *Krytyka Prawa* 17, no. 1 (2025): 58–77, <https://doi.org/10.7206/kp.2080-1084.752>.

<sup>37</sup> Tobias and Mulyana, "The Rule of Attribution for Peacekeepers Post-Dutch Supreme Court's Rulings on Mothers of Srebrenica in 2019: A Discourse on Presumptive v. Preventive Interpretation."

Overall, while the Dutch Supreme Court decision does not necessarily dismantle UN immunity, it remains an important jurisprudential precedent that expands the understanding of state responsibility in multilateral operations. By using a probability based and due diligence approach, the judgment shifts the discourse of responsibility from a reactive to more preventive and normative one. It emphasizes that even within complex international frameworks, state actors cannot escape their legal obligations to protect human life.

## **CONCLUSIONS**

The Mother of Srebrenica case confirms that legal responsibility in the context of peacekeeping operations is not solely moral or political, but can be determined juridically against a state that is proven to have operational control over its troops in the field. Through the principle of due diligence, the Dutch Supreme Court held that negligence in providing minimal protection to civilians in a safe zone still gives rise to legal liability, even though the act occurred within framework of a multilateral mission.

This decision provides an important precedent that expands the understanding of state accountability in the international legal system, particularly for negligence that contributes to gross human rights violations such as genocide. The Dutch court's use of the loss of a chance doctrine to establish partial state responsibility for refugees' loss of life chances reflects an innovative juridical approach. In situations where direct evidence of causality is difficult to prove, this probability-based approach provides a more adaptive pathway to justice and prevents a liability vacuum in the context of multilateral operations.

Furthermore, this case representing needs to reform the international legal system, particularly in terms of the scope international organization immunity and accountability mechanisms in peacekeeping missions. To that end, it is necessary:

1. Reformulation of international legal norms that limit the absolutism of international organization immunity in cases of heavy human rights violations;

2. Development of minimum operational standards for troop-sending countries, including provisions on control, responsibility and post-mission evaluation;
3. Establishment of an international claims mechanism that gives victims direct legal access to international organizations or mission member states.

With such measures, the principle of civilian protection in conflict zones is not only part of normative declarations, but also realized through concrete and enforceable legal instruments. This is important to ensure that the right to life and safety of civilians is not sacrificed due to a vacuum of institutional responsibility in the international system.

## BIBLIOGRAPHY

- Arévalo-Ramírez, W. "State Responsibility." In *Public International Law: A Multi-Perspective Approach*, 333–45. Taylor and Francis, 2024. <https://doi.org/10.4324/9781003451327-11>.
- Berkes, A. "The Standard of 'due diligence' as a Result of Interchange between the Law of Armed Conflict and General International Law." *Journal of Conflict and Security Law* 23, no. 3 (2018): 433–60. <https://doi.org/10.1093/jcsl/kry022>.
- Boon, K. "The State of the Netherlands v. Respondents & Stichting Mothers of Srebrenica." *American Journal of International Law* 114, no. 3 (2020): 479–86. <https://doi.org/10.1017/ajil.2020.36>.
- Cleverly, Francesca. "What Happened in Srebrenica | Remembering Srebrenica," June 24, 2021. <https://srebrenica.org.uk/what-happened/history/happened-srebrenica>.
- De Rechtspraak. Court Of Appeal At Den Haag: Mothers of Srebrenica v. State of the Netherlands, No. ECLI:NL:GHDHA:2017:3376 (Hof Den Haag June 27, 2017).
- Delpla, I. "State Liability for Failure to Protect Others. Srebrenica Cases." *Sudosteuropa* 66, no. 2 (2018): 245–71. <https://doi.org/10.1515/soeu-2018-0018>.
- DPL Forum, "International Humanitarian Law and Peacekeeping", 11 may 2022, Lihat dalam <https://www.dlpforum.org/2022/05/11/international->

- humanitarian-law-and-peacekeeping/?utm\_source=chatgpt.com, diakses pada 28 Mei 2022, Pukul 19.32.
- Duijzings, G. "Commemorating Srebrenica: Histories of Violence and the Politics of Memory in Eastern Bosnia." In *The New Bosnian Mosaic: Identities, Memories and Moral Claims in a Post-War Society*, 141–66. Taylor and Francis, 2016. <https://doi.org/10.4324/9781315555256-16>.
- Getty. "Pembantaian Muslim Srebrenica: Tentara Belanda ikut bertanggung jawab atas pembunuhan massal 350 orang." BBC News Indonesia, July 19, 2019. <https://www.bbc.com/indonesia/dunia-49045045>.
- Herik, L. van den, and E. Irving. "*Due diligence* and the Obligation to Prevent Genocide and Crimes against Humanity." In *Due diligence in the International Legal Order*, 200–216. Oxford University Press, 2021. <https://doi.org/10.1093/oso/9780198869900.003.0012>.
- Hoekema, J. "Srebrenica, Dutchbat and the Role of the Netherlands' Parliament." In *The "Double Democratic Deficit": Parliamentary Accountability and the Use of Force Under International Auspices*, 73–89. Taylor and Francis, 2017. <https://doi.org/10.4324/9781351147125-5>.
- Holligan, Anna. "Dutch State Liable over 300 Srebrenica Deaths." *BBC News*, July 16, 2014, sec. Europe. <https://www.bbc.com/news/world-europe-28313285>.
- Islam, A. *Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Accountability. Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Account.* Protection of Civilians in UN Peacekeeping Operations: Legal Responsibility and Accountability. Taylor and Francis, 2024. <https://doi.org/10.4324/9781032657707>.
- Istrefi, K. "The Right to Life in the Mothers of Srebrenica Case: Reversing the Positive Obligation to Protect from the Duty of Means to That of a Result." *Utrecht Journal of International and European Law* 36, no. 2 (2021): 141–51. <https://doi.org/10.5334/UJIEL.544>.



- Kliko, A. "The Suffering and Defense of Kotor Varos Bosniaks and Croats in 1992." *Historijski Pogledi* 2022, no. 7 (2022): 379–422. <https://doi.org/10.52259/historijskipogledi.2022.5.7.379>.
- Mammadli, I. "International Organisations and Accountability for Human Rights Abuses: Obstacles Caused by Jurisdictional Immunity." *Baku State University Law Review* 9, no. 1 (2023): 66–91.
- Manojlović Pintar, O. "The Use of History, Denial of Crimes, and Concept of Impunity in Republika Srpska, 1992–2022." *Tokovi Istorije* 2024, no. 1 (2024): 301–38. <https://doi.org/10.31212/tokovi.2024.1.man.301-338>.
- Mathur, S., and S. Agarwal. "Balancing Jurisdictional Immunity and Responsibility of International Organisations – Challenges and Reforms." *Krytyka Prawa* 17, no. 1 (2025): 58–77. <https://doi.org/10.7206/kp.2080-1084.752>.
- McArdle, S. "International Organisations and the Pluralist International System: Threatening the Role of Human Rights?" In *Hum. Rights and Power in Times of Glob.*, 173–95. Brill, 2018. [https://doi.org/10.1163/9789004346406\\_008](https://doi.org/10.1163/9789004346406_008).
- Mønnesland, S. "Srebrenica 25 years after - How could the genocide happen?" *Internasjonal Politikk* 78, no. 2 (2020): 195–206. <https://doi.org/10.23865/intpol.v78.2317>.
- Morris, T. "State Responsibility and Accountability in UN Peacekeeping: The Case of The Mothers of Srebrenica v. The Netherlands." *International Peacekeeping* 29, no. 2 (2022): 204–34. <https://doi.org/10.1080/13533312.2021.1989304>.
- \_\_\_\_\_. "The Language of the Protection of Civilians Mandate and the Primary Responsibility of the State: A Legal Norm for Peace and Security." *Journal of international humanitarian legal studies*. 14 (2023) 349–376
- Mustafić, A., and N. Wentholt. "Finding the Truth but Ending the Conversation? How Dutch Civil Court Cases on the Srebrenica Genocide Shaped the Space for Reparation." In *Netherlands Yearb. Int. Law*, 53:321–52. T.M.C. Asser Press, 2024. [https://doi.org/10.1007/978-94-6265-627-7\\_13](https://doi.org/10.1007/978-94-6265-627-7_13).

- Nedeski, N., and B. Boutin. "The Continuing Saga of State Responsibility for the Conduct of Peacekeeping Forces: Recent Practice of Dutch and Belgian Courts." In *Netherlands Yearb. Int. Law*, 50:309–32. T.M.C. Asser Press, 2021. [https://doi.org/10.1007/978-94-6265-403-7\\_25](https://doi.org/10.1007/978-94-6265-403-7_25).
- Ní Ghráinne, Bríd. "Safe Zones and The Internal Protection Alternative." *International and Comparative Law Quarterly* 69, no. 2 (2020): 335–64. <https://doi.org/10.1017/S0020589320000019>.
- Okada, Y. "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 Journal of International Law* 32, no. 2 (2019): 275–91. <https://doi.org/10.1017/S0922156519000062>.
- Peters, A., H. Krieger, and L. Kreuzer. "Due diligence: The Risky Risk Management Tool in International Law." *Cambridge International Law Journal* 9, no. 2 (2020): 121–36. <https://doi.org/10.4337/cilj.2020.02.01>.
- Ratniece, Z. "Fair Trial in Mothers of Srebrenica et al.: Guessing as a Form of Reasoning." *Utrecht Journal of International and European Law* 36, no. 2 (2021): 181–91. <https://doi.org/10.5334/UJIEL.547>.
- Ryngaert, Cedric, "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations", *Utrecht Journal of International and European Law*, Volume 32, Issue 2, July 2021, Pages 171-180
- Rijsdijk, E. "Reconstituting the Dutch State in the NIOD Srebrenica Report." In *The Palgrave Handb. of State-Sponsored History After 1945*, 713–25. Palgrave Macmillan, 2018. [https://doi.org/10.1057/978-1-349-95306-6\\_38](https://doi.org/10.1057/978-1-349-95306-6_38).
- Ryngaert, C., and O. Spijkers. "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)." *Netherlands*

- International Law Review* 66, no. 3 (2019): 537–53. <https://doi.org/10.1007/s40802-019-00149-z>.
- Ryngaert, Cedric. "Attributing Conduct in the Law of State Responsibility: Lessons from Dutch Courts Applying the Control Standard in the Context of International Military Operations." *Utrecht Journal of International and European Law*, July 2021. <https://doi.org/10.5334/ujiel.546>.
- Sahla, A. (2024). Tinjauan Yuridis Terhadap Hak Imunitas Organisasi Internasional dalam Pertanggungjawaban atas Pelanggaran Hukum Internasional. *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 2(1), 191-204.
- Smith, R. Jeffrey. "Srebrenica Genocide | Facts, History, Map, & Photos | Britannica," 2024. <https://www.britannica.com/event/Srebrenica-genocide>.
- Terzieva, V. "State Immunity and Victims' Rights to Access to Court, Reparation, and the Truth." *International Criminal Law Review* 22, no. 4 (2022): 780–804. <https://doi.org/10.1163/15718123-bja10139>.
- Tobias, E., and I. Mulyana. "The Rule of Attribution for Peacekeepers Post-Dutch Supreme Court's Rulings on Mothers of Srebrenica in 2019: A Discourse on Presumptive v. Preventive Interpretation." *Padjadjaran Jurnal Ilmu Hukum* 10, no. 2 (2023): 214–33. <https://doi.org/10.22304/pjih.v10n2.a4>.
- United Nations International Residual Mechanism for Criminal Tribunals (IRMCT). "Srebrenica: Timeline of Genocide." Accessed May 19, 2025. <https://www.irmct.org/specials/srebrenica/timeline/en>.
- Welsh, Jennifer M, "Norm Robustness and the Responsibility to Protect", *Journal of Global Security Studies*, Volume 4, Issue 1, January 2019, Pages 53–72, <https://doi.org/10.1093/jogss/ogy045>
- White, N.D. "In Search of *Due diligence* Obligations in Un Peacekeeping Operations Identifying Standards for Accountability." *Journal of International Peacekeeping* 23, no. 3–4 (2020): 203–25. <https://doi.org/10.1163/18754112-02303005>.