

STATE LIABLE FOR GENOCIDE

Posted on October 12, 2014 by Keghart



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Translated and adapted from the original Portuguese text

"Court rules Dutch state liable for 300 Srebrenica deaths"



(Reuters), July 16, 2014--The Netherlands is liable for about 300 of the more than 8,000 deaths in the 1995 Srebrenica massacre, a Dutch court ruled on Wednesday, pinning some of the blame for Europe's worst massacre since World War Two on the Dutch state.

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"Court rules Dutch state liable for 300 Srebrenica deaths"



(Reuters), July 16, 2014--The Netherlands is liable for about 300 of the more than 8,000 deaths in the 1995 Srebrenica massacre, a Dutch court ruled on Wednesday, pinning some of the blame for Europe's worst massacre since World War Two on the Dutch state.

A district court in The Hague said Dutch peacekeepers in Srebrenica, a Bosnian Muslim enclave in Bosnian Serb-held territory, could have known that the 300 men who had sought refuge in their base in the village of Potocari would be murdered if deported from the Dutch compound.

The court said the Netherlands was not liable for the deaths of those who had fled into the forests surrounding Srebrenica, where many of the men and boys were later buried in mass graves.

The ruling could set a precedent with implications for future peacekeeping deployments by the Netherlands or other countries.

During the Bosnian war, the Dutch battalion Dutchbat had been deployed to protect Srebrenica, which had been designated a safe haven by the United Nations, but surrendered to the much larger Bosnian Serb army commanded by Ratko Mladic, who is on trial for war crimes at an international court in The Hague.

The case was brought by the Mothers of Srebrenica, a group representing surviving relatives of the victims. They had failed in their bid to have a court find the United Nations responsible for the massacre.

"At the moment that the men were sent away, Dutchbat knew or should have known that the

genocide was taking place and therefore there was a serious risk that those men would be killed," said judge Peter Blok.

The above court decision is of exceptional interest and import to Armenians due to the precedent it establishes. Simply put, it creates a jurisprudence which is applicable to past and unpunished genocides--genocides which, by definition, include grave violations of human rights and which have been met by the reprehensible silence and hypocrisy of the Great Powers. These serious human rights violations have been widely denounced, including by UN General-Secretary Ban Ki-Moon in a recent interview with *The Economist*.

For us, Armenians, it is reason for renewed hope regarding the international recognition of the Armenian Genocide, since the ruling is an extremely important legal precedent, issued by a district court in The Hague. It adds to, brings new grounds to, and makes contemporary the VERDICT issued by the "Permanent Peoples' Tribunal" (April 1984, Sorbonne, Paris), which can be read in "A Crime Of Silence: The Armenian Genocide" final chapter (p. 249), Zed Pub., London, 1985.

Finally some light can be seen at the end of the tunnel. It is not possible to restrain the optimism that such piece of news elicits. It offers us confidence that, at last, the absurd denial maintained by Turkey regarding its responsibility for the perpetration of the Armenian Genocide – which killed 1.5 million people – will be shattered. It is high time Turkey assumed its responsibility--together with the expected international recognition--and understood that the court decision, which condemned Holland, is fully applicable to Ankara's 'commissive' and 'omissive' attitude, which led to the evident characterization of genocide.

With hopes of obtaining a copy of the full decision of The Hague court for a detailed legal analysis (for which we ask for the collaboration of the Armenian governmental and Diaspora authorities), we allow ourselves to declare that the court has clearly ruled the STRICT LIABILITY OF THE STATE, in the same terms as in Brazilian internal law, by constitutional provision, and, certainly, in the international law and in countries that recognize common law.

The strict liability (of the state in this case) – which for purposes of reparation of the damages is legally different from the concept of pure liability, as the latter depends on proving guilty from the agent – arises from the pure and simple occurrence of the illegal fact, performed by agents who represent the state.

By the same criterion of the strict liability of the state--by omission--we maintain that Turkey (the same political entity--state--then called Ottoman Empire, under whose control and determination the Armenian Genocide was committed from 1915 to 1923) is unquestionably liable, now twice, by its consummation. We say "twice" because not only is Turkey liable for its widely proven criminal acts, but it's also liable by omission: permitting the massacres committed by its agents, either with (as it really occurred) or without the issuance of official orders to military or civil authorities, and even to

common Turkish citizens, to victimize ethnic minorities (Armenian, Greek, Kurdish, and other groups), which lived in the state and to whom it had the duty of providing protection and the preservation of their lives.

It is worth stressing that Turkey supports, among its contemptible denial arguments, that the Ottoman Empire had to relocate the Armenian population to protect it against dangers arising from the First World War, by transferring Armenians to safer regions of the country. But had that been the case, it could have prevented 1.5 million Armenians from being wrenched from their homes and cities and be killed. By whom? It's no longer a matter of determining the authors of the crimes, either military or civil, acting on official orders or not. What is certain is that the Ottoman government assumed the responsibility for the physical integrity of the Armenians during the so-called "relocation". It failed in its "noble" intent when it withdrew its presence and authority and thus allowed the elimination of Armenians. In doing so Turkey incurred the same strict liability recognized by the Dutch district court against Holland in the lawsuit filed by the "Mothers of Srebrenica". The "relocation" claim has backfired against Turkey. Now Turkey has to taste its own poison.

Thus resoundingly is demolished Turkey's tired argument and its unsustainable denial (that the Ottoman government cannot be connected to the Genocide which occurred against its will in a tumultuous historical moment, the First World War). We heard that same hoary declaration by Prime Minister Tayyip Erdogan, when he made his hypocritical message of condolences to Armenians last April 24.

The fact is that since the court's decision no longer merely imputes the pure liability for the Genocide to the Young Turks (in power at the time), which for spurious "reasons of state" planned and ordered the extermination of the "Armenian race" thus solving the annoying Armenian Problem. The new fact – a decisive argument in our favor – is that in view of the decision of the Court of The Hague it is possible to affirm that **TURKEY IS STRICTLY LIABLE, AND THERE CAN BE NO FURTHER DISCUSSION, AND IT DOES NOT DEPEND ON EVIDENCES, ALL OF WHICH HAVE INDEED ALREADY BEEN PRODUCED DURING THE LAWSUIT FILED IN THE Permanent Peoples' Tribunal, TO THEN CHARACTERIZE ITS SIMPLE LIABILITY.**

In summary, **TURKEY'S STRICT LIABILITY, AS AUTHOR OF THE ARMENIAN GENOCIDE, RESULTS, THEREFORE, FROM ITS OMISSION IN PREVENTING THE CRIMINAL ACTS.** That is how we interpret the ruling of the Dutch district court which declared Holland's strict liability in the face of a similar situation, In both cases the states failed to care for the safety and the lives of people under their inalienable protection and responsibility. In view of what has been exposed, we have concluded as unquestionable the following: Turkey's strict liability for the Armenian Genocide arises from **MAKING IT HAPPEN** (by action, commission) and also from **LETTING IT HAPPEN** (by omission).

The Turkish lobby has tried to delete or suppress the decision meanwhile revealing that it knows what it means....Indeed, as far as we know, the court's decision has not garnered comment from the

media. Hence it's imperative that we obtain a copy of the lawsuit filed against Holland, and its final decision, directly from the primary source. It may be necessary to deploy Armenian diplomats to obtain the decision in full.

Next, having the material in hand, we will analyze and debate it widely in the Diaspora. After the Diaspora public debate the government of the Republic of Armenia will have to file a similar lawsuit against Turkey in the same court because the precedent has been set there.

It is also essential to devise a plan for a vigorous global political action, specially at the United Nations and its Human Rights Commission. In summary, we have to plan and to execute a legal-political strategy. We have to do it immediately to strongly impact world public opinion as we begin Genocide Centenary commemorations. We affirm that this may be the main battle for justice in favor of the international recognition of the Genocide, founded on the law and on justice!

