WRIT OF SUMMONS
DISTRICT COURT, THE HAGUE

This day, the TWO THOUSAND AND SEVEN,

Upon the application of:

1. Mrs **Sabathea Fejzić**, resident in Vogošća (Municipality of Sarajevo), at Gornja Jošanica I do 9, Bosnia Herzegovina;

2. Mrs **Kadira Gabeljić**, resident in Vogošća (Municipality of Sarajevo), at Blagovac 1-99, Bosnia Herzegovina;

3. Mrs **Ramiza Gurdić**, resident in Sarajevo, at Lješevo, Odžak Br. 754, Ilijaš, Bosnia Herzegovina;

4. Mrs **Mila Hasanović**, resident in Sarajevo, at Aleja Lipa 42, Bosnia Herzegovina;

5. Mrs **Kada Hotić**, resident in Vogošća (Municipality of Sarajevo), at Ul. Jošanićka 149, Bosnia Herzegovina;

6. Mrs **Šuhreta Mujić**, resident in Sarajevo, at Polomska BB, Ilijaš Podlugovi, Bosnia Herzegovina;

7. Plaintiff No. 7;

8. Mrs **Zumra Šehomerović**, resident in Vogošća (Municipality of Sarajevo), at Braće Krešo 2, Bosnia Herzegovina;

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9. Mrs **Munira Subašić**, resident in Vogošća (Municipality of Sarajevo), at Stara Jezera Br. 142, Bosnia Herzegovina;

10. Plaintiff No. 10;

11. Foundation the **Mothers of Srebrenica Foundation**, registered office in Amsterdam, at Dijsselhofplantsoen 16-18;

each in these proceedings electing a domicile in Amsterdam at Dijsselhofplantsoen 16-18 (P.O. Box 76729, 1070 KA) at the offices of their legal representatives mr. M.R. Gerritsen, mr. dr. A. Hagedorn, mr. J. Staab and mr. S.A. van der Sluijs;

I have,

SUMMONED:

1. the **State of the Netherlands (Ministry of General Afairs)**, having its seat at The Hague, there at the public prosecutor's office of the Procurator-General to the Supreme Court (in Dutch 'Hoge Raad') having delivered my writ and having left a copy of this document and of the Exhibits to be further specified:

2. an organisation with legal personality **The United Nations**, having its seat in New York City (NY 10017), New York, United States of America, on First Avenue at 46th Street, not having a recognised seat in The Netherlands, there at the public prosecutor's office of the Procurator-General to the Supreme Court (in Dutch 'Hoge Raad') having duly served this writ by delivering two copies thereof and two copies of the English translation of this document, with:

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IN ORDER:

on Wednesday, the two thousand and seven, at 10.00 hours in the morning, not in person but representated by a procurator, to appear at the hearing of the District Court, The Hague, The Netherlands, which then and in that place will be held in the court building at Prins Clauslaan 60;

EXPLICITLY STATING:

that should Defendants not appear in the proceedings on the first date specified on the roll or on another date to be set down by the court or fail to appoint a procurator, the prescribed periods and formalities being complied with, the court will grant leave to proceed in default of appearance against Defendants and award the claim by default, unless the court finds the claim unlawful or unfounded;

that should one of the Defendants appear and the other not and in respect of the Defendant who appears the prescribed periods and formalities being complied with, the court will grant leave to proceed in default of appearance against the Defendant who does not appear, proceedings will continue between the Defendant who appears and Plaintiff and between all parties a judgment will be delivered that is to be considered a judgment in a defended action;

IN ORDER TO:

in that case and at that place hear the following being claimed and moved:

Introduction

1. The worst act of genocide in Europe since the Second World War took place in July 1995 during the Dutch military presence in the East Bosnian enclave of Srebrenica. Between 8,000 and 10,000 persons were killed.
   Plaintiffs 1 through 10 (hereafter referred to in the interests of readability as: 'Plaintiff') and Plaintiff under 11 (hereafter referred to as: 'the Foundation) hold the defendants, hereafter referred to as: 'the State of the Netherlands' and 'the UN', jointly responsible for the fall of the enclave Srebrenica and the consequences thereof. The Foundation is a

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legal entity under Dutch law with full legal capacity, formed with a view to bringing a collective action (class action) within the meaning of Article 3:305a Netherlands Civil Code. In accordance within its constitution the Foundation promotes the interests of surviving relatives and has, in addition to its idealistic interest, also a financial interest in its claims given that the Foundation also has the object of offering financial help to the surviving relatives.

2. In these proceedings Plaintiff and the Foundation seek a judicial declaration that the State of the Netherlands and the UN, due to a failure to perform their undertakings and obligations, acted unlawfully with respect to Plaintiff and the murdered members of her family. Plaintiff (under 1 through 10) further claims an advance of EUR 25,000 per person for the loss and injury suffered and yet to be suffered by her, as well as damages yet to be determined by the court.

3. The claims of Plaintiff and the Foundation rest upon the actions, or at least the omissions, of the State of the Netherlands and the UN, within the framework of the implementation of, inter alia, UN resolutions 819, 824 and 836, to protect the enclave of Srebrenica declared by the UN as a 'Safe Area' and the civilians who found themselves there against the attacks by the Bosnian Serbs. In this the following matters – in a nutshell – are relevant:
   - the State of the Netherlands dispatched a battalion of soldiers to the Srebrenica Safe Area that proved not to be equipped, nor trained nor psychologically prepared to discharge the military duties assigned to it;
   - the promised humanitarian relief in the Srebrenica Safe Area failed or almost entirely failed to reach the civilian population;
   - despite prior knowledge that the Bosnian Serbs intended to overrun the Srebrenica Safe Area in July 1995, the required measures were not taken by the State of the Netherlands nor by the UN;
   - during the attack on the Srebrenica Safe Area, which lasted six days, there appeared to be no serious willingness to stop the Bosnian-Serb attack. What is more, military positions were surrendered by the UN troops without resistance. As was later

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established, the Bosnian Serbs decided to occupy the entire enclave only when they encountered no military resistance to their attack;

- every request by the inhabitants of the Safe Area for the return of weapons, which had previously been impounded, so that they could defend themselves, was resolutely dismissed by the UN troops. That refusal was repeatedly accompanied by the undertaking that the UN troops had personally assumed the defence of the Safe Area and that the UN troops would undertake the defence;
- air power was not consistently deployed or postponed. Shortly before the fall of the Safe Area the Close Air Support was obstructed by the State of the Netherlands itself. The UN would later conclude in respect of the failure of the Close Air Support to appear that even with the most restrictive interpretation of the mandate all the conditions for the deployment of Close Air Support had been met;
- the protection of the defenceless civilian population from the Serb troops following the fall of the Safe Area on 11th July 1995 was neglected, despite the fact that undertakings were given up to the last to protect it. As a result, the fact that hundreds of women were raped and murdered was not prevented and it was also not prevented that thousands of men and boys were systematically taken away, tortured and executed. Ultimately, between 8,000 and 10,000 refugees would die;
- war crimes were not reported despite the fact that the Dutch troops were witness to them. Even the detection of war crimes by military observers of the UN who were present in the Safe Area did not lead to the taking of any measures. Given that the majority of executions occurred in the days following the fall of the Safe Area and persisted for weeks thereafter, it is possible that many refugees could have been saved.

4. Plaintiff wishes to raise the following matters in support before moving to the formulation of her claims:

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I Facts

5. Plaintiff has, with respect to the facts, drawn to an important extent from the following sources:

- the Report of the Dutch Institute for War Documentation (NIOD), of 10 April 2002, entitled: '*Srebrenica, a 'safe' area'* (in Dutch '*Srebrenica, een 'veilig' gebied'*)'. That report is referred to as the '**NIOD Report**'. At the end of 1996 NIOD (then termed: State Institute for War Documentation (in Dutch '*Rijksinstituut voor Oorlogsdocumentatie'*) was charged by the Government of the Netherlands (at the time of the Kok-I cabinet) with compiling an inventory of the relevant factual material and ordering that material. The intention was that such ordered material would provide the base from which, from an historical perspective in both a national and international context, insight would be gained into the origins and events that led to the fall of the Srebrenica Safe Area and to the dramatic developments that followed from that. For the formulation of the assignment with accompanying conditions and regulations reference is made to Lower House, Assembly Year 1996-1997, 25069. A summary of the Report has also been published and reference to that will be to '**the Summary of the NIOD Report**'. Plaintiff notes with reference to the

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reporting by the NIOD that she has used the Reports as a source of facts. Plaintiff expressly does not endorse all the (political) choices and conclusions that the NIOD has drawn on the base of those facts. In the view of Plaintiff, the NIOD failed to draw conclusions on a number of essential matters where that should have been done. Where conclusions have in fact been drawn, frequently these have strikingly turned out generously for the UN and the State of the Netherlands, or they do not do justice to the facts.

- the Decision at first instance of 2 August 2002 given by the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (Yugoslavia Tribunal), against Radislav Krstic, and the decision on appeal of 19 April 2004, given by the 'Appeals Chamber' of the Yugoslavia Tribunal. These two decisions are referred to as: '**the decision of the Yugoslavia Tribunal in the case Krstic** (**at first instance,** or **on appeal,** respectively)';

- the Report of 22 November 2001 of a commission of the French Parliament (*Rapport d'information commune sur les événements de Srebrenica*). This commission investigated the responsibility of France for the events in Srebrenica. After the fall of the Safe Area doubts arose both within and outside France whether France had actually wanted to protect the Srebrenica Safe Area threatened by the Bosnian Serbs. The French Parliament took serious note that reproach, given that France had been an important supplier of troops and in Bosnia 56 French soldiers had lost their lives. The French commission investigated, inter alia, how, and why, the Safe Area defended by the UN could have fallen, despite the presence of UN soldiers, and how the greatest mass slaughter in Europe since the Second World War could have occurred, despite the presence of 35,000 UN soldiers in the former Yugoslavia. The Report is referred to as: '**the Report of the French Parliament**';

- the UN investigated the events around the fall of the Srebrenica Safe Area. The then Secretary-General of the UN, Kofi Annan, recorded that investigation and the conclusions on the errors that were committed in his Report of 15 November 1999:

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'*Report of the Secretary-General pursuant to General Assembly resolution 53/35, the fall of Srebrenica*'. This Report is referred to as: '**the UN Report**'. Plaintiff notes in respect of the UN Report that the International Court of Justice (ICJ) at The Hague in its judgment of 26 February 2007 determined that the UN Report had great authority;

- As a result of the events in Srebrenica a Parliamentary Commission of Enquiry was set up in The Netherlands on 5 June 2002. That commission was presided over by Mr. A.D. Bakker. The aim of the enquiry was to enable the House to pass political judgment on the role of the House, the Dutch government and the responsibilities of the civil service and the military in the run up to, during, and following the events in Srebrenica, in supplementation of, inter alia, the investigation conducted by the NIOD. This Report is referred to as '**the Dutch Parliamentary Enquiry**' (see, Lower House, Assembly Year 2002-2003, 28506);

- Moreover, a team of Dutch and Bosnian lawyers has spoken in detail with surviving relatives of the men, women and children murdered in the Safe Area, as well as with other concerned parties and witnesses. Furthermore, these lawyers together with some of the surviving relatives have repeatedly visited Srebrenica and Potočari where a significant part of the facts to be described below took place.
  Eleven persons made a statement about what they experienced at the fall of Srebrenica. Those statements are appended to this writ of summons as **Exhibits 1 through 11**.

I.1. The war in the former Yugoslavia

6. The former Yugoslavia was occupied during the Second World War by national-socialist and fascist powers. A civil war was then also raging. The parties accused each other of dreadful crimes. More than 1 million persons out of a population of 16 million lost their lives. When one views the victims by republic, then Bosnia Herzegovina was the worst affected with approximately10.3 % of its population dead (see page 65 of the NIOD Report).

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7. In the post-war Yugoslavia under Tito nationalism was discouraged whether or not by force and the emphasis lay on the unity of the communist state. With the exception of a relatively calm period from 1945 to 1980, the ethnic groups remained conscious of their separate identities.

8. The Socialist Federal Republic Yugoslavia (literally: South Slavia) consisted of six republics from 1945 to 1990, namely, Bosnia Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia. These republics were populated by divergent ethnic groups who sometimes formed the majority in the particular republic. For example, Serbia was populated in particular by Serbs, and Croatia in particular by Croats. In Bosnia Herzegovina, the area in which Srebrenica lay, several population groups were represented before the war in Yugoslavia, namely, Bosniacs (44%), Serbs (31%), Croats (17%) and others (8%). The territory of Yugoslavia was populated from time immemorial by these ethnic groups. Throughout the centuries there had been both peaceful co-existence as well as conflict. The conflicts had always been along those ethnic lines.

9. What had been warned of in the West since the death of Tito in 1980 happened at the end of the 1980s. Under the influence of the fall of the Wall and economic decline, Yugoslavia began to fall apart and friction arose along ethnic lines.

10. Slovenia and Croatia declared their independence in June 1991. A war followed in Slovenia that lasted 10 days, and in Croatia a war that lasted several months. Macedonia declared its independence in September 1991. The divergent ethnic groups in Bosnia Herzegovina began to prepare themselves for the struggle. The fat was in the fire when a referendum over the future of Bosnia Herzegovina was held. Attacks occurred and road blocks were set up by paramilitary organisations. The leader of the Bosnian Serbs, Radovan Karadzic, warned on 3 March 1992 that developments threatened in Sarajevo, '*which would make Northern Ireland look like a holiday resort*' (see page 518 of the NIOD Report). The Bosnian Serbs occupied some 70% of Bosnia Herzegovina in the months of March through June 1992. It was difficult to form an overall view or to

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follow the war that ensued because, amongst other things, the warring parties acted in alliances that could vary even from village to village.

11. The Serbs proceeded to engage in so-called 'ethnic cleansing' in 'their' areas of Bosnia Herzegovina (see page 538 et seq. of the NIOD Report and Chapters 6 and 7 of the NIOD Report entitled 'History and Reminders in East Bosnia'). Those cleansing operations were aimed at ensuring that only Bosnian Serbs remained in a given place. That was done by military and paramilitary forces (in the case of the Serbs often designated as '*Četniks*' or '*Chetniks*'), who forced the civilian population of other ethnic backgrounds to flee or harassed them to leave. It was often the case that people were imprisoned in camps and/or killed.

12. The Yugoslav People's Army (or: JNA, *Jugoslavenska Narodna Armija*), which was dominated by Serbs, began in the autumn of 1991 to arm strategically situated villages in East Bosnia. That also happened in the Municipality of Srebrenica. In Srebrenica Town itself the Bosniacs temporarily retained the upper hand. The most important cities in East Bosnia were brought under Serb control and hundreds of Bosniacs were arbitrarily murdered in that process. Thereafter, the Serb attention focused on taking control also of those villages and cities in East Bosnia with a Bosniac majority. That occurred, for example, in Bratunac, a small city less than ten kilometres from Srebrenica, at the beginning of April 1992. The local police force was divided between Serbs and Bosniacs, whereupon the town was overrun by Serb military and paramilitary forces and effectively came under Serb control. Then the local TV-masts were blown up to ensure that the civilian population could only receive Serb television channels. An ultimatum was given to the Bosniac authorities to leave the town, and those authorities subsequently fled the town (see page 1206 of the NIOD Report and page 37 of the Summary of the NIOD Report).

13. Despite the predominance of Bosniacs in and around Srebrenica, the Serb paramilitaries succeeded within a few weeks in bringing a significant part of East Bosnia under their control, including Srebrenica (see page 5, point 13 of the decision of the Yugoslavia Tribunal at first instance). The Bosniacs began slowly to unite forces and in May 1992

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succeeded in retaking Srebrenica and the surrounding areas. Attacks by both sides then followed. The enclave had been compressed from 900 to 140 square kilometres by January 1993 and the civilian population in Srebrenica had grown to between 50,000 and 60,000 persons. This included a large number of refugees from the villages and smaller towns around Srebrenica. Reports of terror acts against civilians circulated on both sides during the succeeding months. Groups of Bosniacs in reaction to the terror organized violent sorties against Serb villages in the areas surrounding the enclave and Serb settlements and houses were plundered and burnt to the ground without respect for person. These sorties took on the character of raids as the food situation in Srebrenica increasingly became more acute. Between April 1992 and March 1994 there were at least 1,000 Serb civilian victims, while in the same period some 2,000 Bosniacs died in and around the enclave (see pages 189 and 190 of the NIOD Report, 'History and Reminders in East Bosnia').

14. The then commander of the 'UN Protection Force' ('UNPROFOR'), the French General Ph.P.L.A. Morillon, visited Srebrenica Town in March 1993. In Morillon's view East Bosnia was dominated by more hate than anywhere else, without exception (see page 904 of the NIOD Report). The city was by then under heavy siege and overpopulated. The advancing Serb armed forces had destroyed the city's water supplies and there was virtually no running water. Electricity could still be generated but only by diesel generators. There was a lack of essentials such as food and medicine. The inhabitants suffered greatly under the almost daily gunfire and shelling. People died from hunger and cold. According to a Report by the British doctor, S. Mardel of the World Health Organization (WHO), who managed to reach Srebrenica on 6 March 1993, there were then some 2,000 sick in Srebrenica, 40 people a day were dying and about 900 children and their parents were homeless (see page 915 of the NIOD Report). Meanwhile, the VRS (*Vojska Republika Srpska*, the army of the Bosnian Serbs) attacked Srebrenica. Morillon later described the situation in Srebrenica as 'a hell' (see page 1222 of the NIOD Report and page 77 of the Summary of the NIOD Report). Morillon, under the influence of what he had encountered in Srebrenica, declared in March 1993 before a multitude of Bosniacs (see the Report of the French Parliament, Part I, pages 17/18):

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'*Vous êtes maintenant sous la protection the l'ONU (...) je ne vous abandonnerai jamais*'

[Lawyer's translation:
You are now under the protection of the UN (…) I will never abandon you.];

and in other sources, such as page 77 of the Summary of the NIOD Report:

'*I will never abandon you.*'

and further at number 38 of the UN Report:

'*Prior to departing, he addressed a public gathering in Srebrenica, telling them that they were under United Nations protection and that he would not abandon them.*'

15. The situation in the enclave deteriorated on 12 April 1993, when at least 56 persons were killed and 73 were seriously wounded during a bombardment by Bosnian Serbs, including 15 children playing football on a school playground. One eyewitness, a co-worker of the United Nation High Commissioner for Refugees (UNHCR), wrote that the ground was bathed in blood, that human remains were caught in the fence and that a child was decapitated (see page 1219 of the NIOD Report).

16. By the middle of April 1993 the Bosnian Serbs had approached to some 1,800 metres of the city centre of Srebrenica and Srebrenica was on the point of falling into Bosnian-Serb hands. The generally-held opinion was that this would lead to a blood bath because of the feelings of revenge of the Serbs due in part to what had been done in the first year of the war by the Bosniacs. Even the then Serb President, Slobodan Milosevic, foresaw a mass slaughtering of the Bosniacs should Srebrenica fall (see pages 1219 and 2891 of the NIOD Report). The Report of the French Parliament, Part I, page 19 states:

'*le général Morillon rencontrait longuement Milosevic et lui indiquait que la chute the Srebrenica entraînerait des massacres épouvantables, compte tenu des lourds*

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contentieux entre les deux communautés dans la region. Milosevic semblait le savoir puisque David Owen raconte que celui-ci a dit au cours d'une coversation téléphonique tenue le 16 avril 1993 qu'il ne fallait pas que Srebrenica tombe car les massacres y seraient épouvantables, ceci soulignant le caractère spécifique the la situation dans cette région.'

[Lawyer's translation:
'General Morillon had a lengthy meeting with Milosevic and pointed out to him that the fall of Srebrenica would lead to dreadful massacres given the great differences between the two communities in the region. Milosevic appeared to know this, for David Owen recalled that during a telephone conversation on 16 April 1993 he [Milosevic, lawyer's note] had said that Srebrenica must not fall because otherwise dreadful massacres would take place, which was underscored by the specific character of the situation in this region.']

17. Milosevic's statement to Owen that a Bosnian-Serb capture of Srebrenica would lead to a blood bath is also contained in the NIOD Report (see page 2891). That thought was also widely present among Bosniacs, which later, at the time of the fall of the Safe Area, prompted them to flee in great numbers. It was borne in mind that the VRS would wreak vengeance for the murders committed in 1992 and 1993 by Bosniacs in Serb villages (which in turn led to the response of Serb massacres and ethnic cleansing) (see page 2479 of the NIOD Report).

18. The international community, most particularly the UN, decided, against the background outlined above, to create the so-called 'Safe Areas', inter alia, in the area around Srebrenica Town.

I.2. UN resolutions

19. Before examining further the relevant passages in the various UN resolutions of the Security Council, Plaintiff will provide below a brief survey of the resolutions that relate to the United Nations Protection Force (see Dutch Parliamentary Enquiry, page 26):

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- UN resolution 713 (25 September 1991): promulgation of a weapons embargo against all parts of the former Yugoslavia;
- UN resolution 743 (21 February 1992): establishment of a United Nations Protection Force (UNPROFOR);
- UN resolution 758 (8 June 1992): enlargement of UNPROFOR's duties with responsibility for the unimpeded provisioning of Sarajevo and other areas in Bosnia;
- UN resolution 770 (13 August 1992): approval of the use of '*all necessary measures*' for the provision of humanitarian relief;
- UN resolution 781 (9 October 1992): establishment of a no-fly zone over Bosnia to counter disruption of humanitarian flights to Sarajevo and bombing by Bosnian Serbs;
- UN resolution 816 (31 March 1993): authorization by the Member States, with reference to Chapter VII (*peace enforcement*) of the UN Charter, to enforce the no-fly zone over Bosnia;
- UN resolution 819 (16 April 1993) and UN resolution 824 (6 May 1993): establishment of the Safe Areas under Chapter VII of the UN Charter, which, according to the Dutch Parliamentary Commission of Enquiry, was a hybrid of peacekeeping and peace enforcement;
- UN resolution 836 (4 June 1993): establishment of the levels of violence in respect of the Safe Areas, based on Chapter VII of the UN Charter;
- UN resolution 844 (18 June 1993): choice by the UN Security Council in favour of the 'light variant' (a military force of 7,600 personnel) and re-confirmation of the possibility of Close Air Support in order to discharge the mandate;
- UN resolution 1004 (12 July 1995): condemnation by the Security Council of the Bosnian-Serb aggression and demand for withdrawal of the troops from the Srebrenica Safe Area.

20. In the interest of clarification, Plaintiff notes that the UN Charter distinguishes between different types of peace operation. Under Chapter VI of the Charter peaceful resolution of disputes is understood as being without military means (peacekeeping). The UN also recognises operations under Chapter VII of the Charter, under which fall purely military

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operations in the interest of international peace and security, thus peace enforcement (see page 58 of the Summary of the NIOD Report). Plaintiff will below examine further the UN resolutions that relate to the Safe Areas and their protection.

Introduction to the concept of Safe Area

21. The concept of Safe Area is introduced in Article 1 of UN resolution 819 of 16 April 1993:

'The Security Council (…)

demands that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any hostile act.'

This definition was repeated in UN resolution 824 (1993). In anticipation of the future course of this writ of summons Plaintiff states here already that – given the fall of the Srebrenica Safe Area and the 8,000 to 10,000 murdered persons – the liability of the UN is a given in the light of the undertaking of Morillon described above on behalf of the UN and the UN resolutions that here follow. The UN is in that connection guilty of an attributable failing or at least of acting unlawfully towards Plaintiff. The way in which the UN voted for the protection of the civilians and the maintenance of the Safe Areas will be examined below. What is first and foremost postulated is that the UN itself voted for the means and the manner of performance of its undertakings. Whatever excuses may be inherent in the choice of the means and performance, these lie exclusively within the sphere of influence of the UN (and the State of the Netherlands, that later became directly involved by the dispatch of the Dutch battalion, termed Dutchbat) and not within the sphere of influence of the civilians who were entitled to rely on the promises of safety. Plaintiff will further examine below the text of the resolutions and the commentary thereto of the then Secretary-General of the UN.

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Text of the UN resolutions and Commentary of the Secretary-General

22. In his statement of 9 May 1994 on the above UN resolutions the then Secretary-General (Boutros Boutros-Ghali) described the Safe Areas (on the base of UN resolutions 819 and 824) as follows:

'*No. 2*
…The Safe Areas were envisaged to be areas free from armed attacks and from any other hostile acts that would endanger the well-being and the safety of their inhabitants and where the unimpeded delivery of humanitarian assistance to the civilian population would be ensured.'

23. The mandate relating to the Safe Areas and the assistance to the civilian population was extended by UN resolution 836 (1993). The most important passages in that resolution are:

'The Security Council (…)
No. 4:
Decides to ensure full respect for the Safe Areas referred to in resolution 824 (1993);

No. 5:
Decides to extend to that end the mandate of UNPROFOR in order to enable it, in the Safe Areas referred to in resolution 824 (1993), to deter attacks against the Safe Areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1991) of 14 September 1992;

No. 9:
Authorizes UNPROFOR, in addition to the mandate defined in resolutions 770 (1992) of 13.8.1992 and 776 (1992), in carrying out the mandate defined in paragraph 5 above, acting in self-defense, to take the necessary measures, including the use of force, in reply to bombardments against the Safe Areas by any of the parties or to armed

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incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys;

No. 10:
Decides that, notwithstanding paragraph 1 of resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the Safe Areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate set out in paragraph 5 and 9 above;'

24. In addition to protection of the territory of the Safe Area the UN ought also to protect the civilian population of the Safe Area. The preamble to UN resolution 836 (1993) stated in that connection:

'Determined to ensure the protection of the civilian population in Safe Areas and to promote a lasting political solution,(…)'.

25. The Secretary-General expressly cited the protection of the civilian population as a goal in his statement of 9 May 1994 (page 5, V *The way ahead*):

'No. 16.
There has existed a certain ambiguity as regards UNPROFOR's mandate in the Safe Area: is its role to defend a geographically defined Safe Area or is it to deter, through its presence, attacks on the civilian populations living therein? The Security Council clearly intended the latter, but a perceived lack of clarity of intent may have contributed to misunderstandings and false expectations, by both warring parties and by the international community, of UNPROFOR's responsibilities in Gorazde. Based on a careful analysis of Security Council resolutions 824 (1993), 836 (1993), 844 (1993) and 913 (1994) as well as relevant reports of the Secretary-General, UNPROFOR understands its mission as follows:

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To protect the civilian populations of designated Safe Areas against armed attacks and other hostile acts, through the presence of its troops and, if necessary, through the application of air power, in accordance with agreed procedures.'

'No. 22
"Should UNPROFOR determine that activities in those Safe Areas pose a threat to their populations, then it will act in accordance with its responsibilities, in close cooperation with the NATO.'

26. The Secretary-General confirmed in his statement that the use of force both for self-defense and for the defense of the civilian population in the Safe Areas was permitted:

'No. 17
…Should UNPROFOR's presence prove insufficient to deter an attack, it could be required to resort to close air support to protect its own members or to request air strikes to compel an end to the attack of the Safe Areas.'

27. The Secretary-General subsequently concluded in his statement that the concept of the Safe Areas had to be adapted. The Secretary-General wished to protect the civilian population but also to remain impartial, without, however, impeding the possibility of thereby using force:

'No. 24
In my view, the successful implementation of the safe-area concept requires the acceptance of three overriding principles:

(a) That the intention of Safe Areas is primarily to protect people and not to defend territory and that UNPROFOR's protection of these areas is not intended to make it a party to the conflict;
(b) That the method of execution of the safe-area task should not, if possible, detract from, but rather enhance, UNPROFOR's original mandates in Bosnia and Herzegovina, namely supporting humanitarian relief operations and contributing

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to the overall peace process through the implementation of cease-fires and local disengagements;

(c) That the mandate must take into account UNPROFOR's resource limitations and the conflicting priorities that will inevitably arise from unfolding events.

(…)

'No. 25

The UNPROFOR approach outlined above would more clearly define the geographical limitations of the Safe Areas, UNPROFOR's responsibilities therein and the obligations of the warring parties with respect to them. This approach is a manifestation of UNPROFOR's resolve to protect civilian populations, regardless of ethnic background. It is not, however, UNPROFOR's intention to defend territory nor to enter the fray as a belligerent. UNPROFOR has ba, is and must remain impartial. If UNPROFOR must have recourse to force, this will be in clearly defined circumstances, triggered by the actions of one or another party to the conflict.'

(…)

'No. 30

Safe Areas can be made somewhat more effective and manageable. On the other hand, because of difficulties in their implementation as well as their limited effect, it must be recognized that Safe Areas do not in themselves represent a long-term solution to the fundamental conflict in Bosnia and Herzegovina, which requires a political and territorial solution. I therefore view the safe-area concept as a temporary mechanism by which some vulnerable populations can be protected pending a comprehensive negotiated political settlement. In this respect, UNPROFOR's protection of the civilian population in Safe Areas must be implemented so as to provide a positive contribution to the peace process, and not to detract from it.'

Interpretation of the text of the UN resolutions and Commentary of the Secretary-General

28. As appears from the above, the Secretary-General expressly declared that the aim was to protect the civilian population in the Safe Area and not only the territory. It would be

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unimaginable that the UN would protect a given territory only with the sole intention of protecting the land. The land serves the people, after all, and not the other way round. Territory is only a derived interest from the interest of the people who find themselves within that territory.

29. It follows further from the UN resolutions that Close Air Support could be used to protect the civilian population of the Safe Areas and UNPROFOR against attack. Number 10 of UN resolution 836 provides that use of air power is permitted to support UNPROFOR in the performance of its mandate as defined in Numbers 5 and 9 of the UN resolution. Numbers 5 and 9 see as the objective of the Safe Area that attacks against the Safe Area will be deterred, and also that force is permitted for the protection of humanitarian convoys. Air support may therefore be used to deter an attack on the civilian population and to protect humanitarian convoys.

30. To reiterate here, the question of the way in which the UN determined its means is not relevant for Plaintiff. What is determinative is that the UN promised the civilians of Srebrenica protection and that the UN itself determined what means of protection should be used. As has been raised above and will be examined still further below, the issue is whether, in making those decisions, the UN was fully cognizant of the extent of the explosive situation, most particularly of the violent past history, of the crimes committed and alleged on both sides since 1991, and of the catastrophic humanitarian situation.

31. The responsibility of the UN for the protection of the civilians and the territory is also recognised in the NIOD Report. On that matter the NIOD Report states on page 1223:

'*In his statement of 14 March, Morillon placed great responsibility on UNPROFOR and the United Nations. (…) The Bosnia-Hercegovina Commander now forced the peacekeeping mission to protect an area and its inhabitants.*'

I.3. Rules of engagement

32. The so-called 'rules of engagement', the rules that determine when UNPROFOR might use force, have been kept secret from Plaintiff. Plaintiff requested the rules of engagement from the State of the Netherlands (**Exhibit 12**) and from the UN (**Exhibit**

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13). The State of the Netherlands and the UN declined to grant access to those documents (**Exhibits 14** and **15**). Plaintiff therefore lodged a so-called WOB-application under the Government Freedom of Information Act (in Dutch '*Wet Openbaarheid Bestuur*') in order to gain the desired and necessary insight. That application was refused on 6 October 2006, against which decision Plaintiff lodged an objection on 23 October 2006. That objection was denied on 20 February 2007. Plaintiff has meanwhile lodged an appeal to the court. The situation that here arises is that the State of the Netherlands and the UN are possessors of evidentiary material and do not wish to furnish insight into that evidence. That circumstance should be interpreted against the State of the Netherlands and the UN.

33. The rules of engagement result from the mandate founded on the UN resolutions and ought here to cause justice to be done. The rules of engagement arise – in brief – as follows. The military staff of the Department of Peacekeeping Operations *(*DPKO*)* of the UN proposes a draft of the rules of engagement, based on the instructions on the use of force. This draft is then submitted to the political department of the DPKO, which incorporates any necessary additions and/or amendments into the draft. The rules of engagement must be examined for compatibility with international (humanitarian) law. The draft of the rules of engagement is then submitted to the Force Commander (the military commander-in-chief of the mission), who must judge whether the proposed rules of engagement are workable. The draft thus achieved is then returned to the legal department of the DPKO. If there are no comments or remarks and the rules of engagement can definitively be established, they are submitted to the Under-Secretary-General for Peace Operations for signature. Upon receiving that signature the rules of engagement are formally binding and UN troops must act in conformity with them.

34. The NIOD (in contrast to Plaintiff) was given access to the rules of engagement, with the result that the arguments of Plaintiff are perforce based on what the NIOD states thereon in its Report. On the rules of engagement the NIOD Report states on page 2360:

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'The Rules of engagement, including rules for when UNPROFOR was allowed to open fire, were intended to set limits to the use of force and to indicate in which situations force could be used.'

35. Plaintiff again adopts the principal position that these rules were drawn up by the UN. Plaintiff had no influence on the creation, the content and the execution of those rules. Plaintiff has been placed in a difficult situation in respect of any discussion of the rules of engagement because they have been kept secret. Taking everything into account should lead in the view of Plaintiff to a reversal of the burden of proof. The UN and the State of the Netherlands should make the content of the rules of engagement public and demonstrate that these rules were sufficient, or at least that these rules were correctly applied. For the present it must be concluded – given the fact that there was no question of any military action on the part of the UN and the State of the Netherlands despite the obstruction of the humanitarian convoys, the capture of the observation posts, the fall of the enclave and the murder of 8,000 to 10,000 refugees – that the rules drawn up by the UN and the State of the Netherlands were inadequate, alternatively that these rules were not correctly observed.

36. As has been set out above and as is also expressed in the NIOD Report on pages 2363 and 2364, the UN also had the task of protecting the civilian population of the enclave. It is concluded on page 2365 of the NIOD Report that the rules of engagement actually permitted force to be used only for self-defense. In the light of the situation outlined above and the mass slaughter to be expected should the Safe Area fall, as well as in the light of the crucial significance of the observation posts (yet to be discussed), that is a fault imputable to the UN and the State of the Netherlands. Where that is of importance Plaintiff will examine below what is known regarding the rules of engagement. In particular, Plaintiff will return to the fact that the Dutch troops stationed in Bosnia were under a duty to report war crimes or the suspicion thereof. As will appear, that duty was seriously neglected.

37. Summarising the above, the UN should have protected both the civilians in and the territory of the Srebrenica Safe Area. In addition, the UN should have protected the

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humanitarian convoys. The operational order to the UN troops stationed there comprised, inter alia, the protection of and care for the civilian population, improvement of the living conditions of that population, and the provision of military assistance to the humanitarian operations of UNPROFOR (see page 1361 of the NIOD Report).

38. The protection of the territory of the Safe Area in East Bosnia (**Exhibit 16** - map page 141 of the Summary of the NIOD Report), and the inhabitants, was crystallized by the establishment of 15 observation posts (OPs). In addition, two bases (or: '*compound*', see page 1337 of the NIOD Report) were established for UN soldiers (**Exhibit 17** - map page 212 of the Summary of the NIOD Report), a smaller one in Srebrenica Town and a larger one in a nearby hamlet, Potocari. Dutchbat sought to perform the tasks assigned to it by means of access and road checks, patrols, and observation posts. No heavy weapons were permitted within the Safe Area. UNPROFOR was to seize and store the weapons within the Safe Area. Dutchbat also performed that task. In practice the demilitarisation amounted only to the disarming of the civilian population in the Safe Area. Plaintiff refers to the photograph on page 1245 of the NIOD Report to illustrate the supervision of the disarmament. Three battalions of the Air Brigade, each consisting of 900 to 1,000 personnel (comprising approximately 50% infantry and approximately 50% support personnel), stayed in the Srebrenica Safe Area in succession between March 1994 and July 1995. The following were deployed in succession: Dutchbat I (from March 1994 to July 1994), Dutchbat II (from July 1994 to January 1995) and Dutchbat III (from January 1995 to July 1995). The realization and implementation of the decision to participate in the UN mission will be examined further below.

I.4. The Dutch contribution: Dutchbat

39. The Dutch contribution to the UN mission, in the form of a battalion of soldiers, termed 'Dutchbat', was a complete failure. The manner in which the Dutch decision to participate in this mission came about and the preparation for the mission, was characterized by (political) overconfidence and a lack of (military) insight and knowledge. Briefly, it concerned the following points:

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1. the decision to join in the UN mission was not, or at least not sufficiently, thought through. The decision was motivated by the hope that if The Netherlands were to provide troops, other countries would certainly follow. There was no discussion of the decision in Cabinet. Due to blunders in communications between the Ministry of Defence and the Ministry for Foreign Affairs no conditions were placed on the Dutch participation, and this while Dutchbat was burdened with the most dangerous and explosive part of Bosnia;
2. the choice of the Air Brigade was ill-considered. That choice was taken even before it was known to which area in Bosnia the Dutch troops would be dispatched. The choice in favour of the Air Brigade was motivated, moreover, by the political desire to place this new unit of the armed forces in the limelight;
3. a choice was made in favour of light weaponry partly due to the political motive not to allow the Air Brigade to appear too much like a regular armoured infantry battalion. The fear at the Ministry of Defence was that the deployment of heavier materiel would also endanger the subsequent purchase of helicopters for the Air Brigade. In addition, the State of the Netherlands hoped that this issue of weaponry would not provoke the Serbs;
4. the soldiers who were dispatched had received only poor training and preparation, were inexperienced and there was virtually no *esprit de corps*;
5. there was no or virtually no exchange of experiences with the Canadian Battalion, Canbat, the battalion that was relieved by Dutchbat. No risk-analysis had been conducted nor was any military intelligence gathered, while, for example, offers by the US to supply intelligence were resolutely rejected.

These points will be amplified below.

Realization of the decision in favour of the Dutch contribution

40. Feelings of impotence regarding the situation in Yugoslavia predominated in the Netherlands during 1992. There was no international support for a more far-reaching military intervention than just the escorting of humanitarian convoys. In the Netherlands, on the contrary, there was broad support to do ‘more’ against the war (see page 26 et seq. of the Dutch Parliamentary Enquiry), with an emphasis on the

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establishment of safe areas in which refugees would receive complete protection and which would lead necessarily to peace enforcement (see page 34 of the Dutch Parliamentary Enquiry). Accordingly, various parties argued in the Lower House as early as the end of 1992 for the establishment of 'safe areas', quite some time before Srebrenica would be declared a safe area by General Morillon. The then Chief of the Defence Staff, General A.K. van der Vlis, the highest Dutch military officer, meanwhile had his own thoughts and on 22 November 1992 stated in the television programme, *het Capitool*, that with the establishment of safe areas for refugees the line between peacekeeping and peace enforcement would be crossed, given that protection implied that people of one side would have to be protected against people of the other side. Van der Vlis thought that the realization of that objective would require a force of about 100,000 soldiers (see page 768 et seq. of the NIOD Report and pages 102 and 103 of the Summary of the NIOD Report).

41. The Netherlands exercised no influence on the decision to which area or Safe Area Dutchbat would be dispatched. What was known was that the Srebrenica Safe Area was the most dangerous and explosive part of Bosnia. There was, moreover, talk of a power struggle between the Ministry for Foreign Affairs and the Ministry of Defence, which led to a breakdown in the interdepartmental coordination that was required. These Ministries differed in viewpoint as to whether the Air Brigade should be deployed for a peace settlement (Ministry of Defence) or for protection in a Safe Area (Ministry for Foreign Affairs). Communication between the Ministries was inadequate. The desire of the Ministry of Defence to remain outside a Safe Area and not to go to Srebrenica was not communicated to the UN. A letter by the then Minister of Defence, Ter Beek, was blocked by the Ministry for Foreign Affairs. Instead, the UN was informed that the offer of the Air Brigade applied to the Safe Areas. That notification was jointly signed on behalf of the Ministry of Defence even though Minister Ter Beek was not informed thereof. The consequence was that the eventual offer to dispatch the Air Brigade was done without any conditions being attached thereto (see pages 115 and 116 of the Summary of the NIOD Report and see page 51 of the Dutch Parliamentary Enquiry). There was no discussion in Cabinet of the choice of location. The Cabinet had itself on 12 November 1993 promised a discussion on that matter. The area for deployment was

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actually taken note of only on 3 December 1993. Consequently, the curious circumstance occurred that no discussion took place in the Cabinet on the dispatch of Dutchbat to Srebrenica (see page 122 of the Summary of the NIOD Report).

Choice in favour of the Air Brigade

42. It can be deduced from the memorandum of priorities of the Ministry of Defence of 12 January 1993 that the Air Brigade would be the ideal candidate for *peacekeeping* operations as a result of the structure of that brigade in battalions and the possibility that those battalions could relieve each other (see page 881 of the NIOD Report). That is a remarkable argument that should not have been decisive. The fact that the battalions of the Air Brigade could relieve each other says in fact only something about the organisational structure of the brigade and did not entail that this unit was necessarily suitable to be deployed to the Srebrenica Safe Area.

43. The choice in favour of deployment of the Air Brigade preceded the moment when it was known that the Srebrenica Safe Area would be the place where the deployment would occur. That is decidedly remarkable. It is normal that the means are geared to the objective and not vice versa. Nevertheless, on 9 March 1993 a parliamentary debate took place in which the initial impetus was given to the deployment of the Air Brigade (see page 37 of the Dutch Parliamentary Enquiry). On 1 April 1993 Dutch diplomats abroad were issued with the instruction to, '*prepare minds for the deployment of the Air Battalion*'. The then Chief of the Defence Staff, Van der Vlis, experienced '*enormous*' pressure from the Ministry for Foreign Affairs to deploy the Air Brigade. It can furthermore be deduced that Van der Vlis had even considered resigning over that matter (see Dutch Parliamentary Enquiry, Lower House, Assembly Year 2002-2003, 28 506, no. 5, page 135 and page 139,).

44. The choice in favour of a lightly armed army unit, namely, the Air Brigade, was made entirely as a result of domestic political considerations. That unit had just been set up and was busy recruiting soldiers. There was a need to allow the Air Brigade to show what it could do. Lieutenant-General Schouten, Commander of the First Army Corps,

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under which the Air Brigade fell, considered the choice detrimental to the further recruitment of the Air Brigade as it (see page 112 of the Summary of the NIOD Report):

'after two and a half years had not progressed further than a small exercise on the Ossendrecht heath and a small exercise in Greece.'

However, the then Commander of the Air Brigade, Major General J.W. Brinkman, was eager in the summer of 1993 to deploy 'his brigade' (see pages 112 and 114 of the Summary of the NIOD Report).

Armament

45. The Air Brigade was lightly armed. The so-called YPRs or APCs or AIFVs (Armoured Personnel Carriers or Advanced Infantry Fighting Vehicles) that were deployed were intended only as '*battlefield taxis*' and not to take part in the fighting. These APCs were furthermore lightly armed. In place of the heavier possibilities of a 25mm gun or the so-called TOW anti-tank missile launcher, for example, the choice was made for the outdated .50 machinegun that had been in use since 1950 (see page 1122 of the NIOD Report). The decision on armament was taken, moreover, at a very early stage, even before it was known that the unit would be deployed in Srebrenica (see page 1123 of the NIOD Report).

46. The choice in favour of light armament was criticized both within the Netherlands and abroad. There was pressure from the Lower House (see page 1128 of the NIOD Report) and from the then Bosnia Herzegovina Commander, Lieutenant-General F. Briquemont, for heavier armament (see page 1124 of the NIOD Report). By using light armament the Ministry of Defence wished, however, to preclude the Air Brigade resembling a regular armoured infantry battalion, with the result that the necessity for the procurement of helicopters might possibly disappear. It was precisely those helicopters that in the view of the Ministry of Defence made the Air Brigade so special and had consequently played such an important role in the recruitment campaigns for the brigade. If they were not to materialize that would diminish the charisma of the unit (see page 125 of the Summary of the NIOD Report). Moreover, other countries that were supplying soldiers to

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UNPROFOR, including France and Denmark, had in fact chosen for heavier armaments. To repeat, the choice in favour of light armament was a Dutch choice, for which The Netherlands was responsible. In no case can the light armament be the beginning of a disculpation for the non, or at least inadequate, protection of the civilian population. Plaintiff takes as an illustration the armament of the Scandinavian UN battalion, Nordicbat, that was stationed around Tuzla, and which had a Danish tank squadron available to it. From this it emerges likewise that heavier armament by Dutchbat was not only desirable and necessary, but had even been possible.

47. A political discussion on the armament of Dutchbat arose. A motion was tabled in the Lower House in the middle of May 1993 in which the Government was requested, '*to render the Air Brigade fit for action in foreseeable UN operations by operational battalions without delay and also to provide adequate training and instruction with heavier materiel, including armoured vehicles.*'.

The government parties replied to this that they wished to be able to make a contribution also to peace enforcement (see page 106 of the Summary of the NIOD Report). This met with the customary resistance from the Ministry of Defence. A highly-placed official is quoted on page 107 of the Summary of the NIOD Report who complained in response to this:

'*What sort of foolishness is that? Deploy the Air Brigade in Yugoslavia as a sort of armoured division? That is the same as saying to a volleyball team shortly before the Olympic Games: we would rather that you played icehockey.*'

48. The established lack of armour was brushed aside. The Chief of the Defence Staff, Van der Vlis (who had originally expressed his objections to the mission and had claimed that the deployment of certainly 100,000 soldiers would be required), said that the deployment of armoured transport vehicles would make the Air Brigade look too much like a normal armoured infantry battalion and that had (see page 104 of the Summary of the NIOD Report):

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'*a negative image and would discredit the credibility of and recruitment to the Royal Netherlands Army. This solution must therefore also be strongly discouraged*.'

49. In the political discussion that arose in regard to the armament of the Air Brigade, the then Minister of Defence, Ter Beek, mentioned, moreover, as an argument that heavier armament could provoke agression. A Member of Parliament recalled that the Government had promised, however, that a forceful action would be possible (see page 125 of the Summary of the NIOD Report).

50. Despite all of this and against better judgement, the decision was adhered to deploy the Air Brigade in Bosnia with light armament.

Training and experience

51. The training of Dutchbat was seriously inadequate. There were waiting lists for certain courses and training. That meant that not everyone could pursue the required instruction. It was often the case that elements of the instruction programme had to be skipped. These problems were greater in the case of Dutchbat II and even greater in the case of Dutchbat III (see page 135 et seq. of the Summary of the NIOD Report). Consequently, a considerable time was required to get suitable professional soldiers. Moreover, the military was assembled from as many as 80 different support units, with a resulting absence of any *esprit the corps*. In addition, the soldiers were very young and had '*life experience 0.0*', in the words of Dutchbat III Commander, Karremans. Moreover, no lessons were drawn from the start-up problems of Dutchbat I and use was not made of the experiences better to prepare the succeeding battalions (see page 137 of the Summary of the NIOD Report).

52. The training and instruction that Dutchbat did get appeared to be of a particularly peculiar standard. An attempt was made in the final exercise conducted by Dutchbat III, by the name of Noble Falcon, to simulate the situation in the Safe Area as far as possible. The report thereof in the NIOD Report reads as follows (see page 138 of the Summary of the NIOD Report):

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'In order to be true to the reality of the situation it was required of those who played the role of the local population during the final exercise that they so fully play their part (for example, by much begging), that the members of Dutchbat III became seriously annoyed by it. This picture fits seamlessly, though, with what this battalion was told during the training by Major De Ruijter of the Military Intelligence Service: that the civilian population consisted of 'pure scum'.'

53. It cannot be determined to what extent the prejudice expressed during the training contributed to allowing an anti-Bosniac attitude to exist amongst the Dutch soldiers (see page 165 of the Summary of the NIOD Report). What has subsequently been established is that elements of Dutchbat III were associated with rightwing extremist behaviour. This was extensively investigated by the Military Intelligence Service of the Royal Netherlands Army (a highly-ranked officer of which service had described the civilian population during the training as '*pure scum*', as noted above) and the Public Prosecutor's Office. The investigation revealed that there had been various incidents with a right-wing extremist character (see page 165 of the Summary of the NIOD Report). It was evidently necessary for Dutchbat III Commander Karremans also that an investigation be instituted into breaches of conduct by Dutchbat (see page 1619 of the NIOD Report). Those breaches of conduct allegedly consisted of rapes, harassment and demeaning the civilian population, as well as abuse of alcohol and weapons. Children were even maliciously enticed into minefields by throwing sweets into them so as to allow the soldiers to check in this way whether the area was safe for themselves (see page 1616 of the NIOD Report). What followed was merely an uncoordinated and limited investigation that produced no evidence. The investigation was founded on rumours and hastily produced reports, while the gravity of the accusations should have been occasion for a thorough investigation (see page 1631 of the NIOD Report and page 171 of the Summary of the NIOD Report).

Intelligence

54. A trio of Dutch reconnaissance missions went to Bosnia in the autumn of 1993. What is conspicuous is that none of those missions went to Srebrenica despite the fact that it was known at the time of the latest reconnaissance mission that the dispatch of Dutch troops

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would be to Srebrenica (see page 54 of the Dutch Parliamentary Enquiry). Major General Reitsma, Director of Operations of the Royal Netherlands Army, who led the Dutch reconnaissance group, would, however, advise The Hague after he had learnt that the Dutch soldiers would be deployed in Srebrenica to agree to that deployment. He regarded it as an 'honourable, not straightforward but certainly a performable task' (see page 121 of the Summary of the NIOD Report).

55. Dutchbat relieved a Canadian Battalion (Canbat). The íntelligence concerning the arrival of Dutchbat in the Safe Area was inadequate. The Air Brigade and the future Dutchbat were responsible for training and did not listen to UNPROFOR, which would have allowed for greater anticipation of what the battalion would encounter in Bosnia (see page 136 of the Summary of the NIOD Report). One can read on page 142 of the Summary of the NIOD Report that the Dutch Ministry of Defence did not take the protection of its own troops seriously. There was a failure to give weight to intelligence. According to the then Canadian Commander in Srebrenica, Lieutenant-Colonel J. Champagne, The Netherlands was barely interested in his account of the difficult situation in Srebrenica (see page 1067 of the NIOD Report and page 118 of the Summary of the NIOD Report). Even proposals of the United States, for example, to place advanced listening equipment at its disposal were resolutely rejected by the State of the Netherlands. There was no contact between the Canadian and Dutch governments concerning military matters. The Netherlands made not a single request to Canada for information prior to the Dutch troops arriving in Srebrenica. Dutchbat learned that the suspension of hostilities in the safe area was violated some 150 to 400 times a day only when it relieved Canbat. It subsequently appeared that Dutch politicians had not been aware of that fact (see page 122 of the Summary of the NIOD Report).

56. The NIOD Report devoted a separate part to the issue of intelligence (C. Wiebes, Intelligence and the War in Bosnia 1992-1995). The Ministry of Defence never requested, either prior to or during the deployment of Dutchbat, the Military Intelligence Service (MID) to compile a risk-analysis. The MID scarcely played a role in the conflict in Bosnia (see page 118 of the cited work of C. Wiebes). The NIOD concluded unsurprisingly that there was here an issue of poor intelligence, with the result that

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effective action during the fall was precluded in advance. The NIOD made reference in this connection even to an intelligence failure (see page 461 of the cited work of C. Wiebes).

I.5. Command Structure of UNPROFOR

57. The command structure of UNPROFOR at the time of the fall of the Srebrenica Safe Area will be examined below in the interest of a better understanding of the remainder of this writ of summons.

58. The formal chain of command began in UNPROFOR in Zagreb. Below that was the Bosnia Herzegovina Command in Sarajevo, also known as BiH command. Under that fell the Sector North East at Tuzla, which in turn gave orders to Dutchbat in Potocari/Srebrenica. This chain of command, with the relevant commanders, can be diagrammatically represented as follows:

UNPROFOR in Zagreb

- Force Commander - Lieutenant General B. Janvier (France)
- Chief of Staff - Brigadier General A.M.W.W.M. Kolsteren (The Netherlands)
- Head of Operations - Colonel J.H. De Jonge (The Netherlands)

Bosnia Herzegovina Command in Sarajevo

- Commander - Lieutenant General Sir R.A. Smith (England)
- Deputy Commander - Major General Gobilliard (France)
- Chief of Staff - Brigadier General C.H. Nicolai (The Netherlands)
- Assistant Chief of Staff - Lieutenant Colonel J.A.C. De Ruiter (The Netherlands)

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Sector North East in Tuzla

- Commander - Brigadier General H. Haukland (Norway)
- Chief of Staff and Deputy Commander - Colonel C.L. Brantz (The Netherlands)

Dutchbat III in the Srebrenica Safe Area

- Battalion Commander - Lieutenant Colonel Th.J.P. Karremans (The Netherlands)
- Deputy Battalion Commander - Major R.A. Franken (The Netherlands)

UNPROFOR in Zagreb

59. The Force Commander of UNPROFOR headquarters in Zagreb bore the responsibility for all military matters. All national military contingents fell under his command. The principal officers on the staff of the Force Commander were his deputy, and two chiefs of staff, one for operational matters and one for logistics and administrative matters. These two chiefs of staff were the Dutch officers, Kolsteren and De Jonge. The chiefs of staff were responsible for the daily conduct of affairs, including operations on the ground, in the air and planning and policy (see page 1179 of the NIOD Report).

Bosnia Herzegovina Command in Sarajevo

60. Bosnia Herzegovina Command was based in Sarajevo and was responsible for the Bosnia Herzegovina area. The usual staff divisions also came under the Bosnia Herzegovina Commander and his Chief of Staff (see page 1182 of the NIOD Report). At the time of the fall of the Safe Area Commander Smith was on leave. His position during this period was formally deputized by the French General, Gobilliard. As Gobilliard was busy with the developments in his ‘own’ sector of Sarajevo, he was only occasionally in a position to follow the developments at UNPROFOR headquarters. These various factors resulted in the Chief of Staff, the Dutch officer Nicolai, and his military assistant, the Dutch officer De Ruiter, being in charge during the fall of the Safe Area (see page 137 of the Dutch Parliamentary Enquiry).

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Sector North East in Tuzla

61. A Scandinavian battalion termed Nordicbat and Dutchbat fell under the command of Sector North East Tuzla. The Norwegian officer Haukland was on leave during the fall of the Safe Area. The Dutch Deputy Commander, Colonel Brantz, deputized for him. The position of military Chief of Staff, who commanded the five Staff Divisions, was always filled by a Dutch officer (see page 1185 of the NIOD Report).

Dutchbat in the Srebrenica Safe Area

62. The fourth link in the chain of command was Dutchbat in the Srebrenica Safe Area, with its most important base at the compound in Potocari, and a smaller base some kilometres distant at Srebrenica.

63. As appears from the above, and which will arise for further discussion below, the decision-making positions at all three levels above Dutchbat were filled by Dutch officers.

I.6. The fall of the Srebrenica Safe Area

The run-up

64. The most important observation post manned by Dutchbat (OP-E) fell into the hands of the VRS on 3 June 1995. Then the Srebrenica Safe Area fell following an attack of six days that was launched on 6 July 1995. Plaintiff will raise in this Chapter the issue of the operational actions of Dutchbat. Moreover, the period preceding the fall will also be discussed. The conclusion that follows from that is that the UN and Dutchbat seriously and culpably failed in the performance of their duties, and that failure ultimately made the genocide of between 8,000 and 10,000 refugees possible.

65. For the present Plaintiff notes that Dutchbat partly relied on the deployment of Close Air Support for the performance of its duties. A so-called double key was prescribed for the deployment of the air force, whereby the deployment of air power was made dependent on the permission of both the UN and NATO (NATO attended to the implementation of an airstrike). The procedure for requesting Close Air Support was designated ‘Blue

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Sword' (see page 2095 of the NIOD Report). Plaintiff states here already that the UN subsequently concluded that even with the most restrictive interpretation of the rules all the conditions for the deployment of Close Air Support had been met and that the decision on the use of force by deploying air power would have had to have been taken much sooner (in any event five days before the fall of the Safe Area) (see points 480 et seq. of the UN Report).

66. In the case and to the extent that the State of the Netherlands and the UN rely on the rules followed by them for the deployment of Close Air Support, for example, to rebut their liability, then in connection with the maintenance of secrecy regarding the relevant documents the burden of proof and the onus of proof should fall upon the State of the Netherlands and the UN.

Pressing situation in the Safe Area

67. The logistics of both Dutchbat and the civilian population of the Safe Area were squeezed in the course of the operational actions (see number 233 et seq. of the UN Report). A significant part of the supply line to Srebrenica ran through Bosnian-Serbian territory. Permits for supply convoys were refused by the Bosnian Serbs with increasing frequency. The Serbs had also ensured – by the compulsory prescription of certain routes – that four days were required to travel a distance of some 250 kilometres. Supplying Dutchbat became a structural problem from the summer of 1994. Only nine of the 38 requested convoys received permission to travel from the Bosnian Serbs. These matters resulted in a serious shortage of diesel oil, with the result that operational tasks (such as patrols) had to be carried out on foot. Even humanitarian relief was restricted. The then Battalion Commander, Colonel Everts, raised the serious consequences already at the time of Dutchbat II (see page 1421 et seq. of the NIOD Report). The lack of supplies meant that duties could only be minimally carried out.

68. There was talk of a general blockade by the VRS (see page 1426 of the NIOD Report). In addition, there were constant VRS attacks on the Safe Area (see page 1428 et seq. of the NIOD Report).

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69. It follows from the above that the UN and Dutchbat failed on a number of points. Neither the UN nor Dutchbat took action on the ground of the prevention of provisioning and supply of humanitarian relief, nor because of attacks on the Safe Area and its citizens. The UN and Dutchbat consequently failed in the performance of their undertakings and undermined their essential purpose in breach of the obligations of the UN resolutions by not enforcing the provision of supplies.

70. In addition to this, the failure to act led to a psychological effect amongst the Bosnian Serbs, who had little or no respect any more for the UN and Dutchbat, and this while an important element of action being taken by UNPROFOR lay precisely in the lack of respect that the warring parties had for the UN. General Manfred Eisele, retired, who was Assistant Secretary-General for Planning and Support of the UN in 1995, with reference to the failure to act of Dutchbat and the failure to enforce provisioning and assistance, referred to the armament of a battalion of Scandinavian countries, Nordicbat, that partly comprised tanks. Eisele declared further on that on 5 April 2002 in the Argos radio programme of the VPRO:

'*We could see that all the convoys with humanitarian relief supplies that were escorted by the Danes reached their destinations. The Danes put a tank in front of such a convoy and also a tank as last vehicle. These convoys reached their destination and thus achieved the objectives.*'

The success enforced by the Danes stood in stark contrast to the results of Dutchbat. At any given time only 10% of the relief reached the place of destination because the warring parties seized a part thereof underway as the price of allowing a convoy to pass (see page 101 of the Summary of the NIOD Report). As a result, relief supplies and provisions mostly ended up with the Bosnian Serbs, who used them to further the war.

71. In the spring of 1995 Dutch politicians were also expressing the view that Dutchbat was in a muddle. The Summary of the NIOD Report states at page 206 that the Commander of the Royal Netherlands Army, Lieutenant General Couzy, had previously advised against the dispatch of Dutchbat and that he found it unpleasant to be proved right after

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the event. The VVD party leader, Bolkestein, demanded that the 'muddling-through scenario' must be brought to an end.

72. The situation in the Safe Area deteriorated in the spring of 1995. The UN could provide only 30% of the food required in June 1995 (see page 1912 of the NIOD Report). Even the supplies situation within Dutchbat was exceptionally critical in the period May-July 1995 (see page 1916 of the NIOD Report). There was a serious shortage of, inter alia, fighting rations, ammunition and diesel oil. In addition, there was a shortage of toilet paper, and drinking water was rationed. Ammunition, diesel oil and food and water supplies are, of course, essential for the performance of military duties. In the meantime there was an increase in firing by the warring parties in the vicinity (see page 1919 et seq. of the NIOD Report). These matters did not, however, lead to the UN or the State of the Netherlands taking action or measures.

73. Anaesthetist Naval Captain Schouten noted in his diary regarding the distressing situation (see page 1930 of the NIOD Report):

''*The picture gradually emerged of the bankruptcy of the UN actions. The Serbs just do as they please, and the only thing we do in return is 'diplomacy' and 'conferences'.*'

Importance of the observation posts

74. Discussions were held in the final days of May 1995 on the position of the observation posts (**Exhibit 17 -** map, page 212 Summary of the NIOD Report). Withdrawing from a number of less important observation posts (OPs) was proposed in order to be able to defend the important observation posts. Everyone was agreed that the observation posts were of the greatest possible importance. In this connection the NIOD Report states on page 1991:

'*it had been doing all in its power for months to ensure that the OPs functioned as well as possible with the few resources they had at their disposal. At the same time, this was almost the only justification of Dutchbat's existence, because it was only from the OPs that a degree of protection could be offered to the population.*'

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75. Despite this realization that the OPs were of vital importance for the protection of the civilian population, preparations were taken in the night of 28 to 29 May 1995 to withdraw from six OPs, should that be necessary. On 29 May 1995 guidelines were issued by Lieutenant General R.A. Smith, Commander HQ UNPROFOR in Sarajevo, known as the Post Airstrike Guidance (**Exhibit 18)**, which, according to the NIOD Report, provided that OPs must remain manned until serious danger threatened (see page 1991 of the NIOD Report). The Dutch Parliamentary Enquiry (see page 186 thereof) also referred to the part of the Post Airstrike Guidance in which it was set out by Smith that the mandate was secondary to the safety of UN personnel. Point 7 of the stated:

'*I have been directed, today 29 May 1995, that the execution of the mandate is secondary to the security of UN personnel. The intention being to avoid loss of life defending positions for their own sake and unnecessary vulnerability to hostage taking. My interpretation of this directive is at paragraph 9b.*'

That instruction to General Smith, the origin of which is however unclear, if it were to be taken literally does not give the mandate its proper due, and consequently in that case could be in breach thereof. Plaintiff notes incidentally that a military officer cannot vary the mandate. Point 7 above refers on the issue of interpretation to point 9b of the Post Airstrike Guidance, which passage states:

'*Positions that can be reinforced, or it is practical to counter attack to recover, are not to be abandoned. Positions that are isolated in BSA territory and unable to be supported may be abandoned at the Superior Commander's discretion when they are threatened and in his judgment life or lives have or will be lost.*'

Plaintiff notes here for the sake of completeness that '*BSA*' refers to: '*Bosnian Serb Army*', in this writ of summons referred to as VRS.

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76. In the case of the observation posts none of the conditions for withdrawal (as summarised under point 9b of the Post Airstrike Guidance) were satisfied. An observation post is by definition a position that has already been strengthened, and which can be further strengthened (or: '*reinforced*' as meant in the quotation above). Observation posts can also be recovered. The observation posts formed part of the Safe Area and by definition did not lie within the Serbian ('*BSA*') territory, let alone that they were isolated *and* also that it was impossible to support them. There was also no question of any consideration by the Superior Commander that lives were in danger.

77. It follows from the above that on the ground also of the Post Airstrike Guidance the observation posts ought not to have been abandoned. On the contrary, the Post Airstrike Guidance gave precisely the order not to withdraw from those positions. All isolated positions in Serbian territory could be abandoned whenever lives were imperilled or lives had been lost. In the case in point there was no question of that. Any other interpretation of the Post Airstrike Guidance is incorrect. In spite of this, Dutchbat placed the emphasis incorrectly not on the defence of the observation post and thus on the civilian population of the Safe Area, but entirely on itself. No actual danger threatened Dutchbat, only the fear of coming into danger. During the entire attack on the Safe Area the VRS fired in the direction of Dutchbat merely to intimidate Dutchbat. The VRS later even admitted that (see pages 2106 and 2107 of the NIOD Report).

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Portents/prior knowledge of the attack on the Safe Area

78. Intelligence reached Duchtbat from 25 May 1995 that an attack by the VRS on the Safe Area was impending (see page 1989 of the NIOD Report).

79. General Manfred Eisele, retired, declared on 5 April 2002 in the previously cited radio programme, 'Argos':

'*The British UN Commander regularly informed us that the Serbs were making preparations for a possible attack on the Safe Areas. We received regular reports in New York on the situation on the ground that clearly showed that the Bosnian Serbs possibly wanted to attack the Safe Area.'*

Eisele confirmed with this statement an anonymous source within the Department of Peacekeeping Operations of the UN. That source told that pointers were available there already in March 1995 – inter alia, on the base of American satellite photos – that the Bosnian Serbs were preparing for a large-scale attack on Srebrenica. There were reports also from UNMOs (United Nations Military Observers), among others, of preparations at Bratunac, to the north of the Safe Area, regarding bunkers and pathways in the woods that were being constructed for troop reinforcements and tanks.

80. The Public Prosecutor of the Yugoslavia Tribunal, Mrs C. Del Ponte, has also expressed herself in similar terms in a recent Article in Paris Match (week 44, 2006, page 41 et seq.). She states (also cited in the radio broadcast of 22 December 2006 and 3 January 2007, 'De ochtenden, Argos') that the international community was aware that the Serb leaders (Milosevic, Karadzic and Mladic) intended to capture Srebrenica, but that the international community did nothing to prevent it. There was even a meeting at the White House at which the then American Vice-President, Al Gore, read out transcripts of tapped telephone calls between Milosevic and Mladic about the planned attack on Srebrenica. The UN Tribunal requested the phone tapping protocols, but did not receive them on the ground that these either did not exist or had been destroyed. Del Ponte did not believe this (see cited interview in Paris Match).

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81. The former Dutch Minister of Defence, Voorhoeve, also recently stated that at least two of the bigger permanent members of the UN Security Council knew around June 1995 that the Bosnian Serbs intended to overrun in the following weeks the three Safe Areas (Srebrenica, Gorazde and Zepa) in Bosnia (TV programme, 'Spraakmakende Zaken' of 9 July 2005 and in the radio broadcasts, 'De ochtenden, Argos' of 22 December 2006 and 3 January 2007).

82. American Diplomat and negotiator Richard Holbrooke stated in a TV interview, broadcast on 19 November 2005 in Sarajevo (and cited in the above radio broadcast, 'De ochtenden, Argos'), that he had instructions '*to sacrifice*' the Safe Areas. The UN with this knowledge decided for incomprehensible reasons to do precisely nothing (see also, Paris Match, loc. cit., page 44).

83. Plaintiff also notes finally in connection with the above that Dutchbat Commander Karremans reports in his book, 'Srebrenica: Who Cares', on page 149, that the British soldiers, who were attached to the Dutchbat battalion, had informed him on 8 June 1995 that the suspicion existed that within two weeks the VRS would attack all the Safe Areas. Even the ABiH (*Armija Bosna i Herzegovina*, the Bosnian Army) had notified Karremans of an impending attack. Karremans states in his book that he had passed various items of information up to the higher echelons.

84. The UN and Dutchbat did absolutely nothing with the above information, which is incomprehensible given the manifestly so evident signs.

Surrender of observation post E on 3 June 1995

85. The VRS (*Vojska Republika Srpska*, the army of the Bosnian Serbs) and the ABiH (*Armija Bosna i Herzegovina*, the Bosnian Army) met in battle on 31 May 1995 in the vicinity of OP-E (observation post E). The impression at Dutchbat was that the VRS had stage-managed incidents around OP-E in order to increase the pressure on Dutchbat (see page 1999 of the NIOD Report). The Commander of the Serb Drina Corps requested Battalion Commander Karremans on 1 June 1995 to withdraw from OP-E (see page 2001 of the NIOD Report). OP-E was of particular strategic importance for a number of

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reasons. OP-E lay at the junction of a three-forked road that controlled the southern access to the Safe Area. If the route through this access point could not be used by the Bosnian Serbs a detour would be necessary along the northern edge of the Safe Area. Moreover, the supply of drinking water to Srebrenica could be controlled from this point (see page 1996 of the NIOD Report).

86. Entirely in keeping with the importance of OP-E Dutchbat Commander Karremans had found it unacceptable that the VRS would cross the confrontation line. Karremans adopted the position that the OPs must be defended (see page 2000 of the NIOD Report).

87. On 3 June 1995 approximately 50 VRS soldiers were observed at OP-E. Some fifteen to twenty of them approached OP-E and using a megaphone instructed Dutchbat to withdraw from the OP within ten minutes. The VRS then surrounded OP-E. According to the NIOD Report (see page 2005) the Standing Order was for Dutchbat to set fire to the OP in the event of forced withdrawal. OP-E had been prepared for this but on the instruction of the responsible Dutchbat Company Commander that was not done. Close Air Support was requested during the taking of OP-E but that was refused by Bosnia Herzegovina Command in Sarajevo. This would be the first (but not the last) time that Close Air Support would be requested by Dutchbat III and which would be refused (see page 2005 et seq. of the NIOD Report). Plaintiff will examine extensively below the repeated non-appearance of Close Air Support. Plaintiff does not understand why no Close Air Support was provided on 3 June 1995 and why no attempt was even made to defend the observation post, and if that had not been possible, why the order to burn the observation post was not carried out. This attitude of doing nothing (which subsequently appeared not to be an incidental but rather an invariable pattern of conduct of Dutchbat) was subsequently heavily criticized abroad. The Force Commander, General Bernard Janvier, said the following of the Dutch actions in general in the French Parliamentary investigation (see page 123, Part 2, of the Report of the French Parliament):

‘*(...) si nous avions eu 400 Français à Srebrenica, cela aurait été totalement différent car nous nous serions battus. Les Néerlandais ont reçu l'ordre the se battre. Quand on*

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reçoit l'ordre the barrer une direction, on se bat, c'est la mission. Nous nous serions battus et tout aurait changé. Nous aurions manœuvré, replié les dispositifs extérieurs, mis and œuvre nos armes, comme les mortiers the 81. Chaque engin blindé est équipé d'une mitrailleuse the 50. Nous nous serions battus. Nous aurions réagi et je suis persuadé que nous aurions fait reculer les Serbes. Certes, il nous manquait, dans les forces des Nations unies, des moyens pour annihiler l'artillerie serbe. On l'a bien vu à propos du mont Igman. Lorsque nos mortiers ont été là pour écraser les Serbes, la chose a été différente.
Les Néerlandais avaient aussi des missiles anti-chars puissants : ils ne les ont pas utilisés. Ils avaient des lance-roquettes anti-chars : ils ne les ont pas utilisés. Je pense qu'ils auraient dû se battre, quoi qu'en dise le Report du Secrétaire général des Nations unies.'

[Lawyer's translation:
'(…) if we should have had 400 Frenchmen in Srebrenica, this would have been entirely different because we would have fought. The Dutch had received the order to fight. If you are given the order to block a certain position, then you fight, that is the mission. We would have fought and everything would have been different. We would have manoeuvred, the flanking positions would have withdrawn and strengthened, and we would have used our weapons like the .81 mortars. Every armoured vehicle is provided with a .50 machine gun. We would have fought. We would have responded and I am convinced that we would have driven the Serbs back. Naturally, our troops of the United Nations did not have the means to destroy the Serb artillery. We saw that only too well at Igman Hill. When we had our mortars to smash the Serbs, it was a different story. The Dutch even had powerful anti-tank weapons: they did not use them. The Dutch even had rocket launchers: they did not use them. I think that they should have fought, whatever the Report of the Secretary-General of the United Nations says on the matter.']

88. A meeting was held between Dutch Colonel Brantz and the Chief of Staff of the Second Corps of the ABiH (*Armija Bosna i Herzegovina*, the Bosnian Army) as a result of the capture of observation post E (OP-E) and the failure of any military reaction by Dutchbat. At that meeting the ABiH Chief of Staff stated that should another

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observation post be given up, the ABiH would take matters into their own hands. Colonel Brantz indicated that he understood the position of the ABiH but let it be known that Dutchbat was the only one who took those decisions. According to Brantz, Dutchbat was 'capable to do the job in the most proper way' (see page 2011 of the NIOD Report).

89. The fall of OP-E saw several thousand refugees forced to flee from the refugee camp, Swedish Shelter Project, near the OP-U, to Srebrenica (see page 2012 of the NIOD Report). The observation post constituted the only protection for the refugee camp against the VRS (*Vojska Republika Srpska*, the army of the Bosnian Serbs).

90. The capture of OP-E was not seen by the UN and Dutchbat as being a reason to take military action, despite the weighty significance, described above, of the observation posts in general and OP-E in particular, as well as the orders in the Post Airstrike Guidance and the UN resolutions. This is incomprehensible to Plaintiff. OP-E was an essential strategic position for the defence of the Safe Area. By relinquishing that position without any military response, the UN and Dutchbat did the opposite of what they should have done. As will emerge below, the events around OP-E formed an overture to the attack on the Safe Area that was launched on 6 July 1995.

Period 6 through 11 July 1995

91. The VRS (*Vojska Republika Srpska*, the Army of the Bosnian Serbs) began with an attack on the Safe Area on 6 July 1995. Dutchbat was requested by the AbiH (*Armija Bosna i Herzegovina*, the Bosnian Army) to return the weapons collected in by Dutchbat (which were securely stored in the Weapon Collection Point), in order that they could defend themselves. That request was once again refused by Dutchbat (see page 2102 of the NIOD Report). Number 240 of the UN Report states on the refusal the following:

'*Ramiz Becirovic, acting commander of Bosniac forces in Srebrenica, asked the UNPROFOR Battalion Commander* [Karremans, lawyer's note] *to give the Bosniacs back the weapons they had surrendered as part of the demilitarization agreements of 1993, but his request was refused. One of the Dutchbat Commander's superiors, with*

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whom he consulted on this decision, has since stated that he supported the decision not to hand back the weapons, because "it was UNPROFOR responsibility to defend the enclave, and not theirs" (…).'

As will be discussed below, subsequent requests by the ABiH and of civilians for return of the weapons were also rigorously refused. The reason repeatedly given was that it was the task and duty of UNPROFOR/Dutchbat to protect the civilian population, such being a pledge that the civilian population would be safe.

92. The ABiH stated by letter in response to the attack on the Sector North East in Tuzla that more than 1,000 rockets/shells landed in the Safe Area on that day, of which 17 were in Srebrenica Town. ABiH General Denic urgently appealed to Dutch Colonel Brantz of Sector North East to take steps '*to protect the disarmed population and their territory*'. However, no steps were taken and nor would any steps be taken as a result of the bombardment of observation post F (OP-F) on 8 July 1995. A request for Close Air Support as a result of that bombardment was refused. That refusal was a private Dutch affair. The Dutch Chief of Staff, Nicolai, was opposed to this request for Close Air Support (and as will be seen below also to subsequent requests), because, in his view, the conditions for Close Air Support had not been met. Nicolai's Dutch superiors in Zagreb, Van Kolsteren and De Jonge, concurred with that judgement (see Numbers 242 and 243 of the UN Report). Nicolai made it plain that as long as the possibility remained for the UNPROFOR personnel to withdraw and those personnel were not actually threatened with death, no permission would come from Zagreb for the deployment of Close Air Support. The UN here allowed a unique possibility to pass of eliminating an extensive number of weapons systems of the VRS at this early stage (see page 2103 of the NIOD Report). The refusal of the request for Close Air Support and the reasons given for that refusal are incomprehensible to Plaintiff and evidence an incorrect understanding of the tasks and powers of UNPROFOR.

93. Srebrenica was bombarded by the VRS on 7 July 1995 which resulted in four fatalities and 17 wounded among the civilian population in the centre of Srebrenica (see number 248 of the UN Report). Even that appeared to be no cause for military intervention by

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the UN and Dutchbat. It subsequently emerged from the statement of the Chief of Staff of the VRS, General Milovanovic, that the bombardments had been studied. He declared that the bombardments were intended to intimidate Dutchbat and the civilian population (see page 2107 of the NIOD Report).

94. Fighting in the Safe Area intensified on 8 July 1995. In the night of 7 to 8 July 1995 observation posts counted 275 incoming artillery and mortar shells. The ABiH again requested Dutchbat on 8 July for a return of the weapons from the Weapon Collection Point but that request was once more refused. That refusal was again explained with the statement that it was the task of Dutchbat to protect the enclave and not the task of the ABiH (see number 477 of the UN Report). Dutchbat also stated that NATO would intervene with the deployment of Close Air Support when that was necessary (see page 2114 et seq. of the NIOD Report).

Surrender of observation post F (OP-F)

95. The observation post OP-F came under fire on 8 July 1995 from VRS tanks that fired on ABiH positions. Following that UNMOs (UN military observers) observed that the VRS was making preparations to attack the OP. Two tanks were deployed and their fire caused a breach in the defense wall of the OP. Although anti-tank weapons were present at the OP, they were not deployed (see number 253 of the UN Report). Thereupon VRS soldiers approached OP-F from out of the woods. Two VRS soldiers came up to the OP and more came after some signalling. The crew of OP-F surrendered without even a single shot being fired and OP-F was abandoned. The crew members of the OP were allowed to depart upon leaving their weapons behind. The frustration over the abandonment of this observation post without any struggle and the departure of Dutchbat by APC (an advanced infantry fighting vehicle) was so great that a soldier of the ABiH threw a hand grenade at the departing APC, as a result of which a Dutch soldier died.

96. Dutchbat Commander Karremans had requested Close Air Support on 8 July 1995 at 13.00 hours, at the time that the VRS made visible preparations to attack OP-F. The VRS had not then fired on the observation post. The UN Report states to the reply of the

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(Dutch) UNPROFOR Chief of Staff Nicolai to Karremans' request (see number 252 of the UN Report):

'*During the early afternoon, the Dutchbat Commander appears to have spoken to the UNPROFOR Chief of Staff in Sarajevo, again requesting close air support in response to the attack on Foxtrot. As before, the Chief of Staff discouraged the request, favoring instead the option to withdraw the personnel from the post.*'

The paper work for an air strike was done in Sarajevo even before Dutchbat had left the observation post at 15.20 hours. At 15.52 hours, after the observation post was abandoned, NATO aircraft appeared in the airspace above the Safe Area. NATO had made the aircraft available in the light of the problems that had arisen. These did not actually go into action because General Nicolai had previously decided not to forward Karremans' request to Zagreb. Nicolai justified his course of conduct with the proposition that the situation had stabilized itself, which stood in stark contrast to the actual situation. The statement that the ABiH Commander, Delic, received from General Nicolai when he was asked was that the criteria for Close Air Support had not been met (see page 2122 of the NIOD Report). In response to the refusal of Nicolai to grant Close Air Support Karremans responded as follows (see page 2123 of the NIOD Report):

'it is disappointing to receive no support at all under those circumstances. I now realise that the interests in the higher echelons are engaged in a completely different realm – namely politics – and could not be bothered by a minor observation post in the Safe Area of Srebrenica.'

In the view of Plaintiff, Dutchbat Commander Karremans hit the nail on the head with this response – which was straight from the shoulder. Interests were evidently involved in which the protection of the Safe Area containing ten thousand civilians who were dependent upon that protection was subordinate. Those interests did not, however, discharge the UN and Dutchbat from their obligations resulting from their undertakings and the obligations laid down in the UN resolutions to provide that protection.

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Surrender of observation post U (OP-U)

97. OP-U was abandoned by Dutchbat on 8 July 1995 around 19.00 hours. It appears from the NIOD Report (see page 2125) that the observation post was surrounded by some twenty or so VRS (*Vojska Republika Srpska*, the army of the Bosnian Serbs) soldiers. Despite previous orders that shots were to be fired over the heads of the VRS were they to cross the border of the Safe Area and, that should that not achieve the desired effect, they were to return fire, the OP Commander simply surrendered the observation post without more. The VRS ordered the crew of OP-U to depart for Srebrenica. The crew was, however, so afraid of the possible reaction of the ABiH (*Armija Bosna i Herzegovina*, the Bosnian Army) that they voluntarily decided to accompany the Serbs. This decision to accompany the Serbs had in fact been previously approved by the Deputy Battalion Commander of Dutchbat. These soldiers would later be used by the Serbs as a means to put pressure on the UN and Dutchbat. The view apparently existed from the highest to the lowest ranks that voluntarily accompanying Bosnian-Serb troops was to prevail over the retreat past the civilian population whom Dutchbat had to protect. Were anyone to imagine that such matters would lead to strong protests at UNPROFOR they would be disappointed. When Dutch General Nicolai spoke the following day by telephone with a VRS General about the above matters, Nicolai expressed his appreciation for the fact that the VRS had conducted the captured Dutchbat soldiers by a safe route to Bratunac. In passing Nicolai apparently expressed the wish to see his men again shortly in Potocari (see pages 2126 and 2127 of the NIOD Report). There was no talk of any indignation, decisiveness or action. In place of an immediate and robust reaction Nicolai decided that evening to do nothing, a decision that was, however, contrary to an advice that covered the situation from a member of Nicolai's staff who had previously advised Nicolai to pre-sign a request for Close Air Support and to submit it to Zagreb. The thrust of that advice was to have a 'pre-approved' request, for which the continuation of the VRS attack would serve as the trigger. In the event that the VRS were to press home the attack, immediate Close Air Support would be a possibility without the need for lengthy consultation. Nicolai disregarded that advice (see page 2127 of the NIOD Report).

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98. As is evident from the above, the UN and Dutchbat still did not perceive any reason for military intervention in the loss of OP-F and OP-U – for incomprehensible reasons.

Surrender of the OPs S, K and D

99. After this the OPs S, K and D emerged as candidates for capture by the Serbs. The NIOD Report recounts (on pages 2128 and 2129) how that was effectuated:

'The VRS unit would advance as close as possible to the OP, fire a few grenades in the vicinity of the on and then repeat that action in closer proximity of the on before sitting down to wait. In the absence of support for the on (which was the case in most instances), the VRS would warn the on personnel to withdraw. Most Dutchbat units soon understood that they were less likely to come to harm with the VRS than with the apparently unpredictable ABiH units. The continued assurance on the part of the Bosnian Serbs to the effect that they did not desire the lives of the UNPROFOR soldiers appeared to be true.'

100. Plaintiff notes incidentally that the conclusion drawn by the NIOD Report that the Dutch soldiers were not in any danger from the Bosnian Serbs is irreconcilable with the later threat (that according to the NIOD Report was expressed) to execute the soldiers who went with the Serbs. According to the NIOD Report it was under the pressure of that threat that Close Air Support was suspended a few days later. Whatever the reason for the suspension of the Close Air Support, this appraisal of the intentions of the Bosnian Serbs by Dutchbat and the State of the Netherlands would take a dramatic turn in a few days. The appraisal that the Serbs had the best interests of Dutchbat at heart is decidedly amazing, given the fact that the Bosnian Serbs had for years squeezed the logistics and provisioning of Dutchbat, had obstructed humanitarian relief, had violated the Safe Area on a virtually daily basis and most recently of all had seized observation posts and at the same time was engaged in a heavy attack on the Safe Area.

101. Upon the capture of OP-S the crew, after surrendering their personal weapons, had the choice of withdrawing to their own compound or of going to Bratunac (which was under Serb control). The local Commander of Dutchbat ordered the crew to withdraw to

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Bratunac (see page 2131 of the NIOD Report). As a result eight new 'hostages' fell into the hands of the Bosnian Serbs.

102. Dutchbat Commander Karremans looked back on the preceding days in a letter to Bosnia Herzegovina Command in Sarajevo on 9 July 1995. It was stated in the letter that the VRS had attacked with all possible means. The attack was aimed at ABiH and Dutchbat positions. The VRS had to that end deployed artillery, mortars and multiple rocket launchers. Mortars were fired in the vicinity of most of the OPs and, according to Karremans, it appeared that the Serbs knew precisely what they were doing and how far they could go. Their operations appeared to be carried out according to a preconceived and well-thought out plan (see page 2132 of the NIOD Report). The fact that OP-S was seized, as well as that Dutchbat soldiers were again taken prisoner by the Bosnian Serbs, still did not provide a reason for the UN and Dutchbat to take military action.

Order to take up blocking positions

103. After the observation posts above were abandoned without a struggle, Dutchbat received the order from Zagreb on 9 July 1995 to take up 'blocking positions' (see page 2150 et seq. of the NIOD Report). The intention was that Dutchbat would raise a blockade against the VRS advance, where necessary with the use of Close Air Support, and this would call a halt to that advance. The idea of the blocking positions was conceived in Zagreb by De Jonge, who had sought support for his idea from his Chief of Staff, Kolsteren. The staff in Zagreb (and most particularly the non-Dutch officers) had become convinced that while Dutchbat could indeed request Close Air Support, Dutchbat certainly showed little appetite for a fight. In Zagreb the staff were keen to know what Dutchbat itself would do to overcome the situation. Dutchbat Commander Karremans, however, considered his troops to be '*too good to be sacrificed*' (see pages 286 and 287 of the NIOD Report).

104. General Nicolai informed the Serbs that UNPROFOR considered the actions of the VRS as an attack on the Safe Area. He also acknowledged that the VRS used heavy weapons, while the heavy weapons of the Bosniacs had been collected in and then stored in the Weapon Collection Point. Nicolai warned the VRS that attacks on a blocking position

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would have serious consequences and that Close Air Support would be deployed (see page 2151 of the NIOD Report). It is stated in the NIOD Report on page 2155 that the setting up of the blocking positions nevertheless posed problems for Dutchbat. The NIOD concluded in that respect:

'Following the Rules of Engagement could at any moment compel Dutchbat to return fire and thereby to 'green' conduct. The battalion was neither equipped nor trained for this and it certainly did not have the mindset for such an operation.'

105. It follows from the above quotation that the UN and the State of the Netherlands dispatched an army, whose equipment, training and state of mind was not equipped for its duties. The carrying out of a 'green' assignment, that is, an assignment where fighting might be a possibility, is the essence and *raison d'être* of an army. Dispatching an army without the required means, that cannot and will not fight, is seriously culpable. Plaintiff refers again to the assessment made by General Janvier on the question of what French soldiers would have done in the same situation (see the Report of the French Parliament, Part 2, page 123, cited above).

Air support and other developments on 9 July 1995

106. Air support was repeatedly refused until 9 July 1995 because the conditions for its use would not have been met. From 9 July 1995 another reason for its refusal was put forward. Aircraft appeared above the enclave at 8.15 hours on that day in response to a request for Close Air Support. The Air Operations Coordination Centre in Sarajevo was informed by Dutchbat that it did not want aircraft over the Safe Area. The Forward Air Controller (a soldier on the ground who provide the aircraft with information about objectives on the ground) relayed that to the Dutch F-16s and in the words: *'Get the hell out of there, they are holding some of our guys'*.
Dutchbat apparently assumed that the aircraft were going to make low-level attack runs over the territory. Authority for an attack was still not given, however, because still no request had been signed by the UN. Dutchbat was nervous of simply having the aircraft merely visibly present as a deterrent to the Bosnian Serbs. Dutchbat wanted no air presence because of the safety of the Dutch soldiers who – it should be noted – had

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decided voluntarily to accompany the VRS and subsequently were made hostage (see pages 2133 and 2134 of the NIOD Report). The position of the civilian population in the Safe Area was of absolutely no consideration in the decision whether or not to provide Close Air Support.

107. General Nicolai reported to The Hague on 9 July 1995 at 14.00 hours that no new group of aircraft should be deployed so as not to obstruct a possibly impending release of the 15 Dutchbat soldiers held by the VRS (see page 2135 of the NIOD Report). The ten thousand refugees in the Safe Area were once more made subordinate to the position of 15 'hostage' Dutchbat soldiers.

108. It appeared that in the Netherlands the safety of Dutchbat also prevailed over the safety of the civilian population of Srebrenica. Minister Voorhoeve explained on television on 9 July 1995 that he regarded it as inevitable that Close Air Support would be deployed but that the safety of the Dutch soldiers must take precedence. Voorhoeve's instruction to the Dutch commanders was to avoid victims: *'I want to see all those men and women back home unscathed'* (see page 2147 of the NIOD Report). The carrying out of the mandate, including the protection of the civilian population of the Safe Area, was simply not an issue.

109. The Bosnian President, Izetbegovic, appealled on 9 July 1995 to the government leaders Clinton, Chirac, Major and Kohl of the United States, France, Great-Britain and Germany, respectively, to employ their influence to get the UN to fulfill its obligations and to prevent the genocide of the civilians of Srebrenica. He pointed out in his letter that the enclave was continuously exposed to bombardment despite the fact that Srebrenica had been declared a Safe Area and was demilitarised. In a letter to the Security Council the Bosnian representative to the UN pointed out that the VRS offensive could only be directed against the civilian population and UNPROFOR and not against the ABiH, because the ABiH had been disarmed already in May 1993. The UN and the NATO had consequently assumed responsibility for the defence of Srebrenica (see page 2148 of the NIOD Report). This position on the part of the Bosnian

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representative was also in accordance with what the ABiH and the civilians were told by the UN and Dutchbat when they repeatedly requested the return of their seized weapons.

110. The VRS advance progressed very successfully for the Bosnian Serbs. The NIOD concluded in its Report on page 2150 that the decision was taken in the evening of 9 July 1995 no longer to confine the attack to the southern sector of the enclave but to extend it and to occupy the whole Safe Area.

111. The UN Report concluded with respect to that under point 264:

'*Only after having advanced with unexpected ease, did the Serbs decide to overrun the entire enclave.*'

Plaintiff refers further to the Report of the French Parliament (Part I, pages 41 and 42), in which a comparable conclusion is drawn:

'*(…) l'absence the réaction des forces des Nation unies pousse les Serbes à poursuivre leur offensive.*

(…) et que c'est l'absence the réaction the la communauté internationale a cette date – et notamment l'absence the frappes aériennes – qui explique la décision prise le 9 the prendre l'enclave.'

[Lawyer's translation:
(…) the absence of a reaction from the troops of the UN prompted the Serbs to extend their attack.

(…) and it is the absence of a reaction from the international community on that day – in particular the absences of air strikes – that explains the decision taken on the 9th to take the enclave.]

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112. The International Court of Justice (ICJ) at The Hague in its judgment of 26 February 2007 in the case Bosnia-Herzegovina against Serb and Montenegro (legal consideration 283 together with 294 and 295) copied the aforementioned conclusion of the UN Report and took it for granted.

113. It is therefore certain that the entire Safe Area could be overrun because the observation posts (OPs) crewed by Dutchbat were seized without struggle and that no serious military response from Dutchbat and the UN followed. As a result the VRS could achieve all its objectives, including the murder of the (predominantly male) population in the Safe Area.

114. General Nicolai informed the VRS on 9 July 1995 that the VRS must withdraw within two hours otherwise UNPROFOR would be compelled to use all available means against the VRS. Moreover, the VRS was informed that Dutchbat had been ordered to take up blocking positions. Akashi and Janvier had decided that if the VRS attacked their blocking positions Close Air Support should be deployed. The UN now intended 'to slug it out' (to engage the enemy), and as the log book of the Fifth Allied Air Force in Vicenza also stated: *'If unsuccesful NATO Close Air Support/Air Strike will be used'* (see page 2154 of the NIOD Report).

115. Consistently with that the formal order to take up the blocking positions – drawn up in Dutch – was issued at 22.00 hours on 9 July 1995 from Sarajevo (see page 2160 of the NIOD Report):

'You are to use all means at your disposal to establish blocking positions to prevent further advances of VRS units in the direction of the town of Srebrenica. You are to do everything in your power to reinforce those positions, including the use of weapons.'

The UN now appeared finally to be prepared to engage in combat with the Bosnian Serbs. NATO was also prepared to do so. However, the Commander of B Company of Dutchbat gave the order an incomprehensible interpretation, entirely contrary to the order as cited above. In place of finally putting up a fight he decided on the contrary to

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prevent escalation and to try de-escalating action. There would be resort to self-defense only in the event of a direct attack, and that only if it were necessary (see page 2167 of the NIOD Report). The order that the Commander of B Company gave to the personnel of the blocking positions on opening fire was first to fire over the heads. The soldiers were briefed that only in self-defence were they to shoot to kill. Preference was once again, even against the orders of UNPROFOR, without question to allow personal safety to prevail and not to carry out the assigned duties – the protection of the civilian population.

Events on 10 July 1995

116. The apparent readiness of the UN to engage in combat was not translated by Dutchbat into deeds. On the contrary, Dutchbat repeatedly gave up its positions without struggle, and did so entirely from considerations of its own personal safety that otherwise might be at risk.

117. The blocking positions taken up early on the morning on 10 July 1995 were abandoned the very same day without any defence or response being offered. No aimed fire was directed at the VRS (see page 2187 of the NIOD Report). Even now the UN and Dutchbat could see no reason for military intervention. Close Air Support was indeed requested but again refused by the Dutch officers within UNPROFOR. Deputy Battalion Commander Franken had submitted a request for Close Air Support at 8.55 hours. Franken was maintaining contact with Tuzla that day because he had understood that Dutchbat Commander Karremans was temporarily indisposed with a cold. Whatever the reality of that, after the VRS had resumed the bombardment of the town at about 15.00 hours in the afternoon, Karremans himself submitted a new request for Close Air Support. It is rather striking that no trace is to be found of either request in Zagreb, Sarajevo or with NATO (see page 252 of the Summary of the NIOD Report). Plaintiff will further describe below the events surrounding the departure from the blocking positions.

118. Dutchbat soldiers witnessed the actions of the VRS halfway along the road from Zeleni Jadar to Srebrenica on 10 July 1995 immediately prior to Dutchbat completely taking up

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position at the blocking positions. Because of the fine weather Dutchbat soldiers could clearly see how the VRS advanced with tanks and cleansed the villages. The VRS systematically set alight the houses spread along the road. The pattern was that tanks would first fire a shell through the roof of a house and then hunt the fleeing people to shoot them with machine guns. House after house went up in flames in this way (see page 2173 of the NIOD Report). Once again this was not a reason for Dutchbat and the UN to engage in military action. Nor was it a reason for Dutchbat to report the commission of war crimes against the civilian population, which – as will be explained below – it certainly should have done.

119. Colonel Brantz of the Sector North East in Tuzla spoke about the situation in Srebrenica with the Chief of Staff of the Second ABiH Corps, Budaković, on 10 July 1995. According to the minutes of the discussion Brantz provided information on the Close Air Support procedure and, as an example of what NATO was capable of, stated that three aircraft could destroy about 70 targets. Brantz also told the ABiH that Dutchbat Commander Karremans had given clear orders to block the VRS advance and to fire on the VRS. That order was likewise not carried out by Dutchbat. Brantz also informed Budaković that the ABiH and the Commander of Dutchbat maintained good liaison between their activities (see page 2141 of the NIOD Report). The picture painted by Brantz was incorrect.

120. The Commander of blocking position Bravo 4 reported to the Commander of B Company of Dutchbat that when the VRS infantry near the transmitter mast came down the road, Bravo 4 and Bravo 3 would be cut off from Srebrenica. The Company Commander therefore gave the order for the demolition of blocking positions 3 and 4, instead of maintaining those positions, with all means, in conformity with the order given (see page 2183 of the NIOD Report). As a result two of the three blocking positions were immediately abandoned.

121. At blocking position Bravo 1 the Commander of that blocking position gave the crew the order to fire over the heads of the Bosnian Serbs with the .50 machine gun. Then a VRS tank (type T-54/55) opened fire and a mortar shell fell close to an APC (an

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advanced infantry fighting vehicle). No-one was injured. Despite this the Commander of that blocking position decided immediately to abandon this (by now the) last position (page 2187 of the NIOD Report).

122. The objective of the blocking positions was to draw a line and, if necessary, go into combat if that line were crossed. Dutchbat had already withdrawn from two of the three blocking positions before combat could be commenced or a shot had been fired at Dutchbat. The last blocking position was left after the first shot was fired at Dutchbat. Here again, Dutchbat withdrew without any form of opposition being offered. Eventually every soldier and all the materiel of the blocking positions would be withdrawn during the night of 10 to 11 July 1995 to the market square of Srebrenica. That position would also be abandoned the following day without resistance when Dutchbat withdrew in the direction of the compound.

123. Close Air Support was again requested in the evening of 10 July 1995, by now the umpteenth time (see pages 2189, 2190 and 2191 of the NIOD Report). For the first time this request did not encounter the refusal of the Dutch General Nicolai in Sarajevo. Even the NATO concurred. General Janvier, however, hesitated to approve the request for Close Air Support.

124. Shortly thereafter, at about 21.25 hours, Janvier spoke with Mladic to inform him that the situation was no longer tenable. Janvier by his own account did everything to avoid the use of force, but in his view even here there were limits. In the light of the circumstances described above there was little evidence of that attitude being a particularly decisive one. Janvier briefed the staff on the discussion and concluded that UNPROFOR was faced with three possible scenarios:

1. do nothing; in that case the VRS could stop its advance but it could also outflank the blocking positions;
2. immediately summon Close Air Support, but as it was dark and the situation confused, that could be risky;

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3. wait until the following morning to remove the risk that one's own troops would be accidentally engaged by the Close Air Support, and to have a clearer sight of the targets.

Janvier chose ultimately for the third option (see page 2192 of the NIOD Report). It appears from the UN Report that this decision was partly prompted by Karremans' request to postpone Close Air Support until 6.00 hours the following morning. Karremans expressed the hope that the situation would remain quiet during the night and considered that Close Air Support at that moment would not be beneficial (see number 291 of the UN Report). However, it seems more likely that the argument regarding the visibility of targets was prompted more by the wish not to deploy Close Air Support than by technical limitations. The aircraft that would have been deployed were equipped to carry out their missions also at night ('*the aircraft were night capable';* see number 285 of the UN Report).

125. Despite the five days of bombardment of the Safe Area, the many civilian dead and injured, the loss of property, the capture of the observation posts, Dutchbat soldiers taken hostage and the transgressions beyond the blocking positions by the VRS, there had still been no military intervention by 10 July 1995.

126. The Mayor of Srebrenica, Fahrudin Salihovic, had little belief that air strikes would still come. Karremans was however able to convince the so-called 'war-president' (the leader of the emergency town council of Srebrenica), Osman Suljic. Suljic had asked Karremans directly: '*If you had been in my place, would you have believed that Close Air Support was imminent?*' Karremans had replied in the affirmative. Suljic later quoted that as the moment when he had been betrayed by Karremans. In fact, on 11 July he proposed to have Karremens arrested for that betrayal because he thought that such an action might have prompted the UN to come to his aid. Suljic claimed to have had a good understanding with Karremans prior to that. According to Suljic, Karremans did everything in his power to save his soldiers. Moreover, Suljic observed that Karremans appeared himself to be very scared. The Bosniacs had, given the circumstances, planned a counter offensive. Suljic later said that it would have made no difference that many

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would have died as a result because everyone involved was going to be killed in any event (see page 2208 of the NIOD Report).

127. Karremans requested ABiH Commander Becerovic on 10 July 2005 to withdraw his troops and informed him, pointing in the direction of the southerly lying Zeleni Jadar: '*Tomorrow everything will be blown away. No one in that zone will survive*'. Karremans also said that the Bosnian Serbs had been given an ultimatum (see page 2208 of the NIOD Report). This also created the impression among the civilian population of Srebrenica that they would still be protected. In that same discussion Karremans informed the ABiH that a counter-attack planned by the ABiH was very unwise because ABiH soldiers would then also be caught up in the air strikes that would take place. After that announcement the plans for the counter-attack by the ABiH were finally called off (see page 2208 and 2209 of the NIOD Report) and the ABiH withdrew from their positions in large numbers (see numbers 295 and 296 of the UN Report). The population thus placed its fate (again) totally in the hands of the UN and Dutchbat.

128. France offered on 10 July 1995 to deliver hyper-modern Tigre attack helicopters with crews should the Dutch run into further problems (see page 2291 of the NIOD Report). The State of the Netherlands saw no reason in these events to intervene nor to accept the offered assistance. To clarify the capacity of the offered attack helicopters, Plaintiff notes that a single Tigre attack helicopter equipped, inter alia, with eight anti-tank rockets, was capable within a few minutes of destroying several tanks and other targets. That applied with even greater force in the present case where superannuated T54/55 tanks were involved. Those tanks were produced between 1946 and 1977. The VRS had four such tanks available to them, which in the most generous case were 18 years old. Despite this it was these antiquated tanks that were the most important reason for the military predominance of the Bosnian Serbs, given that the ABiH had divested itself of its heavier weapons to the UN troops. The destruction of the tanks would without doubt have brought the Serb advance to a halt.

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Events on 11 July 1995

129. Dutchbat drew upon 11 July 1995 around 04.00 hours, in consultation with the Sector North East, a list of 40 targets which were to be attacked by airstrikes at 06.50 hours. However, this did not happen (see number 298 of the UN Report), which Plaintiff finds incomprehensible.

130. Dutchbat again requested Close Air Support on 11 July 1995 around 8.00 hours. Dutchbat heard for the umpteenth time from Dutch General Nicolai in Sarajevo in response to its request that the conditions had not been met because Dutchbat had not been attacked and the town was not under fire (see page 2226 of the NIOD Report). That reasoning was incorrect and incomprehensible and can only be explained by the evident disinclination to permit Close Air Support. Indeed, the Safe Area had been attacked for five days and observation post after observation post had been captured. There were many dead and injured under the civilian population that was to have been protected. The Bosnian Serbs had taken a number of Dutch soldiers hostage, which in itself should have been reason to intervene. The facts show that the conditions for Close Air Support had been met. That is also admitted in retrospect by the UN, as will be extensively discussed below. For now Plaintiff reproduces here the central consideration on this matter of the UN Report (under number 480):

'*Even in the most restrictive interpretation of the mandate the use of close air support against attacking Serb targets was clearly warranted.*'

131. Karremans submitted another request for Close Air Support around 10.00 hours on that day. The request only included a single target, namely, a tank south of Srebrenica (see page 2226 of the NIOD Report). According to Dutch Colonel Brantz, the request should have been submitted in writing, a formal position that was greeted by Dutchbat with amazement. It was the task of the responsible staff officer in Sarajevo, according to Brantz, to establish that there was definitely an attack that was immediately directed at UNPROFOR units (see page 2227 of the NIOD Report). Plaintiff notes that Brantz's interpretation contravened the mandate, which did not specify an attack on UNPROFOR as a condition for Close Air Support.

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132. When agreement was reached on the request for Close Air Support following an extensive discussion between Dutchbat and UNPROFOR much time had already been lost. Sarajevo then replied that no aircraft were available. The aircraft that were on their way at that time had been ordered to return to their bases in Italy as General Nicolai, having received so little information from Srebrenica, had assumed that the situation had therefore been stabilized (see page 2227 of the NIOD Report). Brantz had, however, told Nicolai that a request for Close Air Support was in the pipeline. Given the fact that – to repeat this – the attack of the Bosnian Serbs was already in its fifth day and the Serbs were advancing with some 1,200 men, the assumption of Nicolai that the situation must be stable is extremely implausible, particularly when account is also taken of the fact that the Safe Area would fall just a few hours later. Plaintiff notes that the order to turn back is irreconcilable with the position that the aircraft were not available. The fact is that the aircraft that were allegedly not available had in actual fact received the order to return to their base. The result was that the Bosnian Serbs could see on their radar screens that the aircraft had left Bosnian airspace, with the result that they could press their attack on Srebrenica without interference (see page 2228 of the NIOD Report).

133. When the request made at 10.00 hours on the 11th July 1995 was finally approved by Sarajevo, that was the second and also the last time (of the nine requests in total for Close Air Support made in the preceding days) that such a request had not foundered on the refusal of the Dutch General, Nicolai, in Sarajevo. Once the request had passed Nicolai it appeared that the procedure as a whole was not elaborate or complicated. The NIOD stated that the request was approved by the UN and NATO, without discussion and without questioning, within thirty minutes of it reaching Zagreb from Sarajevo (see page 2232 of the NIOD Report). Three sets of target were approved by telephone, namely (1) VRS units attacking a blocking position to the south of Srebrenica, (2) heavy weapons firing on UN positions in Srebrenica, and (3) VRS units attacking observation posts (OPs). The 'blue sword request' that General Janvier signed stated that permission had been granted for, '*attacks on any forces attacking the blocking UNPROFOR position south of Srebrenica and heavy weapons identified as shelling UN positions in Srebrenica Town'*. Akashi added to that authorization also the authority to attack '*forces*

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attacking UN OPs on the parameter of the enclave' (see pages 2232 and 2233 of the NIOD Report). Plaintiff notes that this reveals the incorrectness given by Dutchbat and the Dutch staff of UNPROFOR to the interpretation of the rules for Close Air Support. It transpires indeed that attacks were authorised on Bosnian Serbs who attacked the Safe Area and not only on Bosnian Serbs who attacked UNPROFOR. The UN and Dutchbat consequently wrongfully withheld Close Air Support during the six days that the enclave was under attack.

134. When Air Support was authorised there were in total six supporting aircraft available (type EF-111, EA-6B, F-18C) and eight for Close Air Support (type F16 and A-10). Plaintiff notes that a single A-10 could have destroyed within a few minutes all four of the (very outdated) T-54/55 tanks which were available to the VRS. The aircraft for the suppression of enemy air defences received daily authorization to fly above Bosnia '*to access the environment*'. The Close Air Support aircraft remained provisionally in the vicinity of the refuelling aircraft above the Adriatic Sea. The order of these aircraft was determined at the airbase in Vicenza (Italy): first, the Dutch F-16s, then two flights of American F-16s and, finally, the American A-10s. The aircraft that were to attack received permission at 13.56 hours to carry out a bombardment. Following that, at 14.20 hours, the Dutch F-16s made the first contact with the forward air controllers on the ground. Only then, on 11 July 1995 at 14.42 hours, after six days of being under attack, did the first bomb fall (see page 2234 of the NIOD Report).

135. Akashi reported to the UN headquarters in New York that with regard to the Dutch hostages the protection of the Dutchbat soldiers in the OPs and in the blocking positions in any event took priority over them (see page 2236 of the NIOD Report). The protection of the Dutchbat soldiers used in the field was in theory more important than the Dutchbat soldiers who had voluntarily allowed themselves to be taken hostage. As will appear below, the reality (which was determined by Dutchbat, the Dutch UNPROFOR officers and the State of the Netherlands) was different. The Dutchbat soldiers who had so freely allowed themselves to be taken hostage by the VRS appeared to be more important to them than the ten thousand civilians in the Safe Area.

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136. After the start of the Close Air Support operation, Vicenza made available another four F-18s to prepare themselves for the provision of Close Air Support after the American A-10s. This shows that there was more than enough capacity available to give effect to the requests for Close Air Support. In military terms a heavy – if not destructive – blow could have been inflicted on the VRS. The first Dutch F-16 released a bomb at 14.42 hours. The second F-16 released both its bombs simultaneously. At that moment American F-16s and A-10s were flying above the Safe Area and F-18s were in readiness to enter the target area (see page 2239 of the NIOD Report). As will be explained further below, Plaintiff finds it incomprehensible that those aircraft did not likewise press home the attack.

137. From the first wave of attacks the Dutch government employed every effort to halt the air strikes for which authority had already been granted by both the UN and NATO. Heavy telephone traffic from The Netherlands to the UN started soon after the authority for the air strikes was granted some hours earlier. Minister Voorhoeve told Akashi that he feared for the position of Dutchbat and requested an evacuation plan for Dutchbat (see page 2235 of the NIOD Report). In the presence of Voorhoeve the Dutch Chief of the Defense Staff, Van den Breemen, informed Kolsteren in Zagreb from The Hague, that the safety of Dutchbat had absolute priority (see page 2236 of the NIOD Report). Presumably those in The Hague thought that the safety of Dutchbat would be endangered by the air strikes. That these interventions were successful may be deduced from the fact that the air strikes were no longer carried out and eventually would be cancelled. This appeared also from the television interview transmitted on 10 July 2006 by the NCRV with the Dutch F-16 pilot (who was the first to drop a bomb over the VRS), together with original images and recordings from the cockpit, that the air force had then been informed that the attack should be broken off because of the Dutch hostages.

138. The fact that the second wave of air strikes was not pressed home can therefore only be explained by the Dutch interventions. At about 14.00 hours the required aircraft were airborne, with a refuelling aircraft in the vicinity. After the first wave at around 14.45 hours no bombs were dropped by the second wave between 15.33 hours and 16.18 hours

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and the third wave did not go ahead. The attack was finally called off entirely at 18.30 hours (see page 2240 of the NIOD Report).

139. The Bosnian Serbs were terrified of the deployment of air power. VRS General Mladic claimed, according to Akashi, that he would rather have 72 tank shells fired at him, as the Danes had done at Tuzla, than be attacked from the air. There was telephone contact between Akashi and Milosevic at 15.00 hours. Milosevic said in that conversation that the Dutchbat soldiers taken by the VRS had been allowed to keep their weapons and equipment and that they were free to move around (see page 2235 of the NIOD Report). That communication was in amazing contrast with the establishment in the NIOD Report that at 15.50 hours the VRS had threatened the thirty Dutchbat soldiers held hostage in Bratunac with death and an attack on the compound, which mysterious message had reached Dutchbat via the radio of a APC (an advanced infantry fighting vehicle) belonging to the hostages who were in Bratunac (see pages 2240 and 2241 of the NIOD Report). Deputy Dutchbat Commander Franken let it be known, however, that the battalion had not attached much weight to those death threats against the Dutchbat soldiers who were held hostage, as, in his view, Mladic would not kill any UN soldiers. That had not yet happened and would also not happen (see page 2241 of the NIOD Report).

140. Prime Minister Kok and Ministers Van Mierlo (Ministry for Foreign Affairs) and Voorhoeve (Ministry of Defence) gathered that afternoon with a number of civil servants in the Defence Crisis Management Centre (DCBC) in The Hague. Within just a few minutes of discussion they had concluded that the air strikes must be stopped immediately. With that calls were placed personally to, inter alia, the Dutch representatives in Naples and Vicenza, with instructions to inform the NATO Commander accordingly. Not knowing whether Zagreb would stop the air strikes (in time), Voorhoeve himself began to call. He first called Akashi to say that it no longer had any purpose to go ahead with the air strikes. Plaintiff notes that the operational aim or necessity of the air strikes was in reality not a matter for the State of the Netherlands. After Akashi had spoken with Force Commander General Janvier he returned to Voorhoeve and told him that Janvier did not agree at all with the view that the third

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wave of aircraft for Close Air Support should be stopped. Given the serious objections of the State of the Netherlands, Voorhoeve was told that if it could be done in time the third attack wave would be recalled (see page 2302 et seq. of the NIOD Report). Plaintiff notes (in anticipation of the legal characterization of the facts) that here also the UN chain of command was broken and that the State of the Netherlands, as communicated by Voorhoeve, allowed the wish to suspend the Close Air Support prevail over the operational military necessity for the deployment of the Close Air Support (see page 2302 of the NIOD Report). Plaintiff will return to this point when discussing the involvement of The Hague in the actions of Dutchbat. Meanwhile, Dutch Minister for Foreign Affairs Van Mierlo drew an intentionally incorrect picture for Germany and France that Close Air Support would not be necessary. The following serves as explanation.

141. It emerges from an interview met Jean-David Levitte, diplomatic advisor to the French President, reproduced in Part II, page 161 et seq. of the Report of the French Parliament, that the French government began a meeting in Strasbourg on 11 July 1995 at 17.45 hours with a German government-level delegation. Shortly after the start of that meeting, Van Mierlo made a telephone call to the German Minister for Foreign Affairs, K. Kinkel. Van Mierlo stated in that conversation that the Dutch troops were certainly under pressure but that they could take it and that the intervention of NATO aircraft was not essential! Kok, Voorhoeve and Van Mierlo (meeting together in the DCBC in The Hague), however, had already at the time of that telephone call employed every means to snuff out the Close Air Support. Instead of raising the alarm and taking action, Van Mierlo gave the appearance, against good conscience, that there was little the matter. One hour later Van Mierlo again called Kinkel with the news that Srebrenica was on the point of falling and that Close Air Support was now too dangerous as the Dutch soldiers were too close to the VRS who were in the neighbourhood (see page 162, Part II, of the Report of the French Parliament). Van Mierlo was thereby complicit in preventing the air strikes going ahead with a demonstrably incorrect statement (see page 2412 of the NIOD Report). All this was in stark contrast to the statement that Van Mierlo later made before the Dutch Parliamentary Enquiry and which is reproduced on page 599:

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'The moment at which force was requested, was when air support was refused. Everything was focused on that. I am convinced that if air support had been used to a persuasive degree, the enclave would not have fallen and we would not be sitting here.'

Van Mierlo did not include in his statement that when the Close Air Support that was so essential was finally used it was halted at the express request of the State of the Netherlands and himself. That request to halt the Close Air Support apparently could not be discussed with Germany and France. To those countries The Netherlands gave the appearance that Close Air Support was not essential and that Dutchbat was holding out. There was never any question of holding out. The resistance that Dutchbat offered was non-existent. If the Safe Area had not fallen, the murder of 8,000 to 10,000 refugees could not have taken place. For that matter, Van Mierlo appears subsequently to have entertained a particularly exceptional interpretation of the mandate. According to Van Mierlo there were only symbolic possibilities of defending the Safe Area, which were based on a tacit agreement with the Bosnian Serbs (see page 2378 of the NIOD Report): *'we defend symbolically, you do not attack'*.

142. As described above, at 15.50 hours the VRS were supposed to have threatened Dutchbat with the murder of the 30 Dutchbat soldiers and an attack on the compound in Srebrenica and Potocari, if the air strikes were not immediately halted. The existence of that threat is not documented in the NIOD Report by reliance on any written source or witness statement. That is striking given that in the NIOD Report even the smallest details of a source are provided. The threat was apparently passed almost immediately by Dutchbat to the DCBC in The Hague. Deputy Battalion Commander, Franken, had, however, said that the threat was of no significance (see page 2241 of the NIOD Report). Nevertheless, it was decided in The Hague to do everything to get the air strikes halted (see page 2241 of the NIOD Report). Akashi stated in his interview with the NIOD that at the time he had halted a new Close Air Support wave following a telephone request of Voorhoeve (see also number 307 of the UN Report). It appears that the decision not to carry out air strikes had in fact already been taken at the time of the second attack wave before Akashi had anything to do with the question. Indeed, no bombs were released during that second attack wave. It has all the appearance that the

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decision not to attack the VRS – possibly in connection with the Dutchbat soldiers who were 'hostages' – was taken earlier than is reported in the NIOD Report. The fear of the State of the Netherlands appears to be a probable reason for not releasing the bombs. The suggestion in the NIOD Report that in the case of the second air attack that day there were issues of targets that could not be found or significant air defences is extremely unlikely. The tanks of the VRS were located on the only major road to Srebrenica and Potocari and that was clearly visible. It was already apparent from the first attack that there was good team work between the pilots and the forward air controllers. Moreover, at least one target had been marked with a smoke shell (see page 2238 of the NIOD Report). Furthermore, the VRS had no serious air defence capabilities.

143. There is, apart from that, another important indication that The Netherlands wished to stop the air strikes no matter how, and did stop them, and that such decision was not coherent with the alleged threat to kill the 30 Dutch soldiers. The then Secretary-General of the UN, Boutros-Ghali, confirmed that Voorhoeve had immediately called Akashi when the air attack had begun, with the request to halt them. Voorhoeve explained that request by saying that the Dutchbat soldiers would be too close to the Serb infantry and that their lives would be endangered. Akashi would then have had no choice other than to suspend the Close Air Support (see page 2301 of the NIOD Report and number 306 of the UN Report). Plaintiff notes that there were no signals from Dutchbat that Dutchbat would be endangered by the Close Air Support. On the contrary, the point is precisely that Dutchbat had requested the air strikes. The explanation of Voorhoeve was accordingly not supported by the facts. This ground that Voorhoeve brought up for halting the air strikes must be viewed separately from the evidently later threat by the VRS to kill 30 hostages and to attack the compound in Srebrenica and Potocari if the air strikes were not immediately halted. That threat, to the extent that it was made, would in any case have reached Dutchbat only at 15.50 hours on that day.

144. A final example of the attempts made to halt the air strikes appears from the telephone conversation that the Dutch Chief of the Defense Staff, Van den Breemen, conducted from The Hague with the military advisor of the Secretary-General of the UN, the Dutch

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General Van Kappen, in which he said that the third air attack should be stopped (see page 2304 of the NIOD Report).

145. The conclusion is that attempts were successfully undertaken from The Hague to call a halt to the deployment of the Close Air Support although that involved cutting across the UN chain of command and by breaching Command and Control that resided with the UN (see page 2241 of the NIOD Report). The NIOD concluded (see page 2245 of the NIOD Report): '*the consequences of the air support for Dutchbat were that it had to withdraw from Srebrenica Town*'. In no way does Plaintiff subscribe to that conclusion. Dutchbat had to withdraw as a result of surrendering the OPs without opposition and due to the failure to press home the Close Air Support, and specifically therefore not on account of the Close Air Support.

146. The position of the civilian population of the Safe Area played no role in the decision-making in The Hague. That population was meanwhile fleeing and was instructed by Dutchbat soldiers to proceed to the compound at Potocari, where they would be safe (see for example page 2609 of the NIOD Report). Plaintiff will return below to an extensive examination of those guarantees on safety with the discussion of the witness statements.

147. A new blocking position was established on the order of one of the Company Commanders of Dutchbat at 16.00 hours on 11 July 1995 to the south of the factory complexes by the compound at Potocari. A few hours later the VRS approached and made clear by their gestures that the Dutchbat soldiers in the blocking position should lay down their weapons. That message was clearly understood by Dutchbat and the soldiers in the blocking position allowed themselves to be unarmed by the VRS. They also handed over their vehicles, fragment vests and helmets without any struggle. A line was drawn only insofar it concerned the personal belongings (see page 2250 of the NIOD Report). The Dutchbat equipment was put to good use by the VRS a few days later when men and boys who had fled into the woods from the Safe Area were enticed by VRS soldiers in Dutch uniform and with Dutch equipment. The men and boys were then taken prisoner, fettered, humiliated and murdered (see page 2686 of the NIOD

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Report). For further substantiation of the proposition that Serb soldiers appeared in UN uniform, Plaintiff refers to the internationally acclaimed documentary of Leslie Woodhead from 1999, *A cry from the grave*; that alleged fact can be clearly seen in that documentary at around 57'30".

Orders from Sarajevo

148. The laying down and handing over of weapons on 11 July 1995 is even more incomprehensible when account is taken of the clear orders on this matter from Sarajevo. French General Gobilliard gave, inter alia, the written order (**Exhibit 19**):

'*Giving up any weapons and military equipment is not authorized and is not a point of discussion.*'

Despite that, upon its departure from the Safe Area, Dutchbat appeared to have 'lost' a total of 199 guns, which included 25 Uzis, 38 pistols, 18 .30 machine guns and 11 .50 machine guns (see page 2250 of the NIOD Report).

149. Furthermore, the order of General Gobilliard to Dutchbat on 11 July 1995 was:

'*Take all reasonable measures to protect refugees and civilians in your care*'

and:

'*Continue with all possible means to defend your forces and installation from attack.*'

That eventually 8,000 to 10,000 refugees could be murdered was directly related to the fact that Dutchbat considered its own safety so important that there was never any question of a serious attempt to protect the refugees (in accordance with the undertakings, the UN resolutions and the order of 11 July 1995 from Sarajevo). Nor was there even any attempt made of a defence against the attacks of the VRS, let alone that a defence with all possible means took place.

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150. Moreover, the order of 11 July 1995 from Sarajevo was to:

'*provide medical assistance and assist local medical authorities.*'

Despite this, Dutchbat did not appear to be prepared to provide injured refugees with adequate medical assistance. On the basis of a memorandum of 10 July 1995 of the most senior medical officer of Dutchbat III, priority was given to the preservation of the so-called 'iron rations' for the benefit of possible Dutchbat casualties. The provision of humanitarian relief to the civilian population was to be kept to the absolute minimum and that meant that only restrictive and selective use could be made of the existing supplies. The lowest point was reached in this connection with the order of Dutchbat Commander Karremans that no operations were to be carried out on refugees. The operating theatres had to stand ready for possible Dutch casualties and the operation materiel needed for such operations was not to be opened (see pages 32 and 54 respectively of the NIOD Report, Dutchbat III en de bevolking: medische aangelegenheden, (Dutchbat III and the civilian population: medical matters), D.C.L. Schoonoord).

151. A distressing example that can be cited in this connection is the fact that the local surgeon in Srebrenica, Pilav, faxed Dutchbat on 11 July 1995 to request assistance. At that moment the Dutchbat sick bay had only two patients, namely, a UNMO (who had undergone a minor medical intervention on 1 July 1995 but who had remained on the compound; see page 2699 of the NIOD Report and page 334 of the Summary of the NIOD Report) and a sergeant with a back complaint. In the meantime 25 seriously injured persons had arrived at surgeon Pilav's hospital, all of whom required surgery mostly for serious injuries, including severed arms. Surgeon Pilav had the capacity in his hospital to treat only five or six casualties. Moreover, Pilav lacked a whole range of medicines and equipment (see page 43 of the NIOD Report, Dutchbat III and the civilian population: medical matters (Dutchbat III en de bevolking: medische aangelegenheden), D.C.L. Schoonoord). Despite this, Pilav's request for help to Dutchbat was refused.

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152. Another distressing example concerns a seriously injured woman with stomach and leg wounds resulting from grenade fragments, who requested medical assistance on 11 July 1995 around 15.00 hours. Dutchbat medics gave no treatment but only morphine because the supply position of the drugs was the decisive factor. Then the injured woman was referred to the hospital in Srebrenica, this being '*the humanitarian consideration to allow the woman to die in her own surroundings*' (see page 263 of the Summary of the NIOD Report).

153. Another example concerned a man who had lost his arm on 12 July 1995 and from Dutchbat learned that he did not qualify to be placed on the casualty list. Other seriously injured persons met the same fate (see pages 2678 and 2679 of the NIOD Report).

154. Dutchbat did in the light of (its own assessment of) its own best interests exactly the opposite of what it was ordered, as set out in the order of General Gobilliard of 11 July 1995. Instead of the provision of humanitarian relief and medical assistance, consideration was paid exclusively to its own position. That attitude is to be regarded as even more blameworthy given that there were no Dutch casualties to mourn.

Surrender of the remaining observation posts (OPs)

155. After the fall of the enclave there were still seven OPs crewed by Dutchbat, namely, OP-A, OP-C, OP-M, OP-N, OP-P, OP-Q and OP-R. Dutchbat received the order on 11 July 1995 to leave all the observation posts and to centre their forces in Potoćari, as well as to take all possible measures to protect the refugees. This order would also not be followed (as will be discussed below). Instead of withdrawing to the compound and there employing every means to protect the refugees, developments were awaited at the OPs (see page 2624 of the NIOD Report). The clearance of the remaining OPs will be discussed in brief below. The number of Dutchbat soldiers who would fall into the hands of the VRS during these activities would eventually rise to 55 (see page 2251 of the NIOD Report).

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OP-R

156. The Dutchbat soldiers of OP-R handed over their weapons and left the OP on 12 July 1995. The VRS transported the crew to the Dragan bunker located 500 metres away. That all happened rather good-naturedly (see pages 2251 and 2252 of the NIOD Report).

OP-Q

157. OP-Q was captured on 12 July 1995 likewise without the VRS needing to use force. The Dutchbat soldiers there were taken hostage and the weapons and equipment captured (see page 2252 of the NIOD Report).

OP-P

158. Then the crew of OP-P surrendered on 12 July 1995 because that OP was '*surrounded by tanks and infantry*'. The crew were not taken hostage. The VRS did take the APC (an advanced infantry fighting vehicle) that they found at this OP. The driving lessons that the Dutch crew of this OP had given the Serbs on this vehicle came in very handy (sic!) (see pages 2252 and 2253 of the NIOD Report).

OP-C

159. OP-C was abandoned also on 12 July 1995. The Serb troops adopted a friendly attitude and tried to put the Dutchbat soldiers at their ease but the VRS also made it clear that there was little time to spare (see page 2254 of the NIOD Report).

OP-A

160. OP-A was abandoned by Dutchbat on 15 July 1995. The crew of the OP had seen how the VRS had cleansed the Bosniac village of Mušići on 11 and 12 July 1995. The crew finally approached the VRS positions under a white flag on 15 July 1995. VRS soldiers brought the group to the village of Mušići, where they were fed by the VRS. The crew spent the night in a school where the VRS was also billeted. The crew did not observe the presence of any Bosniacs. The crew were able to return to the UN compound through Bratunac on 16 July 1995 (see pages 2255 and 2256 of the NIOD Report).

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OP-N

161. The capture of OP-N is described on pages 2256 and 2257 of the NIOD Report. In the afternoon of 12 July 1995 the crew of OP-N saw the VRS plunder the village of Čizmići and set the houses alight. Then the OP crew saw about twenty VRS soldiers, accompanied by two cows and three horses, climb the hill on which the OP stood. They held their weapons aloft as a sign that they intended no harm. One VRS soldier beckoned the crew to come outside to open the gate. The OP Commander set out with his weapon aloft, together with a soldier who opened the gate. The VRS asked about the presence of ABiH soldiers and whether there were mines. When both questions were answered in the negative, the VRS entered the OP area whereupon the crew went outside and laid their weapons on the ground. The student who acted as an interpreter for the Bosnian Serbs told them that they would be well treated but had to have patience. During this VRS operation the crew was in constant communication with its own Company Commander. There was no question of any actual threatening of Dutchbat soldiers (see page 2257 of the NIOD Report):

'The VRS military did not appear to be malicious but they did take everything they wanted, both military as well as personal things.The OP crew felt as if they were made prisoners of war, and they were evacuated in the APC accompanied by two VRS soldiers. (...) The Dutchbat soldiers were not treated badly'.

OP-M

162. OP-M was fired upon, primarily with mortars, by the VRS on 6 and 8 July 1995. The Commander of the OP was given permission after his repeated request to 'leave' the OP. The crew later returned. The crew received the order above all not to fight back. Instead of devoting itself to the defence of the OP the crew was 'troubled over the question of how to get away from there'. The crew finally abandoned the OP on 11 July 1995 to the anger of the refugees in the vicinity and the ABiH. The population of the nearby village of Jaglići saw that the OPs were abandoned and fled with the Dutchbat soldiers in the direction of the UN compound in Potočari. The crew arrived there with some 3,000 to 4,000 refugees. The flight proceeded very chaotically. Possibly there were some

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refugees who were run over when they could not get out of the way of the fleeing APC of the crew of OP-M (see pages 2257 through 2261 of the NIOD Report).

I.7. Interference from The Hague

163. According to the rules for dispatch under a UN flag the national governments retain in principle only the right to withdraw the troops made available to the UN. Command and Control vests primarily with the UN (see page 187 of the Summary of the NIOD Report).

164. Voorhoeve recognised that The Netherlands only had the right, under international law, to withdraw the troops made available to the UN, and that remaining matters were for the UN. In practice, however, the State of the Netherlands exercised a large and direct influence on the decisions taken by Dutchbat or by the Dutch officers within UNPROFOR. As Voorhoeve expressed it (see page 2283 of the NIOD Report): *'these soldiers are now UN blue helmets, and consequently this is not our problem … But that's not how matters were in practice'*

165. The guiding role of the State of the Netherlands was most blatantly expressed in the decisions taken in The Hague when the Safe Area was attacked and the Close Air Support, which was regarded as so operationally essential, was halted. The breach of UN Command and Control by the State of the Netherlands will be discussed hereinafter. Before embarking on that Plaintiff will provide an explanation on the 'Dutch line' within UNPROFOR, as that stood at the time of the fall of the Safe Area.

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166. There existed within UNPROFOR a network of Dutch officers to which other nationalities had no access (see pages 2320 and 2321 of the NIOD Report), the so-called 'Dutch line':

Kolsteren, De Jonge (**Zagreb)**
↕
Nicolai, De Ruiter (**Sarajevo)**
↕
Brantz (**Tuzla)**
↕
Karremans, Franken (**Srebrenica/Potocari)**

This Dutch line maintained close contact with The Hague, thus breaching UN Command and Control. That Dutch officers were highly placed in the UN hierarchy was not coincidental. They had been placed there by The Netherlands to keep an eye on things (see page 131 of the Summary of the NIOD Report).

167. The Hague exercised in due course a continuous influence on Dutchbat. That expressed itself, inter alia, by frequent requests for information, which thus by-passed the formal lines of communication and responsibilities. That caused General Nicolai in Sarajevo later to complain (see page 2626 of the NIOD Report):

'*The moment when I really did make a somewhat bad-tempered call to The Hague was when those people in The Hague started asking where the Forward Air Controllers were. It really is too ridiculous for words that they already want to know that kind of thing in The Hague.'*

168. The Dutch UNPROFOR officers (including the above cited Nicolai himself) cut through the chain of command by calling the Safe Area directly and skipping a link in the chain of command of Dutchbat ↔ Tuzla ↔ Sarajevo ↔ Zagreb (see page 2626 of the NIOD Report). In this way a dissenting link – one that was not congruent with the wishes and interests of the State of the Netherlands – in the UN chain of command could be by-

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passed and the State of the Netherlands could exercise its influence. A pattern existed in fact in which decisions were strongly influenced by a Dutch cabal.

169. As an example of this Plaintiff refers to the meeting that Karremans had with Mladic after the fall of the Safe Area. Karremans consulted with Nicolai (Sarajevo) before the meeting, to whom Karremans let it be understood that the preferred line had the approval of Voorhoeve (The Hague). When the discussion between Karremans and Mladic came to an end, Karremans reported to Brantz (Tuzla), who directly informed Voorhoeve (The Hague) (see pages 2635 and 2636 of the NIOD Report). In all of these instances UN Command and Control was breached and The Hague was involved in the decisions.

170. Another example of The Hague setting aside UN Command and Control is described on page 2236 of the NIOD Report, where it emerges that the Dutch Chief of the Defense Staff, Van den Breemen, prompted in this by Voorhoeve, on 11 July 1995 around noon gave the order by telephone to Kolsteren (Zagreb) that the safety of Dutchbat had absolute priority.

171. The initial failure by the Dutch officers of UNPROFOR to accept requests for Close Air Support and the later halting of the air strikes on the instructions from The Hague, as raised above, constituted an important and fundamental breach of UN Command and Control – with disastrous consequences for the refugees in the Safe Area.

172. As the pressure in Srebrenica increased, so information increasingly went from Sarajevo to the Defence Crisis Management Centre (DCBC) in The Hague (see page 2279 of the NIOD Report). The NIOD Report (see page 2281) records that the atmosphere in the DCBC at the time of the fall was pretty tense due to concern for the Dutch soldiers. Concern for the fate of the civilian population came only many days later when the Dutch soldiers had left the Safe Area. At the same time increasingly less information went to the UN and the DCBC increasingly busied itself with operational matters (see page 2276 of the NIOD Report).

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173. Also the then Secretary-General of the UN, Boutros-Ghali, stated on 14 July 1995 that it was the Dutch government who had requested the UN no longer to deploy air power (see page 2317 of the NIOD Report).

174. The American diplomat and negotiator, Richard Holbrooke, also judged that it was the State of the Netherlands that was to blame for the fact that there were no mass air strikes. Holbrooke pointed out that the United States had despairingly urged the deployment of air power but that the State of the Netherlands had refused.
'*The first line of resistance to any action was the Dutch government, which refused to allow air strikes until its soldiers were out of Bosnia (…)*'

and:

'*For a week I called our Ambassador in the Netherlands, Terry Dornbush, instructing him to press the Dutch to allow air strikes but to no avail*',

records Holbrooke in his memoirs (R. Holbrooke, To End A War, New York 1998).

175. The above provides sufficient evidence that the State of the Netherlands breached UN Command and Control. At the same time Plaintiff notes that it was nevertheless for the UN to stick to the mandate and to press ahead with the air strikes for which permission had been granted.

I.8. The fate of the civilian population from 11 July 1995

176. During the fall of the Safe Area on 11 July 1995 the people who had fled were repeatedly told by Dutchbat that they would be safe on the compound in Potocari. Moreover, they were encouraged to flee to the UN compound (see, for example, point 123 of the Decision of the Yugoslavia Tribunal at first instance against former VRS General, R. Krstic). Dutchbat soldiers often advised the male population, however, to flee into the woods. Plaintiff will discuss a number of witness statements concerning this.

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177. Plaintiff Fejzič states about that (see Exhibit 1):

'The Serbs entered the city on 11th July 1995. Chaos broke out. The Dutch soldiers told the population, amongst whom were my husband, my son and myself, that we must go to the UN compound in Potočari. There, according to the soldiers, we would be safe. We were later informed by the soldiers, through megaphones and by hand signals, that there were two routes to take, either to the woods or to the compound in Potočari. As a consequence, the majority of the men headed for the woods, and the women and children went to Potočari. My husband went towards the woods. (…).'

178. Plaintiff Hasanović states (see Exhibit 4):

'The Serbs fired shells into the city again on 11th July 1995. Chaos broke out in the city. The Dutchbat soldiers then declared that the population had to flee to Potočari and that the men had to go into the woods. They informed us of this through a megaphone and by interpreters. As my husband was sick, he could not walk very well, he did not flee into the woods but walked with me, my mother and my mother-in-law to Potočari. My two sons did flee into the woods. That was the last time I saw my sons. I am still broken-hearted by that.'

179. Plaintiff Hotić states (see Exhibit 5):

'When the Serbs attacked on 11th July 1995, the Dutchbat soldiers told the people through interpreters with megaphones that everyone had to go to Potočari. I went then with my husband, Sead Hotić, my son, Samir Hotić, two brothers of mine, the wife of one of my brothers together with the two daughters of my brother to Potočari. The Dutchbat soldiers then speed off in their transport truck in the direction of Potočari. My brother, Ekrem Đilović, was together with me in one group. My brother, Mustafa Đilović, had already left with another group in the direction of Potočari.

There is an intersection on the road into Srebrenica, close to a filling station: one road goes to Potočari, the other goes in the direction of the woods. The Dutchbat soldiers

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then indicated by hand signals that the men must go to the woods. The Dutchbat soldiers did not tell us why. Nobody knew why. We were very confused at that time and did what the Dutchbat soldiers directed. My son went to the woods. My son was gone so suddenly that I did not even say goodbye to him. After he had already gone twenty metres towards the woods I called him back to wish him very good luck. That was the last time I saw my son. My brother, Mustafa, also went to the woods.'

180. Plaintiff Mujić states (see Exhibit 6):
'*The Dutch soldiers that we encountered on the way said that we must flee to Potočari. They called out: "Potočari, Potočari".*'

181. Plaintiff Šehomerović states (see Exhibit 8):

'*The people had fled to Potočari because they thought they would be safe there. They were invited to do so by the Dutch soldiers who had told them that they must go to the compound and that they would there be helped and protected*.'

182. Plaintiff Subašić states (see Exhibit 9):
'*On the way, in the neighbourhood of the small UN base, a former embroidery factory, the Dutch soldiers said that the men who wanted to could go to the woods, and to those who wanted to go to Potočari they would guarantee their safety*.'

183. Plaintiff No. 10 states (see Exhibit 10):

'*We heard from the Dutch soldiers on 11th July 1995 that the men must flee into the woods and that the women and children had to go to the base at Potocari. We were told this through megaphones and a translator. I preferred to go with my father but a Dutchbat soldier prevented it. That was the last time in my life that I saw my father. I went with my mother, sister, grandfather and other relatives with children to Potocari*.'

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184. Witness Kolenović states (see Exhibit 11):

'Dutchbat soldiers informed us that we had to go to Potočari.'

185. Plaintiff will first briefly deal with the fate of the (principally) men, who had decided to flee through the woods to the town of Tuzla (lying 55 kilometres away as the crow flies). Thereafter Plaintiff will examine the fate of the men and women who sought refuge at the UN compound in Potocari.

The flight through the woods

186. The approximately 10,000 to 15,000 refugees, virtually all men, who – often at the direction of Dutchbat – fled into the woods were for the most part unarmed (see page 2480 of the NIOD Report and point 61 in the Decision of the Yugoslavia Tribunal in the case Krstic at first instance). To the extent that these refugees did have weapons they were light weapons or improvised weapons. This instruction by Dutchbat to the men to flee into the woods can only be explained by the fear entertained by Dutchbat for the lives of the male refugees should they fall into the hands of the VRS. This fear was possibly prompted in part by earlier experiences in that regard, for example, the murder of 762 men who fell into VRS hands on 1 June 1992 in Zvornik. Moreover, it should be taken into account that this flight through the woods cut straight through territory controlled by the Bosnian Serbs, an area, moreover, that was infested with mine fields. All this being taken into account Dutchbat still viewed it as preferable being taken by the VRS.

187. A large proportion of the refugees did not arrive in Tuzla. The majority were killed by mines, were shot dead by Serbs or were taken prisoner. After capture most of the men were immediately or shortly thereafter murdered. The Yugoslavia Tribunal established in 2001 that not less than 7,475 persons were missing, that about 6,000 men were taken prisoner and that in July 1995 between 7,000 and 8,000 men were murdered (see points 81, 83 and 84 of the Decision of the Yugoslavia Tribunal in the case Krstic at first instance). The decision in the case Krstic further reveals that the core of these

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executions took place between 14 and 17 July 1995 (see also NIOD Report page 2545). Many executions – on a smaller scale – took place for weeks after 17 July 1995.

188. Plaintiff notes in respect of the above that, given the real danger that the refugees ran and the fact that Dutchbat was aware of that danger, it was the responsibility of Dutchbat to sound the alarm over the fate of these refugees and to action. If such steps had been taken on 11 July 1995, or subsequently, then it is virtually certain that many of them could have been saved. What is certain is that Dutchbat raised no alarm and took no action.

The flight to the UN compound

189. Dutchbat decided to withdraw to the UN compound at Potocari when the majority of the observation posts had been surrendered and the blocking positions that had been taken up were in turn abandoned within hours. As described above, Dutchbat guaranteed the civilian population that they would be safe on the compound. In the meantime requests to Dutchbat for the return of the weapons were refused (see number 477 of the UN Report). In this connection Plaintiff refers to the statement of Plaintiff No. 10 (see Exhibit 10):

'*We fled then to the petrol filling station, close to the small UNPROFOR base in Srebrenica. I saw that my father was there talking with someone from Dutchbat. I heard later that he had asked whether the Muslims could get their weapons back, those that in the preceding years had been surrendered or taken from them. That taking of weapons – I am now just going back in time – was fairly carefully done, for example, by going from house to house. A nephew of mine, Ibro, was standing guard when he encountered a Dutchbat patrol. His weapon was then taken and the Dutch soldiers hit him so hard that he fell and he now always suffers with his back. My father was not able on 10th July 1995 to get Dutchbat to give the weapons back so that we could defend ourselves.*'

190. An example is given on page 2609 of the NIOD Report of a Dutchbat soldier who called to the civilian population of Srebrenica to go to the compound at Potocari. The refugees were effectively left to fend for themselves during their journey of about five kilometres

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from Srebrenica to Potocari. Plaintiff refers in this connection to, for example, the statement of witness Mrs Sabra Kolenović, who confirms, as do so many witnesses, that the required and promised assistance was frequently not provided (see Exhibit 11):

'*Dutchbat soldiers informed us that we had to go to Potočari. The Dutchbat compound was in Potočari. It was impossible for my father to walk so far. I wept with despair. Then the Dutchbat soldiers said that I must walk to Potočari. They would bring my father to Potočari in their vehicle. I left my father behind with the Dutchbat soldiers and fled to Potočari.*

(…)

My father arrived in Potočari on 12th July 1995. The Dutchbat soldiers had – contrary to what was promised to him and to me – left him behind in Srebrenica. He had dragged himself the whole way from Srebrenica to Potočari.'

The refugees were frequently shot at with bullets and fired upon with shells during the journey. This did not restrain the State of the Netherlands from issuing a briefing text on 12 July 1995 in which were mentioned '*the professional and courageous action by the Dutch blue helmets'* and '*the crucial assistance they offered the population in the transfer from Srebrenica to Potočari*' (see page 289 of the Summary of the NIOD Report).

191. The judgment of Dutch historiography is, on this point, strikingly charitable: the majority of the soldiers had enough to cope with themselves under the circumstances and it was apparently necessary to that end to run people over (see page 2614 of the NIOD Report).

Arrival of the refugees at the UN compound

192. Only a small part of the enormous flood of refugees from Srebrenica was allowed on the compound. Final counts made when the refugees were leaving the compound produced numbers between 5,100 and 5,200 refugees. About 30,000 refugees had collected

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around the compound (see page 2620 of the NIOD Report). Dutchbat soldiers appeared ready virtually for the first time in one and a half years to use their weapons to threaten, but against the refugees, however, who tried to enter the compound. Those refugees went there on the promises made earlier that day by Dutchbat soldiers but were not admitted. Large groups of them were directed by Duchtbat to the bus depot and factories near the compound (see page 2617 of the NIOD Report). The bus depot and factories were located some tens of metres from the compound (**Exhibit 20** - map page 2605 of the NIOD Report). The refugees there received the assurance yet again that they would be protected by Dutchbat, which prejudicially prompted these refugees to surrender their last remaining weapons (page 2617 of the NIOD Report).

193. It is incomprehensible that Dutchbat did not admit all the refugees, or at least a larger number, to the compound. The compound offered sufficient space to do so. Plaintiff refers in this connection to, for example, the statement of Plaintiff Subašić (Exhibit 9):

'*We subsequently arrived in Potočari. About 100 Dutch soldiers in full battle kit stood waiting for us. My son, who spoke English, asked if they could go into the camp. My son was allowed to enter the camp, but I and my husband were not. I said then that my son had to go into the camp. It is impossible for me to understand why all the people could not go into the camp. In my view there was sufficient room at the UN camp.*'

Plaintiff Subašić entered the compound the following day, however, and states thereon:

'*When I came round I was in the UN base, to be precise in a small area with 15 to 20 beds. I was alone, without my husband and son, who were not there. I lay tied to the bed and I could do nothing but scream. Later in the day of 12th July, when I was a bit calmer and looked about me, I realized just how big the camp was, and that there was more than enough room for us all.*'

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Plaintiff Šehomerović states on the space within the compound (see Exhibit 8):

'*My husband and I were at that time near the factory of Energo Invest opposite the Dutch compound. We were not allowed in the compound. The Dutch soldiers were armed and did not allow anyone in. My husband asked the Dutch soldiers why we had to come here if no-one was to be allowed in. It seemed to us that there was still enough room to allow people in. Our entreaties had absolutely no effect.*'

194. Franken and Karremans decided to make a small area in and around the compound a 'mini Safe Area' (see page 2604 of the NIOD Report and page 321 of the Summary of the NIOD Report). That mini Safe Area turned out to offer as little safety as the Srebrenica Safe Area itself. The result was deliberately to create an entirely false impression among the refugees that they were safe. It follows from the statements, which Plaintiff will consider below, that false hopes were held out to the refugees.

195. Plaintiff Fejzić states (see Exhibit 1):

'*Those soldiers told us in English and in Dutch that we did not need to be afraid and that there would be negotiations about our return to Srebrenica. The words that were spoken in Dutch were translated by my son. He had taught himself some Dutch through contacts with the soldiers during the preceding year and a half.*'

196. Plaintiff Hasanović states (see Exhibit 4):

'*The Dutchbat soldiers told us on the morning of 12th July 1995 that the women and children would be taken to Tuzla. A woman next to me asked a Dutchbat soldier what would happen to us. The Dutchbat soldier had an interpreter with him. He answered us – through the interpreter – that we were safe and that there was no reason to be afraid.*'

197. Plaintiff Hotić states (see Exhibit 5):

'*The Dutchbat soldiers then ran a tape around the compound and through interpreters with megaphones said: "Whoever is inside this circle, is safe. Outside the circle we*

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cannot guarantee people's safety." They also said to us: "Do not panic. You are protected, but only within this circle." I heard that myself.'

198. Plaintiff Šehomerović states (see Exhibit 8):

'*My husband and I were shocked at what we found in Potočari when we arrived there. There were unbelievable numbers of people who had collected around the compound at Potočari. The people had fled to Potočari because they thought they would be safe there. They were invited to do so by the Dutch soldiers who had told them that they must go to the compound and that they would there be helped and protected. The Dutch soldiers let that be known when they withdrew from the observation posts. The people with whom I spoke all had the same or comparable experiences.*

We could not enter the base where the Dutch soldiers were when we arrived in Potočari. They told us that no-one else could enter the base. The people asked the Dutch soldiers what would now happen to them. They were told that they had no need to be concerned. They spoke in English with each other. I could not understand that but it was translated for me. People were very, very scared, but the Dutch soldiers kept repeating that there was no problem, that they were there for them.

My husband and I were at that time near the factory of Energo Invest opposite the Dutch compound. We were not allowed in the compound. The Dutch soldiers were armed and did not allow anyone in. My husband asked the Dutch soldiers why we had to come here if no-one was to be allowed in. It seemed to us that there was still enough room to allow people in. Our entreaties had absolutely no effect. I do not know whether the Dutch soldiers understood my husband. Despite the fact that it was difficult to have a complete view of the area, I yet had the feeling that many thousands could still have entered the compound. None of us was expecting a bed or a room just as long as we could go into the safe area of the compound. At the same time we heard from the soldiers that everything would be fine. They said: "We are here, no problem, no problem."'

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199. Plaintiff Subašić states (see Exhibit 9):

'*We were, however, assured that we would be safe at the UN base.*'

(…)

On the way, in the neighbourhood of the small UN base, a former embroidery factory, the Dutch soldiers said that the men who wanted to could go to the woods, and to those who wanted to go to Potočari they would guarantee their safety. Because we heard that the Dutch soldiers guaranteed safety, my husband and son, Nermin, did not want to leave me behind and so we carried on together.

(…)

The Dutch soldiers ran out a tape. They told us that the people within the tape would be safe but that, outside, safety could not be guaranteed. Luckily we found ourselves inside the taped-off area. I felt safe. We were spoken to in English, through interpreters. Moreover, my husband gave English and German language lessons and could therefore understand everything.

(…) One of the Dutch commanders told my husband that there was no reason for panic. Everything would be fine. The Serbs would be bombed and we would be safe.'

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I.9. Rules on the reporting of war crimes

200. Plaintiff will first examine the rules on the reporting of war crimes that applied to Dutchbat before giving a summary of the events that occurred around the compound at Potoćari on 11 through 13 July 1995 as evidenced by the NIOD Report and witness statements.

201. The framework for Dutchbat's military actions consisted of the UNPROFOR Standing Operating Procedures, in particular Standing Operating Procedure 208, of September 1993, entitled '*Human rights and war crimes*'. Those rules were based on all relevant international conventions, charters and Security Council resolutions relating to human rights and war crimes (see page 2653 of the NIOD Report). In that sense Standing Operating Procedure 208 constituted no more than a confirmation of the rules that applied to Dutchbat whatever the circumstances. On the basis of Standing Operating Procedure 208 UNPROFOR soldiers were obliged to record and preserve all physical evidence of war crimes that they encountered. The information so obtained, including witness statements, had to be passed immediately to Bosnia Herzegovina Command in Sarajevo. Various examples were given of violations of the laws of war and/or of human rights in an appendix to Standing Operating Procedure 208. The first point concerned the killing or wounding of enemy soldiers following capture or surrender. The same applied to civilians. The third point concerned, inter alia, torture and cruel or inhuman treatment.
Other points concerned forced eviction from houses, villages or cities, as well as the unauthorised use of recognised symbols and badges and insignia of organisations such as the UN. The appendix to Standing Operating Procedure 208 contained finally the safety net:

'*This list is not complete, when in doubt report anyway.*'

The NIOD Report also states that the rules of UNPROFOR obliged a commander to verify information on suspected war crimes and to pass that information to Sarajevo and Tuzla (see page 335 of the Summary of the NIOD Report). In addition, soldiers are obliged on the basis of the Geneva Convention to report to their superiors any war crime

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that they observe. The carrying out of summary executions, rape/mistreatment of civilians and plundering, among others, are war crimes.

I.10. Situation on and around the UN compound

202. Contrary to what the Dutchbat soldiers had promised to the fleeing people the civilian population proved in fact not to be safe on and around the compound at Potocari. The enormous number of descriptions given by the refugees stands in stark contrast to the limited reports by Dutchbat. The NIOD records on this matter (see page 2693 and 2694):

'Only anonymous psychological debriefing sessions with Dutchbat soldiers after their return to Zagreb provided vague pointers that fit in with the bleakest possible picture of what happened in Srebrenica and Potocari. (…)Talking to psychologists and other support people who have counselled or are still counselling Dutchbat members, it becomes clear that they, too, have been confronted with stories that sketch a much more gruesome picture of what took place than they had realised until then.'

In a footnote to that quotation the NIOD states that verification was not possible given the confidentiality of those communications. The NIOD considered this situation to be generally plausible in the light of other statements. It is particularly striking that the NIOD gives scarcely no indication of what that '*bleakest possible picture'* contained, despite the fact that the NIOD deemed the statements plausible. Moreover, the NIOD Report is generally so comprehensive that it is incomprehensible when seen in that light that this essential part remains so under-exposed and all the more so as terrible crimes were committed under the eyes of Dutchbat. The NIOD Report (see page 2658) comes unstuck with the statement:

'The amount of qualitative source material about massacres in and around Potocari is so great in volume and provides so much detail that even the most conservative interpretation of the available information will show up the striking difference with the statements from the Dutchbat side.'

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203. In the Summary of the NIOD Report it is postulated on page 332 that a reconstruction of what the Bosnian Serbs did to the refugees on 12 and 13 July 1995 would be extremely complicated. It was established that the statements of the refugees and of Dutchbat soldiers were very divergent. The Serbs began from 12 July 1995 with an inspection, with the assent of the Dutchbat soldiers. Men were taken out of the groups of refugees, allegedly to be questioned. Afterwards they were not seen again. It is probable that they were murdered. Girls and women were also taken out of the group and removed to a nearby house, where many would have been raped. Dutchbat soldiers stated that they were woken at night by screaming. Many refugees confirmed later that they received reassuring words and guarantees from Dutchbat soldiers about their safety (page 332 of the Summary of the NIOD Report). The statements that have been put in the proceedings as Exhibits 1 through 11 tell the facts as the State of the Netherlands and the UN evidently do not and did not wish them to be revealed. Plaintiff will discuss those statements below.

204. Dreadful scenes were played out around the compound between 11 and 13 July 1995. Men, women, and children were tortured, raped and murdered, sometimes under the eyes of Dutchbat soldiers. See point 150 of the Decision of the Yugoslavia Tribunal at first instance against R. Krstic:

‘*On 12 and 13 July 1995, upon the arrival of Serb forces in Potocari, the Bosnian Muslim refugees taking shelter in and around the compound were subjected to a terror campaign comprised of threats, looting, and burning of nearby houses, beatings, rapes, and murders.*’

205. The VRS asked on 12 July 1995 to inspect the compound, which was permitted by Dutchbat without condition. The Dutchbat soldiers piled up their weapons ‘*in order to avoid provocation*’ (see page 327 of the Summary of the NIOD Report). By so doing not only did they act contrary to the express orders from Sarajevo but the umpteenth possibility to protect the mortally afraid refugees disappeared.

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Establishment of the mini Safe Area

206. In the light of the pressing situation on the compound Dutchbat Commander Karremans requested and was granted a meeting with VRS General Mladic. Karremans allowed himself to be intimidated in that meeting (see pages 324/325 of the Summary of the NIOD Report). Karremans stated that the air strikes had been requested purely from self-defence and thanked Mladic for the good treatment of the Dutchbat soldiers who were held hostage. Then Karremans immortalized himself in a photograph with Mladic, each of them with a glass in hand. Karremans discussed the evacuation of the refugees during a subsequent meeting with Mladic and representatives of the Bosniacs. Then, in the presence of the representatives of the refugees, Karremans stated that the compound and its vicinity were declared to be a mini Safe Area (see page 325 of the Summary of the NIOD Report). It transpired that the refugees could not trust even that promise. Karremans was subsequently asked, in the context of a witness statement before the Yugoslavia Tribunal, why he had not raised the issue of human rights violations at his meeting with Mladic. Karremans answered – to the amazement of the judges of the Tribunal and the media – that in all honesty he had not thought about it (see page 2733 of the NIOD Report):

'*To be frank, I have not thought about the idea of asking him what happened to the refugees.*'

War crimes in the mini Safe Area

207. There was every reason for Dutchbat to report war crimes. In the Decision at first instance against R. Krstic the Yugoslavia Tribunal held under point 155, regarding the situation around the UN compound between 11 and 13 July 1995:

'*By all accounts, the harassment of the Srebrenica refugees by Serb forces was too widespread and pervasive to be overlooked.*'

208. The mini Safe Area declared by Dutchbat turned out to be anything but safe. In the meanwhile the refugees were repeatedly told by Dutchbat, upon asking, that they would be protected (see, for example, page 2617 of the NIOD Report). This tallies with the

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witness statements that are appended to this writ of summons as Exhibits 1 through 11.

209. The NIOD Report discusses a number of cases that give an impression of the degrading situations that occurred on and around the UN compound. Plaintiff will first discuss the crimes specified in the NIOD Report and then discuss a number of crimes on the basis of the witness statements mentioned above. It is repeated here that all these crimes should have been reported in accordance with Standing Operating Procedure 208, and that action should have been taken at the same time.

210. Dutchbat had established sentries in an outer circle around the refugees (see page 332 of the Summary of the NIOD Report). Duchtbat soldiers seemed to suspect that men had been murdered and they saw not less than 9 or 10 dead bodies in close proximity to the compound (see page 335 of the Summary of the NIOD Report), but that did not lead to action. The fact that men and boys were separated from the women around the compound (see page 335 of the Summary of the NIOD Report) should also have been a reason to intervene and to report crimes against the civilian population.

211. The Serbs removed refugees from around the compound, allegedly to be questioned or to be screened for war crimes. Many hundreds of men and boys were separated out in this way and then murdered. Despite this there is no mention of violations of human rights in the UNMO reports sent to UNMO headquarters (see page 334 of the Summary of the NIOD Report). Nor did the soldiers report any war crimes. As appears from the witness statements put in the proceedings as Exhibits 1 through 11, and as will also be shown below, there was, however, every reason to do so. The description of war crimes in the NIOD Report, the war crimes observed by the UNMOs, the war crimes observed by the MSF (*Médecins Sans Frontières*) and the war crimes to which Plaintiff is a witness or was present, will be discussed below in order.

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I.11. Observed war crimes

Description of war crimes in the NIOD Report

212. The only official report of murder in the Safe Area is found in the report of nine or ten corpses and a possible execution on 13 July 1995. Karremans has always maintained that these were the only reports that reached him from the battalion (see page 2656 of the NIOD Report). It can be cited that photographs of the above nine or ten corpses were taken by a Dutchbat officer, with the result that the report could not be denied. The developing of the film roll concerned in the film laboratory of the Dutch Military Intelligence Service (MID) was subsequently unsuccessful (see page 392 et seq. of the Summary of the NIOD Report), which exceeds the powers of imagination of Plaintiff.

213. It follows from everything that is described in the NIOD Report that Dutchbat witnessed many more war crimes, which in accordance with Standing Operating Procedure 208 – which we repeat – should have been reported. The Yugoslavia Tribunal proceeded on the basis of witness statements that between 11 and 13 July 1995 at least eighty men and possibly even a couple of hundred were killed in the close vicinity of the compound (see also page 2658 of the NIOD Report). A selection of the war crimes described in the NIOD Report (with references) to which Dutchbat soldiers were witnesses follows.

214. Plaintiff refers, inter alia, to page 2650 of the NIOD Report, where it is recorded that in the course of the afternoon of 12 July 1995 many Dutchbat soldiers heard shots that could have pointed to executions.

215. During the afternoon of 13 July 1995 a Dutchbat soldier saw five to six VRS soldiers beat a man with riflebutts. The soldier heard from the closest VRS soldier that he should have looked somewhere else. The victim was then dragged away by his hair behind a house. The Dutchbat soldier heard a shot a few seconds later. After that the VRS soldiers returned without the man (see page 2269 of the NIOD Report).

216. One Dutchbat soldier saw on 13 July 1995 a refugee on his knees, with Serbs beside him. VRS soldiers took the violently struggling man away, out of the field of vision of

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the Dutchbat soldier. Immediately thereafter there sounded screams and a shot. The VRS soldiers returned and shook hands with the other Serbs (see page 2675 of the NIOD Report).

217. Plaintiff refers further to a statement by a Dutchbat soldier who saw how men aged 16-60 years old were taken off in groups of 10-15 to a house diagonally across from the bus depot (which itself stood directly opposite the main entrance of the UN compound), where, according to VRS soldiers, these men would be questioned. A quotation on this matter from the NIOD Report (see page 2676 of the NIOD Report):

'The whole group subsequently came out of the house again. Sometimes they released a few men who could prove they had been farmers and nothing else. The others then walked with the above mentioned VRS soldiers behind the house. He said that he then heard shots, after which he saw the VRS soldiers come back again, alone. This pattern was repeated several times during those two days, July 12 and 13.'

218. Another Dutchbat soldier saw on 12 July 1995 a VRS soldier enter a house with five refugees. Then he heard five to six shots and saw the armed VRS soldier come out of the house alone (see page 2680 of the NIOD Report).

219. It emerges from another statement of a Dutchbat soldier that possibly ten refugees were shot dead on 12 July 1995, the corpses being taken away by truck (see page 2682 of the NIOD Report).

220. That there were mass murders of refugees in the mini Safe Area also emerges from the observation of a Dutchbat soldier who saw on 17 or 18 July 1995 some hundred corpses lying on a wagon. The Dutchbat soldier saw arms and legs, and also heads with long hair (see page 2683 of the NIOD Report).

221. Another Dutchbat soldier tells of a massacre that he had seen during a cleansing by the VRS of the southern sector of the Safe Area. He saw how village after village was plundered and destroyed and the inhabitants forced to flee. Men and women were murdered in that action (see page 2683 of the NIOD Report).

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222. A crew member of observation post S (OP-S) stated subsequently that at various times on 8 July 1995 he had heard loud shouts and cries of fear coming from women. This lasted for fifteen minutes, when the noise suddenly stopped. This was repeated for a period of hours. Shots were also heard. The OP crew gathered the impression that the VRS was sweeping the entire edge of the woods and that they killed everyone they encountered. When the OP was captured by the VRS the following day, this Dutchbat soldier asked the VRS what had been going on the previous evening. The answer was that men had first raped the women and then cut their throats (see page 2684 of the NIOD Report).

223. A Dutchbat soldier later stated anonymously that he had not wanted to experience what he had experienced and that he did not want to remember it anymore. There were torturings, executions and massacres (see page 2684 of the NIOD Report).

224. Many rapes occurred in the mini Safe Area during the period 11 to 13 July 1995. Dutchbat was also witness to that. It emerges from a statement made before the Yugoslavia Tribunal that two Dutchbat soldiers were witness to the raping of a woman by two Serbs in the night of 12 to 13 July 1995. It transpired that those Serbs wore Dutch uniforms. Besides the fact that the rape was not reported, no report was made either of the fact that those Serbs made unauthorised use of internationally recognised symbols and badges and insignia, in this case the uniform of the UN (see page 2686 of the NIOD Report). Both the rape and the unlawful use of the uniform were explicitly listed in the examples given by Standing Operating Procedure 208, and somehow a report should have been made thereof. The wave of panic brought about by the rapes and the free movement of the Serbs inside the group of refugees, resulted in no more than the note in the log book of Dutchbat (see page 2687 of the NIOD Report):

'Probably because of a small group of Serbs having a bit of fun.'

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There was no more than just this note but Dutchbat soldiers later stated that they were woken at night by the shouting and screaming of women (see page 2687 of the NIOD Report).

225. Dutchbat indicated to the refugees that they must not go to those places where murder had been committed (see page 2692 of the NIOD Report). From that it is also clear that Dutchbat was aware of the murders.

226. A Dutchbat soldier later stated that he was a witness to two executions on 12 July 1995, which occurred at a distance of 50 to 60 metres from the compound (see page 2693 of the NIOD Report).

227. It is incomprehensible that Dutchbat did nothing about the humiliations, ill-treatments, rapings and executions among the refugees. A Dutchbat officer expressed it before the Yugoslavia Tribunal as follows (see page 2695 of the NIOD Report):

'Everybody acted as he saw fit, with the result that very little or nothing at all was actually done. The battalion had become completely passive.'
Many observed that Dutchbat soldiers cried from distress while they tried to make something clear to the refugees in English (see page 2695 of the NIOD Report). From this it may be deduced that the Dutchbat soldiers knew perfectly well what was happening. That appears also for example from the television images where, to the question 'what's going on?' (see page 230 of the Dutch Parliamentary Enquiry and page 2703 of the NIOD Report), a high-ranking Dutchbat officer replied angrily:

'*You know perfectly well what's going on.*'

228. Only one Dutchbat officer was moved to a different attitude, which was not so much an attitude that extended to opposition but rather to desisting from the co-operation of Dutchbat with the deportations. This officer was not supported in this by his fellow officers and superiors and was told that he must leave for the compound (see pages 230

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and 231 of the Dutch Parliamentary Enquiry). The attitude of Dutchbat with regard to the deportations reaped international criticism, as will be discussed below.

229. Dutchbat soldiers witnessed the fact that passports and/or identity papers were thrown in a pile before a house (the white house) near the compound (see page 336 of the Summary of the NIOD Report). Dutchbat soldiers came across more than one hundred mortally-afraid refugees inside that house. These Dutchbat soldiers later stated that absolute mortal fear ruled in that house and that one could smell death there. None of this was apparently a reason to raise the alarm. The Yugoslavia Tribunal held in its Decision at first instance in the case Krstic regarding this pile of identity papers under point 160:

'*at the stage when Bosnian Muslim men were divested of their identification en masse, it must have been apparent to any observer that the men were not screened for war crimes. In the absence of personal documentation, these men could no longer be accurately identified for any purpose. Rather, the removal of their identification could only be an ominous signal of atrocities to come.*'

However obvious the situation must have been for everyone, in the view of the Yugoslavia Tribunal, it was apparently unclear for Dutchbat. There was no reporting of war crimes and no decisive measures were taken against the Bosnian Serbs. Even more, as will be shown below, some Dutchbat soldiers even worked actively on the separation of the men from the women. Here it may be noted in advance that the word 'men' may be given a very extensive interpretation. Many children, some only twelve years old, if they were fortunate were allowed the opportunity to bid their mother farewell before they were taken away and murdered.

230. The NIOD took as a starting point that there were some 2,000 men on and around the UN compound between 11 and 13 July 1995 (see page 2620 of the NIOD Report). The NIOD surmised that of that number that between 100 and 400 men were murdered on those two days (see page 2774 of the NIOD Report) in the area that, it should be noted,

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had been declared to be a mini Safe Area. The rest of these men and boys would be taken away and murdered in the days that followed.

War crimes observed by UN military observers (UNMOs)

231. The three UNMOs (UN military observers) present in the mini Safe Area were also witness to war crimes. One UNMO saw on 12 July 1995 that some seventy refugees were driven into an 'interrogation house' some 300 metres from the gate to the compound and then periodically heard shots (see page 2700 of the NIOD Report). Another UNMO referred to finding another house in the vicinity of the compound that bulged with men (see page 2703 of the NIOD Report):

'They stretched out their arms and begged for help. A pile of bodies was stacked against a garage wall - higgledy-piggledy. I reported everything.'

However, it is striking that no reference to these events is to be found in the relevant Reports. Even more striking is that the official picture that was given on 12 July 1995 was positive. The VRS had apparently distributed bread and soft drinks among the refugees (see page 2701 of the NIOD Report). That information is also contained in the communication of 13 July 1995 (under point 7) of Akashi to Kofi Annan on the situation in Srebrenica (**Exhibit 21** - Outgoing Code Cable 13 July 1995). That communication continues (under point 8):

'*There continues to be no reports of BSA mistreating any of the Bosnian civilians'*

232. It is striking that on 15 July 1995 a note would be made in the log book of the DCBC in The Hague as a result of a telephone call by Dutch officer De Ruiter from Sarajevo, which reads (see page 2705 of the NIOD Report):

'UNMO source about 1,000 men taken away Bratunac with unknown destination, many people with neck shots. Worked over with rifle butts. Many killed. Carried on like animals (between Potocari and town of Srebrenica). During attack and what happened after that!!'

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The source was probably the Dutch UNMO on the UN compound in Potocari (see page 2705 of the NIOD Report).

War crimes observed by *Médecins Sans Frontières* (MSF)

233. The war crimes were also seen by a fellow worker of *Médecins Sans Frontières* (MSF; of which '*Artsen zonder Grenzen*' is the Dutch equivalent), Mrs Christina Schmitz, who was working in the Safe Area. She told Karremans and Franken that men were taken away to a house and that she then heard shots from the direction of that house. Karremans and Franken assured her that they were entirely certain that none of the men would have been killed (see page 2690 of the NIOD Report). On another occasion Mrs Schmitz was tackled by a Dutchbat soldier who said that bodies lay behind a factory (see page 2669 of the NIOD Report).

Plaintiff as witness to war crimes

234. **Exhibits 1 through 11** are witness statements appended to this writ of summons. Plaintiff will discuss below a number of the crimes that are specified in those statements.

235. Plaintiff Fejzić states, inter alia, (see Exhibit 1):

'(…) These Serbs began to fetch people out of the crowd, particularly men, but also boys. The Dutch soldiers had weapons but did nothing, even when the Serbs later took girls out of the crowd. (…) Not one of them ever returned. While this was going on I heard much shooting close by. This was not an exchange of fire but individual shots.'

236. Plaintiff Gabeljić states, inter alia, (see Exhibit 2):

'I lost all faith in protection when I saw the Serbs taking girls out of the group and mothers fainting. I did not see Serbs rape women. I did see, however, that Dutchbat soldiers walked around together with the Serbs. The Dutchbat soldiers could naturally see how the women were being taken away. I could not see where the girls were taken

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to. I could certainly make out that they were Dutch men and not Serbs in Dutchbat uniforms, because Dutch men and Serbs look different from each other.

When the Serbs took girls away, Bosnian women asked the Dutchbat soldiers in Serbian what happened to the women who were taken away. I saw how the Bosnian women begged the Dutchbat soldiers to bring the girls back. Those mothers wept then. I was there when the Dutchbat soldiers answered only "no, no" although they had certainly seen how the girls had been taken away.

Women went during the day to the houses that stood about the factory searching for food. A woman told me that she had seen eight beheaded men. I did not see the eight dead men myself because I did not go to fetch water.

(…)

I did go later to fetch water and saw that men were brought to a house. Many people went there to fetch water. I saw a group of Chetniks close to the house. I do not know what precisely the Chetniks did there. Then I heard a number of shots, one after the other, and then there was silence. I think that then people were shot dead.

(…)

I heard people crying out in fear in the night of 12th to 13th July 1995. I heard many people screaming dreadfully but I could not see them. The screaming was in front of the factory; I thought that we were all going to be murdered. I will never forget that sound. It was the most dreadful night of my life. I no longer know exactly where I was. I did see Dutchbat soldiers walking about the entire night. I likewise saw Serbs walking around. I could only make out the uniforms, and therefore not the faces, because it was night-time. I did not dare to leave this place because a man told me that Chetniks were everywhere and many people had been killed.'

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237. Plaintiff Gurdić states (see Exhibit 3):

'*When the Serbs came out of the truck dressed in the Dutch uniforms and with weapons, they moved about among the refugees. Panic broke out. As soon as they recognized someone they began to beat that person. Men were taken away.*'

(…)

At one time, I saw how a young boy of about ten was killed by Serbs in Dutch uniform. This happened in front of my own eyes. The mother sat on the ground and her young son sat beside her. The young boy was placed on his mother's lap. The young boy was killed. His head was cut off. The body remained on the lap of the mother. The Serbian soldier placed the head of the young boy on his knife and showed it to everyone. There were at that moment Dutch soldiers in the vicinity. They stood by and did nothing. They appeared to be entirely indifferent. The woman was hysterical and began to call out for help. A Dutch soldier who was standing there said only, "No, no, no." I think that it was a Dutch soldier. The Serbs forced the mother to drink the blood of her child. Chaos broke out among the refugees.

I saw how a pregnant woman was slaughtered. There were Serbs who stabbed her in the stomach, cut her open and took two small children out of her stomach and then beat them to death on the ground. I saw this with my own eyes. These Serbian soldiers were followed around by a number of Dutch soldiers. I am convinced that there were Dutch soldiers present. I recognized them. I was not under the impression that they were afraid or forced to be present. I am pretty certain that they were armed. The Dutch soldiers did nothing at all.'

238. Plaintiff Hasanović states (see Exhibit 4):

'*I saw in the night of 11th to 12th July 1995 Dutchbat soldiers and Serbs walking together around the compound. I recognized two Dutchbat soldiers, whom I had earlier seen walking about in Srebrenica. The Dutchbat soldiers and the Serbs together took*

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men and boys out of the crowd of refugees. My mother and I saw how they took away two boys. I estimate that those boys were about thirteen years old. I do not know what happened to those boys.

(…)

My mother and I went searching for water in the afternoon. Nearby was a house, with a corn field and a stream beyond that. When we got there we saw several dead bodies lying in the field. They had been beheaded. The decapitated heads lay next to the bodies. My mother and I screamed when we saw the bodies. Just then some Dutchbat soldiers were nearby, not more than 10 to 15 meters away. They did not react when they heard us scream. They just wanted us to go back. I do not know whether the Dutchbat soldiers saw the dead bodies, but I think so. They were always patrolling in that area, after all.

The corn field was later put out of bounds with a yellow tape. We were not allowed into the field any more. A Dutchbat soldier then told me that it was better not to go there anymore. That Dutchbat soldier spoke Bosnian badly.

I also spent the night of 12th to 13th July 1995 in the factory, together with my husband, my mother and my mother-in-law. I saw how Serbian and Dutch soldiers walked together through the group of refugees. They pulled men out and took them away. The whole night I heard people scream. They called out to their children, brothers and husbands. There was shooting outside the factory.

In the morning of 13th July 1995 I went with a couple of other women in the direction of two nearby houses. We had to relieve ourselves. The women who were walking in front suddenly began to scream. They cried out that they could see many dead bodies lying there. We immediately ran away. I did not myself see the dead bodies.'

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239. Plaintiff Hotič states (see Exhibit 5):

In the evening we all had to go from the left-hand side of the street to the right-hand side, that is to say, to the side of the compound. I am talking now about the night of 12th to 13th July 1995. We sat pressed close together. There was no space any more between people and I could not move. I spent that night at the bus depot. I saw people in helmets, but I could not recognize them. Suddenly I heard a woman screaming that UN soldiers killed children. I thought that this woman had lost her mind. I could not imagine that UN soldiers would do such a thing. The rumour spread that soldiers had killed the son of this woman, a child of about thirteen years old. Suddenly many women began to scream because they saw how their daughters were being taken away. The screaming was so loud that it was unreal.

One man cried out the name of his son, Hadi, very loudly. I saw soldiers standing about this man and suddenly the man made strange noises and was quiet. I think that the soldiers had perhaps given the man an injection.

Dutchbat soldiers and Serbs passed through the crowd early in the morning of 13th July 1995 to organize the transportation of the refugees. The refugees had to go towards the buses. I saw the daughter of my brother ask one Dutchbat soldier in English: "Where is my father?" The Dutchbat soldier had tears in his eyes and said: "Don't ask". The daughter told me what she had asked the Dutchbat soldier and what his answer was.

I saw two men standing in their underwear close by the street. I thought that they were Dutchbat soldiers who had taken off their uniform. The men stood there and did nothing.

I was also witness when one old man was killed by Serbs. That happened as follows. A young woman carried an old man in a sheet. A Serbian soldier said to her that she must lay the man on the ground. The woman said: "No, he cannot walk". The soldier then said, we will take care of him. The woman then laid the man down. The soldier put a pistol to his head and then shot him dead. I saw this with my own eyes. I do not know

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any more if Dutchbat soldiers were standing there. The area was in fact so small that Dutchbat soldiers must have seen it.

There was a young woman with a baby on the way to the bus. The baby cried and a Serbian soldier told her that she had to make sure that the baby was quiet. Then the soldier took the child from the mother and cut its throat. I do not know whether Dutchbat soldiers saw that.

There was a sort of fence on the left-hand side of the road to Potočari. I heard then a young woman screaming very close by (4 or 5 meters away). I then heard another woman beg: "Leave her, she is only nine years old." The screaming suddenly stopped. I was so in shock that I could scarcely move. I could not see the woman because too many refugees were standing in front. I do not know whether at that moment Dutchbat soldiers were there. Dutchbat soldiers actually walked through the crowd all the time. The rumour later quickly circulated that a nine year old girl had been raped.'

240. Plaintiff Mujič states (see Exhibit 6):

'I heard that we were not being allowed into the compound. So I did not even try. We sheltered at one of the factories nearby. After the Chetniks arrived they began to take men out of the group of refugees. They could do whatever they wanted, and not only with respect to the men. There was not one single Dutch soldier who put any obstacle in their path.

At one time I saw dead people by the compound, whose heads had been cut off their bodies.

I saw dreadful things happen in the night of 12th to 13th July. It was so bad that I could not weep. It was as if I were dead. I heard the screaming of the people who were slaughtered by the Chetniks, they were the last screams of the dying. I saw a mother die on the spot because the Chetniks took her son away from her. It was a very hot day.

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People had no food or water, nor were there any toilets. When I went to look for water I saw 10 to 15 beheaded bodies.'

241. Plaintiff No. 7 states (see Exhibit 7):

'In the afternoon of 12th July 1995 I heard women suddenly yelling and calling out that the Chetniks were coming and that they would slaughter us. The Chetniks entered the compound. I did not dare to leave the building. I did not see any Chetniks in the building which I was in. When once I did leave the building I saw a number of dead people lying there. Dutch soldiers were walking about in the area.

We had to leave on 13th July 1995. Buses stood ready for the people. Dutch soldiers and Chetniks were there. There were more Dutch soldiers and Chetniks by the buses, where the men and women were separated. Suddenly a child ran to me and asked me to help him. Somehow I managed to take him with me onto the bus. In that way I was able to save his life. There were several Dutch soldiers there, who just stood and watched, and one of them looked to be confused and in shock.

There was a mountain of clothes close to where the Dutch soldiers were. I think that this clothing came from civilians. The clothing was bloodstained. I did not myself see any murders but I did see that the clothing was heavily bloodstained. I certainly heard a young woman scream that she was being killed. I wanted to see what had happened but was held back by some soldiers. I do not know any more whether these were Dutch soldiers or the Chetniks. I later saw a pool of blood at that place. This was close to the fence around the compound. I saw this when I had to leave the compound, on the way to the buses.'

242. Plaintiff Šehomerović states (see Exhibit 8):

'The Serbian soldiers, including the Serbs in UN uniform, formed a circle. The circle was formed around the Energo Invest factory. Everyone who tried to break out of that circle was shot dead. I saw with my own eyes that people who tried to flee the circle

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were shot dead. I did not hear the soldiers in UN uniform speak Dutch. I learned later that they spoke Serbian with each other. Some of the people called them by name because they recognized them. I do not know how many people were shot dead. I heard many shots. I actually saw a case myself where a person was shot dead. This all happened about 15 meters from the factory. I heard shooting every 10 to 15 minutes. This went on for about three to four hours. When it grew dark, the shooting increased. The people were so scared that no-one left their place. Everyone, including myself, stayed in the same place.

The son of the uncle of my husband could not bear to watch it anymore and hanged himself in the factory. He was afraid that something would happen to one of his three daughters. He was afraid that she would be raped and that he would have to witness that. That was the reason why he hanged himself. His name was Smojlović Hamdija. We obtained permission to bury him a few meters outside the circle. Dutchbat soldiers patrolled along the road. They moved among the refugees. I am convinced that they saw what was happening. It was impossible for them not to have seen what occurred. They also came inside the circle sometimes. They were able to move about freely.

The Chetniks began with the transportation of men and women from noon on 12th July1995. Girls especially were also taken away. The Dutch soldiers did not intervene. They were constantly implored to help. At a given moment, and this is very important, I myself saw how a boy of fourteen years old from Zapolje, whose mother was called Mukelefa, was snatched out of the hands of his mother. She begged the Dutch soldiers to bring her son back. They just watched and did nothing. The Dutchbat soldiers stayed very calm during all of this. They offered no resistance to what was happening and also did not protect any of us. Dramatic events were taking place everywhere. Old men were murdered. Children were snatched out of the hands of their mothers and parents committed suicide because their daughters were taken away and raped.

At that time one's life stopped. Total chaos reigned. I saw no rapes myself. I saw only that girls were taken away and I do not know where they were taken to.

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During all of this the Dutch soldiers just walked around without doing anything. (…)

The Dutch soldiers just watched. They did not react in any way at all to what happened. I recognized some of the Dutch soldiers from the patrols alongside our house. We arrived at a barrier. I knew about twenty persons of those in the group with us. Some were neighbours, some were friends and some I knew from work. I saw how the nine-year old son was torn out of the arms of his mother. She screamed for help. The Serbian soldiers dragged her by the hair and beat her on the ground. The woman was thrown in the truck. The young boy lay on the ground on his left side. Even after more than eleven years I cannot forget how he cried out for his mother.'

243. Plaintiff Subašić states (see Exhibit 9):

'Then Mladić came and everyone was in a panic. The soldiers with Mladić were heavily armed and walked among the people. All this was filmed by a camera crew. Mladić began then to distribute chocolate and sweets among the children there. He let it be known that no-one needed to be afraid and that everything would be fine. As soon as the camera stopped filming this scene changed. He asked a young boy how old he was. The boy told him that he was eleven. To that Mladić said that in six years he could be a soldier and that he had to go with them. The young boy was then grabbed, taken out, and taken away. I told this to my husband and he told it in turn in English to one of the soldiers that children were being removed. The Dutch soldier looked at him and said only, "So what".

(…)

The Serbs began at a certain point to take girls and young women out of the group of refugees. They were raped. The rapes often took place under the eyes of others and sometimes even under the eyes of the children of the mother. A Dutch soldier stood by and he simply looked around with a walkman on his head. He did not react at all to what was happening. It did not happen just before my eyes, for I saw that personally,

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but also before the eyes of us all. The Dutch soldiers walked around everywhere. It is impossible that they did not see it.

There was a woman with a small baby a few months old. A Chetnik told the mother that the child must stop crying. When the child did not stop crying he snatched the child away and cut its throat. Then he laughed. There was a Dutch soldier there who was watching. He did not react at all.

I saw yet more frightful things. For example, there was a girl, she must have been about nine years old. At a certain moment some Chetniks recommended to her brother that he rape the girl. He did not do it and I also think that he could not have done it for he was still just a child. Then they murdered that young boy. I have personally seen all that. I really want to emphasize that all this happened in the immediate vicinity of the base.

In the same way I also saw other people who were murdered. Some of them had their throat cut. Others were beheaded.'

244. Plaintiff No. 10 states (see Exhibit 10)**:**

'We spent the night of 11th to 12th July 1995 in the factory. The Serbs entered the factory in the morning of 12th July 1995. They shouted out that the men and boys older than thirteen had to leave the factory. The Serbs were armed and took men and boys out of the group of refugees. I saw UNPROFOR soldiers in the factory. When I came closer to those soldiers, I heard that they spoke Serbian. I heard them say that the men were being taken out of the group for questioning. Other UNPROFOR soldiers were clearly Dutch and they did nothing.

When we were driven out of the factory by the Serbs a group of Serbs came along who said that they were looking for a particular girl. Those Serbs knew that girl from before the war. My mother was scared that it was my sister they were looking for and she covered her head and face with a scarf. Girls were continually being taken out of the group and they were raped. I was very afraid. I knew a woman whose daughter was

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taken out of the group and was never seen again. That daughter was a year older than me.

I wanted on 12th July 1995 to fetch water with my sister from a house that stood close to the factory, and to do so I had to cross a corn field that was in front of the house. I saw bodies lying there without any heads. My sister, who was walking in front, dragged me away. Dutch soldiers were standing only a short distance away and I cannot believe that they did not see it.

During the rest of 12th July 1995 I saw Dutch and Serbian soldiers walking about together. I heard a Serbian soldier ask a Dutch soldier in Serbian whether the Dutch soldier was interested in a girl and he offered him a girl. The Dutch soldier said nothing back.

I was later with my niece close to a group of Dutch soldiers. The soldiers were handing out sweets. My niece asked a Dutch soldier in English what was happening and the soldier said that whatever it was, it was not good for us. He then began to laugh. We went back to my mother. It began to get dark and we heard screams from the direction where the men and boys from the factory had been taken.

My mother was taken by Serbs from the group of refugees during the night of 12th to 13th July 1995. She was then raped. I cannot speak any more of that. She never recovered from that and a year later died of cancer of the womb. She was then 37 years old.'

245. Witness Kolenović states (see Exhibit 11):

'The Serbs subsequently began to separate the men from the other refugees. They formed a human line together with the Dutchbat soldiers. Nobody was allowed through. The Serbs dragged the men out of the crowd and brought them to a house on the other side of the compound.

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The Serbs did whatever they wished. A sort of tape was stretched across the road just about where the "Blue Factory" and the zinc factory were. The Dutch soldiers stood in front of it and no-one was allowed to pass. At that moment a Chetnik, slightly older than my oldest son, spoke to me. He looked like Rambo, with a cartridge belt across his body. At first I did not recognize him but I remembered him when he told me that his name was Željko. He asked me where my family was, in particular my husband. I told him that he had been killed by a shell. He offered me a cigarette. While I smoked it he told me that there could be, and here I use the Bosnian word, a "Kurban". This stands for ritual slaughter. At that he walked to the tape that had been placed by the Dutchbat soldiers and sliced it through. Željko spoke to one of the Dutch soldiers, who stood by the tape. This soldier was then struck in the face by Željko with such a hard blow that the soldier's helmet fell off. The Dutchbat soldier then had to give his weapon to Željko. The Dutchbat soldier blushed red but did nothing. He appeared scared and allowed this to happen to him.

I later saw Serbs stab an old man. This happened under the eyes of a Dutchbat soldier. This was the same Dutchbat soldier from whom Željko had taken the weapon. also The Dutchbat soldier did nothing this time also. He stood there and just watched.

I saw this same Željko several times on 12th and 13th July 1995. He walked about looking for former neighbours from Srebrenica. He raped two sisters. I did not see this myself but they told me themselves. They were two former neighbours of mine. I do not want to name them.

I also heard that Željko said to some Dutchbat soldiers: "Do what you want to the women. Now is your chance. Do with them what you want. Kill them or whatever." The Dutchbat soldiers did not respond.

I saw a group of Chetniks hold down a woman of about 65 years old while one of the Chetniks stuck his arm up into the vagina of the woman and tore out her womb. After this happened she was still alive. She survived it. I saw that with my own eyes. Some four or five Dutchbat soldiers were standing in the immediate vicinity. They did nothing.

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The night of 12th to 13th July 1995 was also dreadful. It was chaos. I heard people screaming and crying. Chetniks ran around raping the women. I myself saw how they took a girl away. I never saw her return.

My father lost consciousness in the morning of 13th July 1995. I asked a Chetnik if I might fetch some water for my father. He said simply, "Go". I crossed over a bridge and along a road. I came to a house, about two hundred meters from the road. Between this house and the street stands an electricity building. The house stands next to a small stream. Near the house I saw a group of dead men lying. They wore civilian clothes. Their throats had been cut.

As I was approaching the house I saw a woman. When she saw that I was not a soldier she began to scream and ran outside. A group of Chetniks stood near the house. When the Chetniks saw the woman run outside screaming they shot her dead. I collapsed when I saw that. A Chetnik walked up to me, grabbed me by the hair and asked me what I was afraid of. Then he began insulting me. I feared that that he would kill me. He took his knife and cut me above my eyes. Then he said that I was not worth this knife and nor was I worth the cost of a bullet. He then kicked me in the head and took his knife and stabbed me through my trousers. I saw that his knife was covered in blood. The thought flashed through me that he must already have killed someone. I then lost consciousness. I do not know what then happened. I do not know at all what they did with me, for I was unconscious. I ran off when I came round again. I left Potočari that day by bus.'

246. None of the events described above led, however, to Dutchbat taking action and/or raising the alarm.

I.12. Need to report war crimes

247. The reporting of war crimes, the raising of the alarm and not co-operating with the separation of men/boys from women, could yet have made a great difference. As shown on page 69 et seq. of the Decision of the Yugoslavia Tribunal at first instance in the case Krstic, the majority of executions took place between 14 and 17 July 1995 (see also

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page 2545 of the NIOD Report), with the result that a report made and an alarm raised on 12 to 13 July 1995 could have meant that still many of the lives could have been saved. In the UN Report it is stated under points 361-374 that the mass executions were begun on 14 July 1995. Before that unarmed men and boys were murdered 'only' in their hundreds.

248. It emerges from the statement of Deputy Battalion Commander Franken, cited on page 339 of the Summary of the NIOD Report, that not reporting and not acting against war crimes were prompted by the wish '*to keep the peace*'. Franken stated:
'At the moment when you announce: "We are indeed afraid that the men will all be killed", there definitely will be panic among the crowd of Displaced Persons. Under those circumstances we gave priority to the fate of the women and children. We accepted that the fate of the men was uncertain and that they indeed might end up in the most deplorable of circumstances.'

That the desire to keep the peace was apparently sufficient justification for Franken to permit men and young boys to be taken away (whose fate was, according to Franken, sealed) is a balancing of issues that is not justifiable. Dutchbat wished to keep control of the refugees and not to protect them. In the light of the above the declaration of the 'mini Safe Area' was a conscious deception. Dutchbat ensured to the very end that the refugees did not themselves offer resistance to the VRS, which ultimately proved fatal for so many.

249. Scores of refugees in the mini Safe Area committed suicide from despair while Franken attempted to '*keep the peace*' (see page 332 of the Summary of the NIOD Report). That should have been for everyone also an indication of the gravity of the situation. It is striking that Dutchbat reported so few cases of suicide among the refugees. For example, there was an older man who returned from questioning by the Serbs, who was so shocked by what he had evidently seen that he did not wish to talk about it. He ended his life during the night by hanging himself. Dutchbat removed his corpse the following day (see page 2688 of the NIOD Report).

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250. A Dutchbat soldier anonymously stated in 1995 that a couple of refugees had hanged themselves in despair. First a Dutchbat soldier openly stated before the Yugoslavia Tribunal at first instance in the case Krstic that he had seen three to four suicide victims, two of whom he had cut down. An UNMO (UN Military Observers) stated also in those proceedings that he had cut down two men. The NIOD concluded in its Report that the probability was that Dutchbat soldiers had seen more suicides but had not formally reported them (see page 2688 of the NIOD Report).

251. The Dutch ministers who were in the Defence Crisis Management Centre (DCBC) in The Hague on 11 July 1995 learned that the Serbs had overrun the Safe Area, and that thirty hostages were in the hands of the VRS. There were other dispatches that all the women and children would be allowed to leave and that raised grave fears for the men and for wholesale slaughter (see page 2296 et seq. of the NIOD Report). It is stated on that page also that the Spanish President of the EU was preparing a statement on Srebrenica and that Spain was of the opinion that Dutch soldiers must continue to protect the local population. In its view The Netherlands was faced with a choice of continuing with the humanitarian task or of ensuring the safety of its own soldiers. The NIOD Report states on page 2299 that Dutch Prime Minister Kok declared that the principle was that Dutchbat was responsible for the fate and the future of the civilian population. Despite that utterance the priority of the State of the Netherlands remained centred, however, on its own soldiers. By making that choice the State of the Netherlands failed to appreciate that the observed crimes should somehow have been reported. If the alarm had been raised, action – by others if needs be – could have been taken.

252. The UN Report concluded (under points 346 through 358, as well as under point 474) that it was incomprehensible that Dutchbat did not report the war crimes where Dutchbat was a witness. The UN Report will be discussed below. The reason for not reporting the war crimes is, however, in reality incomprehensible. The Report of the French Parliament concluded that there was but one reason for not reporting the war crimes which was that the priority of the Dutch government during the entire crisis was the protection of the Dutchbat soldiers held by the Bosnian Serbs. For that same reason

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The Netherlands was also unresponsive to French proposals for military intervention following the fall of the Safe Area (see the Report of the French Parliament, Part I, page 102):

'*L'explication est e realité assez simple: tout au long de la crise, la priorité du gouvernement néerlandais est de garantir la sécurité des soldats du Dutchbat détenus par les Serbes. D'où une discrétion volontaire sur les exactions serbes. Dans le même esprit, les Pays-Bas se montreront très réticents face aux propositions françaises d'intervention military après la chute de l'enclave.*'

[Lawyer's translation :
The explanation is in reality pretty simple: the priority of the Dutch government during the entire crisis lay with the protection of the Dutch soldiers who were held by the Serbs. That was the reason for the deliberate silence about the Serb acts of violence. In the same spirit The Netherlands showed itself to be very unresponsive to French proposals for military intervention after the fall of the enclave.]

I.13. Role of Dutchbat in the separation of men from women and deportation

253. The Bosnian Serbs began the process of deportation of the refugees on 12 and 13 July 1995. To that end the Serbs wished to separate the men and boys from the women. Dutchbat did not stop that. Nor did Dutchbat report the separation, or at least insufficiently reported it. Instead Dutchbat soldiers even assisted with the separation and deportation. The failure to report various matters was discussed above. Plaintiff will examine below the co-operation given by Dutchbat soldiers in the separation and the deportation.

254. One Dutch officer, who was not prepared to co-operate with the separation and deportation, stated on this before the Dutch Parliamentary Commission of Enquiry as follows:

'*An alternative position was that of observer. That is then what I did: do nothing, observe, note down names, record facts. If you find yourself in a situation in which you*

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have no weapons any more and you walk about in a T-shirt but you can still fill in those «millimetres», then that has to be your position. If you refrain from doing that or choose another position, then you take a certain responsibility on yourself. I expressly did not want to take on that responsibility. I tried to record what was actually going on. That was, to put it bluntly, a deportation. There is no other word for it.'

That attitude led to a heated discussion on the spot between this officer and his superiors (see pages 2738 and 2739 of the NIOD Report). The officer in question stated that there were Dutchbat soldiers who rendered assistance to the VRS with the separation and deportation (see page 2740 of the NIOD Report).

255. The then French Minister for Foreign Affairs, Hervé de Charette, said on French television on 13 July 1995 that the Dutch blue helmets were accessories to ethnic cleansing by virtue of their having co-operated with the deportation of the civilian population (see page 2425 of the NIOD Report).

256. Plaintiff will discuss below the role of Dutchbat at the time of the separation and deportation. In addition to that the following matters will be discussed, inter alia, actively ensuring that the refugees proceeded towards the buses and trucks standing ready, that they did not leave the rows leading to the buses and that men and boys could not enter the buses of the women.

257. Plaintiff Fejzić states (Exhibit 1):

'*We heard from the Dutch soldiers in the morning of 13th July 1995 that we were to be taken somewhere else. The Serbs and the Dutch soldiers had formed a sort of human wall on two sides. We had to pass along this corridor of Dutch and Serbian soldiers towards the buses and trucks that stood ready. My son and I held each other tight. While my son and I walked along the corridor towards the buses and trucks, my son was insulted by a Dutch soldier, while that soldier pointed at my son with his finger. My son knew the Dutch word that the soldier shouted at him and he translated that word for me. When we reached a certain point a Serbian soldier said that my son had to go to the*

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right and I had to carry straight on, towards trucks and buses that were intended for the deportation. The Dutch soldiers stood by. I fell to my knees and begged the soldier not to kill my son. The Dutch soldiers did nothing. A Serbian soldier prepared his weapon to shoot me dead but another Serbian soldier objected. My son was taken away and I never saw him again. His remains have also never been identified.'

258. Plaintiff Gabeljić states (Exhibit 2):

'*The transportation of the refugees by trucks and buses took place on 13th July 1995. Chetniks and Dutchbat soldiers had formed a line between the buses and the refugees. I saw that the Chetniks and the Dutchbat soldiers were holding hands and allowed the refugees through only one at a time.*'

259. Plaintiff Gurdić states (Exhibit 3):

'*When we, that is to say, my daughter-in-law, her son and I, tried to go together to the buses he was stopped by the Dutch and the Serbian soldiers. The son of my daughter-in-law was not allowed onto the bus. His headless body was later found.*

The Dutch and Serbian soldiers formed a narrow corridor along which we had to walk. They held hands and in that way made a human chain. The Chetniks stopped me and asked questions. They did not let me through to the bus but I was able to tear myself free and run to the bus. I stayed in the bus. This human chain was put in place for the stream of refugees, not for the buses. As soon as you were through the human chain you could go to the buses.'

260. Plaintiff Hasanović states (Exhibit 4):

'*We were deported to Tuzla later that day by bus. The buses were parked near the compound. A Dutchbat soldier with an interpreter stood between the refugees and the waiting buses. The Dutchbat soldier said to the refugees – through the interpreter - that the men and the women had to go to different buses. A group of men already stood*

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waiting by the buses. They were surrounded by a group of armed Dutchbat soldiers. Dutchbat soldiers were walking about everywhere in the company of Serbian soldiers. Together they separated the men from the women. I was also separated from my husband. I never saw him again.'

261. Plaintiff Hotić states (Exhibit 5):

'I saw with my own eyes how Dutchbat soldiers kept water from the refugees and when they wanted to take some they took it away again just to pester them. Dutchbat soldiers and Serbs stood together at the bus and in front of the refugees. It was a group of five or six Dutchbat soldiers.

The transportation was subsequently done with buses and trucks. I was then with my husband, the wife of my brother and the two daughters of my brother. All the men were then selected. The Dutchbat soldiers did not participate in the selection, they just supervised it. Both Serbs and Dutchbat soldiers were present at the selection. The Serbs held a weapon to my husband's neck and took him away. That was the last time I saw my husband.

I also saw the Serbs take a young boy of about eleven years old out of the group. The Chetniks dragged him away, his mother tried to pull him back. This happened under the eyes of the Dutchbat soldiers. The Dutchbat soldiers did absolutely nothing. Then a soldier said in the Serbian language: "Leave the child". The young boy was then allowed to leave with his mother.'

262. Plaintiff Mujić states (Exhibit 6):

'We were transported in buses on 13th July. Soldiers from Dutchbat and Chetniks stood hand in hand when we went to get in the buses, and they made sure that no men could get in the bus. There was just one old man in our bus.'

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263. Plaintiff No. 7 states (Exhibit 7):

'*We had to leave on 13th July 1995. Buses stood ready for the people. Dutch soldiers and Chetniks were there. There were more Dutch soldiers and Chetniks by the buses, where the men and women were separated. Suddenly a child ran to me and asked me to help him. Somehow I managed to take him with me onto the bus. In that way I was able to save his life. There were several Dutch soldiers there, who just stood and watched, and one of them looked to be confused and in shock.*'

264. Plaintiff Šehomerović states (Exhibit 8):

'It was now 13th July 1995. The group was steadily growing smaller as ever more people were taken away. At one point we were taken out of the circle. It was after noon. We moved slowly. Moreover, it was extremely hot weather.

Very many people, including in particular old people, were ill. We went towards the UN base. There were buses and trucks there. The Dutch soldiers stood together with the Serbian soldiers. The Dutch soldiers were no longer armed. The Serbian soldiers were certainly armed. The Dutch soldiers just watched. They did not react in any way at all to what happened. I recognized some of the Dutch soldiers from the patrols alongside our house. We arrived at a barrier. I knew about twenty persons of those in the group with us. Some were neighbours, some were friends and some I knew from work. I saw how the nine-year old son was torn out of the arms of his mother. She screamed for help. The Serbian soldiers dragged her by the hair and beat her on the ground. The woman was thrown in the truck. The young boy lay on the ground on his left side. Even after more than eleven years I cannot forget how he cried out for his mother.

I arrived at the barrier shortly thereafter and my husband and I were separated. At the barrier I was told to walk straight on. My husband had to turn left. At that moment I did not react. I said nothing. I could not speak. My mouth was as dry as a bone and I felt tears well up in my eyes. I came to the truck. There were Dutchbat soldiers there. They did nothing.

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Thereafter we were transported. (…)'

265. Plaintiff Subašić states (Exhibit 9):

'*A wall of soldiers was formed at one point. It was then 13th July 1995. A living corridor was formed in this way of Dutch and Serbian soldiers, and we were literally thrown off the base. No-one remained behind. In that way they could check who was permitted to step into the buses. Then I encountered my husband in front of the base. When we came together my husband and I tried to get to the buses. One of the Dutch soldiers held my husband back and took him to the Serbs. I know for certain that it was a Dutch soldier because he spoke in English to my husband and he wore shorts. All that, thus from leaving the base to the moment that I was separated from my husband, took about ten minutes. Here I must add that I also personally saw how a man, one of our men, tried to conceal himself on the base, but he was then grabbed by his hands by two Dutch men and thrown off the base. The buses in which we sat were not escorted to Tuzla by the Dutch soldiers.*'

266. Plaintiff No. 10 states (Exhibit 10):

'*We had to board the buses and trucks that stood ready for us on 13th July 1995. The men were not allowed to come with us. My uncle with his three-year old son on his shoulders had to give his son to his wife and was told that he must say goodbye. We never saw him again. In the meantime Dutch soldiers stood laughing with Serbian soldiers. I saw some drinking beer together.*'

I.14. Reactions to the fall of the Safe Area

267. The world reacted with shock to the fall of the Safe Area. Plans were rapidly made to retake the Safe Area. Those plans were frustrated, however, by the State of the Netherlands and Dutch advisors. This is explained below.

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268. When the communication from Dutch Minister Van Mierlo came through on 11 July 1995 that the enclave was on the point of falling, and that NATO could no longer deploy aircraft, '*le Président de la Republique a littéralement explosé*', according to an advisor of French President Chirac who was present. German Chancellor Kohl and Chirac were of the opinion that the Safe Area must be restored. General Quesnot, President Chirac's military advisor, proposed a plan to the French President for the retaking of the Safe Area with paratroops. General Quesnot would lead the force. He said: '*Give me two regiments, I jump, and I will retake Srebrenica.*' That this statement was not an empty boast is shown by the fact that 56 French soldiers lost their lives during fighting in the framework of the UNPROFOR mission in Bosnia. When the Dutch Cabinet learned of the French-German plans to retake the Safe Area, it assessed them as scarcely credible. The Dutch Chief of the Defence Staff, Van den Breemen, considered the retaking of the Safe Area to be irresponsible as long as there were still Dutch soldiers in the Safe Area because they would be in danger (see page 2411 et seq. of the NIOD Report and pages 294 and 295 of the Summary of the NIOD Report). This state of affairs shows the constant pattern among Dutch politicians and army command totally to subordinate the importance of protecting the refugees to that of the perceived Dutch interest.

269. President Chirac and Minister Hervé de Charette, during private talks, at once expressed their amazement at the speed with which Dutchbat had surrendered the Safe Area. Hervé de Charette said on French television on 13 July 1995 that the Dutch blue helmets had offered too little resistance, and apart from that were accessories to ethnic cleansing by giving assistance to the deportation of the civilian population (see page 289 of the Summary of the NIOD Report).

270. The wish that the Srebrenica Safe Area should be restored and if necessary retaken arose internationally after the fall. That was expressed in the draft of UN resolution 1004 with the addition, '*to use all resources available*' in the restoration of the Safe Area. This encountered objections from the Dutch government because this hard line against the Bosnian Serbs could entail risks for the Dutch hostages. The Netherlands preferred use of the formulation, '*to use his best efforts*'. For this reason The Netherlands withdrew as co-proposer of the draft resolution. The draft resolution was, nevertheless, unanimously

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accepted on 12 July 1995. Secretary-General Boutros-Ghali then instituted an investigation into the military means that would be required to achieve a restoration of the Safe Area by force. His military advisor, the Dutch Van Kappen, judged a plan to retake Srebrenica as unmanageable in military and political terms (see pages 296 and 297 of the Summary of the NIOD Report). In the end nothing was done.

271. After the women were deported from the Safe Area by bus to Tuzla, after the men and boys were taken away and murdered, Dutchbat left the area together with the freed hostages on 21 July 1995.

272. In the week preceding their departure, Dutchbat neglected every attempt either through an appeal for information or a form of debriefing to reveal information on possible very serious violations of human rights. Both Franken and Karremans subsequently admitted that they were amazed that they had not thought of doing so. Nor was anything done in that respect higher up in the hierarchy of UNPROFOR (see page 2776 of the NIOD Report).

I.15. Individual circumstances of each Plaintiff

273. The individual circumstances of each Plaintiff will be gone into in more detail below. Plaintiff refers for completeness to the statements that have been appended to this writ of summons as **Exhibits 1 through 10**. Each Plaintiff will confine herself essentially to the family members she lost. Plaintiff was driven from hearth and home with the fall of the Safe Area and thereby lost all her personal possessions.

Fejzić

274. Plaintiff Fejzić was born in 1956, in the Municipality of Srebrenica. She lived before the war in Srebrenica with her husband, Ŝaban (born in 1952), who worked as a manager at the mine near Srebrenica. Fejzić and her husband had a son, Rijad, who was born in 1977. The husband of Fejzić fled to the woods on the instruction of Dutchbat on 11 July 1995. He has never been found. The son of Fejzić was separated from her on 13 July 1995 under the eyes of Dutchbat soldiers and taken away. Fejzić has not seen her son

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since and he has not yet ever been identified. Fejzić presently receives a monthly benefits payment of KM 514.39 gross (about EUR 257).

Gabeljić

275. Plaintiff Gabeljić was born in 1955, in the Municipality of Srebrenica. Gabeljič lived in Sućeska, near Potoćari, before the war. She lost the following persons from her close family, up to and including the second rank:
- her husband, Abdulah (born in 1953)
- her brother, Avdić (born in 1962)
- her two sons, Meho (born in 1974), and Mesud, (born in 1979).

Her husband and two sons fled into the woods on the instructions of Dutchbat. Parts of the remains of her husband and her brother were found in a mass grave in 2005. The bodies of her two sons have as yet not been recovered. Gabeljić presently receives a monthly benefits payment of KM 167.40 gross (about EUR 84).

Gurdić

276. Plaintiff Gurdić was born in 1953, in the Municipality of Višegrad. Both before and during the war she lived in Potoćari, at a distance of about 500 metres from what was later the UN compound. She lived there with her husband, Januz (born in 1953), who was a mine worker. Gurdić and her husband had three children, Mustafa (born in 1975) and Mehrudin (born in 1977), and a daughter, Samija (born in 1988). Her husband, sons and brother-in-law fled into the woods on 11 July 1995, after her brother-in-law had seen that no-one else was being allowed into the UN compound and, moreover, that there were Serbs on the compound, who were eating and drinking together with Dutchbat soldiers. Gurdić fled with her daughter towards the UN compound. Gurdić lost a total of 38 family members, in addition to her husband and sons. Gurdić presently receives a monthly benefits payment of KM 252.53 gross (about EUR 126).

Hasanović

277. Plaintiff Hasanović was born in 1946, Municipality of Rogatica. In 1992 she fled with her husband, Huso (born in 1945) and children to Srebrenica, hoping there to be safe. Her son, Ramiz (born in 1967) was killed in the war in 1992. At the time of the fall of

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the Safe Area Dutchbat soldiers stated that the civilian population must flee to Potoćari and the men must go into the woods. Her two sons, Selman (born in 1969) and Sead (born in 1972), consequently fled into the woods. That was the last time that Hasanović saw her sons. Because her husband was sick and could not walk very well, he fled with Hasanović, her mother and mother-in-law to the UN compound at Potoćari. Hasanović was separated from her husband on 13 July 1995 and taken away. Hasanović has never seen her husband again. Her husband and son, Sead, have as yet not been identified. Her son, Selman, was identified in 2003. Hasanović presently receives a monthly benefits payment of KM 161 (about EUR 80).

Hotić

278. Plaintiff Hotić was born in 1945, in the Municipality of Zvornik. Hotić lived in Srebrenica from the outbreak of the war, with her husband, Sead (born in 1939) and son, Samir (born in 1966). Her husband was a sociologist and worked as a civil servant. When Hotić heard from Dutchbat on 11 July 1995 that she had to go to Potoćari she fled there together with her husband, her son, her two brothers and the wife of one of her brothers with their two daughters. Shortly before they had reached the UN compound Dutchbat soldiers indicated by hand signals that the men must flee to the woods. Her brother, Mustafa (born in 1953) and her son therefore fled into the woods and were never seen again. Hotić continued on her way with the rest of the group. Her brother, Ekrem, was taken out of the mini Safe Area by Serbs for ‘questioning’ on 12 July 1995 and never returned. Hotić was separated from her husband on 13 July 1995, and he was taken away with a gun held to his neck. Hotić never saw him again. Her husband and her brother, Ekrem, were later found in a mass grave. Her son, Samir, has still not been found. Hotić presently receives a monthly benefits payment of KM 694.33 gross (about EUR 347).

Mujić

279. Plaintiff Mujić was born in 1948, in the Municipality of Bratunac. Mujić lived in Srebrenica during the war, with her husband, Mustafa, and her sons, Mujo (born in 1972) and Husejin (born in 1973), and her daughter (with her family). Her husband was taken prisoner-of-war by the Serbs in 1993 and has been missing ever since. She fled

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with her family to Potoćari on 11 July 1995, on the instructions of Dutch soldiers. On the way a group of men decided to flee to Tuzla through the woods. Her two sons decided to go with that group. Mujić never saw her sons again. Mujić, her daughter, granddaughter and some other family members continued on their way to Potoćari. Mujić was deported on 13 July 1995. In total, Mujić lost tens of her family members. The remains of her oldest son, Mujo, were later found and identified. A doctor established that her son had suffered four gunshot wounds. Mujić presently receives a monthly benefits payment of KM 169.40 gross (about EUR 85).

Plaintiff No. 7

280. Plaintiff No. 7 was born in 1952, in the Municipality of Vlasenica. Plaintiff No. 7 lived before and throughout the war in Potoćari, near the UN compound, with her husband and her only son. Her husband had fled to Tuzla before the fall of the Safe Area. Her son fled into the woods on the day of the fall. Her son was later identified and buried. Plaintiff No. 7 fled to the UN compound on 11 July 1995, which she was allowed to enter. Plaintiff No. 7 was deported on 13 July 1995. Plaintiff No. 7 lost a total of five members of her family including her son, nephews and nieces. Plaintiff No. 7 presently receives a monthly benefits payment of KM 352.32 gross (about EUR 176).

Šehomerović

281. Plaintiff Šehomerović was born in 1951, in the Municipality of Srebrenica. Šehomerović lived in Srebrenica from the outbreak of the war with her husband, Omer (born in 1946) and son, Armin, who fled as early as 1994. The husband of Šehomerović was a car mechanic. Šehomerović and her husband fled to the UN compound at Potoćari on 11 July 1995. Šehomerović was separated from her husband on 13 July 1995. She has not seen him since. He has not yet been identified. Šehomerović lost numerous nephews and nieces in addition to her husband and brother-in-law. Šehomerović presently receives a monthly benefits payment of KM 178.89 gross (about EUR 89).

Subašić

282. Plaintiff Subašić was born in 1948, in Rogatica. Subašić lived in Srebrenica during the war with her husband, Hilmo (born in 1945), and their sons, Vahidin (born in 1969) and

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Nermin (born in 1975). Her son, Vahidin, fled to Žepa at the outbreak of the war where he stayed to the end of the war. During the fall Subašić was told by Dutchbat soldiers that she with her husband and son, Nermin, would be safe on the UN base. Thereupon, they fled to Potoćari. When they arrived at the UN base her son, Nermin, was allowed to enter the compound. Subašić and her husband were, however, not allowed on the compound. Her son, Nermin, was removed from the compound on 12 July 1995 on the order of VRS General Mladic. He has not been found up to the present. When Subašić and her husband tried to reach the buses on 13 July 1995 her husband was held back by one of the Dutch soldiers and handed over to the Serbs. The husband of Subašić was identified in 2004, following which he was buried. Subašić lost a total of 22 members of her family, of whom 21were men. Subašić presently receives a monthly benefits payment of KM 231.50 gross (about EUR 115).

Plaintiff No. 10

283. Plaintiff No. 10 was born in 1982 in the Municipality of Srebrenica. Plaintiff No. 10 lived in Skelani before the war. Fleeing from the war violence she moved finally to Srebrenica in 1993, with her parents and sister. Plaintiff No. 10 heard on 11 July 1995 via megaphones and a translator that the men must flee to the woods and the women and children had to go to Potoćari. A Dutchbat soldier prevented Plaintiff No. 10 from going into the woods with her father. Plaintiff No. 10 never saw her father again. Plaintiff No. 10 fled with her mother and sister to the UN compound at Potoćari. The father of Plaintiff No. 10 was later found in a mass grave. Two of the uncles of Plaintiff No. 10 with their sons were also murdered. The mother of Plaintiff No. 10 was raped in the mini Safe Area and never recovered from that. She died in 1996 from the consequences of that event. Plaintiff No. 10 was deported with her mother and sister on 13 July 1995. Plaintiff No. 10 presently receives a monthly benefits payment of KM 231.50 gross (about EUR 115).

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I.16. Mothers of Srebrenica Foundation

284. The Foundation has as its objects:

'the promotion of the interests of – the surviving relatives of – the victims of the Bosnian enclave Srebrenica, the bringing of a collective action (class action), the entering into of settlements and the settlement thereof, for example, on the basis of the Settlement of Mass Damage Act (in Dutch 'Wet Afwikkeling massaschade'), the provision of (legal) assistance on all matters, the making available of financial means for the benefit of the victims and other concerned parties, including the provision of means whether or not financial to social welfare organizations or institutions on the spot, that have as their object the redevelopment of Srebrenica and environs and furthermore everything that in the widest sense of the word is connected with or could be conducive thereto.

285. The Foundation represents the interests of approxemately 6,000 surviving relatives. The names of these interested parties have been made known to the UN and the State of the Netherlands.

286. Prior to the commencement of these proceedings the legal representatives of Plaintiff and the persons whose interests are promoted by Foundation, have brought the present matter to the attention of the UN and the State of the Netherlands.
Neither the State of the Netherlands nor the UN showed any willingness to enter into negotiations regarding the matter, and for that reason it is necessary to institute legal proceedings.

287. Everything that is stated relating to the facts with regard to Plaintiffs 1 through 10, is to be considered as herewith repeated and inserted. Plaintiffs 1 through 10 and the Foundation will discuss the legal considerations below.

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II Legal characterisation

Introduction

288. As stated above, Plaintiff and Foundation hold the UN and the State of the Netherlands jointly liable for the fall of the Safe Area and the consequences resulting therefrom, namely, the murder of the family of Plaintiff and the loss of property. The same holds for the persons whose interests are promoted by Foundation. The claims of Plaintiff and Foundation rest upon:

Civil law: breach of contract (non-performance)
The State of the Netherlands and the UN did not fulfill their obligations to provide protection for Plaintiff and her murdered family, or at least made insufficient efforts to protect Plaintiff and her murdered family. The same holds for the persons whose interests are promoted by Foundation.

The civil law: unlawful conduct (tort)
In addition to the facts being characterisable as a failure in the performance of (contractual) obligations, the actions or, alternatively, the omissions of the State of the Netherlands and the UN towards Plaintiff must be characterized as unlawful of tortuous conduct. The same holds true for the persons whose interests are promoted by Foundation.

Public International Law
The claims of Plaintiff and Foundation are additionally based on international public law. There is an issue here of unlawful conduct constituting a breach of international law attributable to both the UN and the State of the Netherlands.

Plaintiff and Foundation will elaborate the above forms of responsibility below. Plaintiff and Foundation will first examine the jurisdiction of the Dutch court, the territorial jurisdiction of the District Court, The Hague, the legal personality of the UN, and the applicable law.

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II.1. Jurisdiction and territorial jurisdiction

289. The Dutch court is competent to hear the present claim against the State of the Netherlands by virtue of Article 2 Code of Civil Procedure (*Wetboek van Burgerlijke Rechtsvordering*; hereafter CCPr.). The principle of law that governs is that in respect of claims against the State of the Netherlands, no court is competent other than the Dutch court (*par in parem non habet iurisdictionem*, i.e., the principle that states are equal and states do not sit in judgment over another state; see, for example, Knut Ipsen, Völkerrecht, C.H. Beck 2004, 5th ed., page 373).

290. The territorial competence of the District Court, The Hague in respect of the claim against the State of the Netherlands follows from Article 99 CCPr.

291. The Dutch court is competent to hear the claim against the UN by virtue of Article 7 paragraph 1 CCPr. The Dutch court has jurisdiction in respect of the State of the Netherlands and there exists such a close connection between the claims against Defendants, that grounds of expediency justify a combined hearing on this matter.

292. The territorial jurisdiction of the District Court, The Hague regarding the claim against the UN follows from Article 107 CCPr. Plaintiff and Foundation here repeat that there exists such a close connection between the claims against the Defendant that reasons of expediency justify a combined hearing on this matter.

II.2. Legal personality of the UN

293. Plaintiff may institute legal proceedings against the UN as the UN possesses legal personality (see Article 104 of the UN Charter):

'*The organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.*'

294. The International Court of Justice at The Hague (ICJ) established many years ago that the UN possesses legal personality (Reparations for Injuries Suffered in the Service of

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the United Nations, Advisory opinion, 11 April 1949, ICJ Rep. 1949, page 174). The legal personality of the UN is also confirmed in the literature (see M. Zwanenburg, Accountability of Peace Support Operations, 2005, page 66):

'*The international legal personality of the UN has subsequently been confirmed on numerous occasions in law and practice.*'

295. Caselaw also confirms that the UN possesses legal personality (Tribunal Brussels, Manderlier/UN, 11 May 1966, 45 International Law Reports 446).

296. In addition to the fact that the UN poosesses legal personality the UN can be summoned also on the following ground: Article 104 UN Charter was given more detailed meaning in Article I section 1 of the Convention on the privileges and immunities of the UN of 13 February 1946 (hereafter: Convention). According to that Article I section 1 the UN possesses legal personality, which means that:

'*It shall have the capacity: (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.*'

Article I section 1 of the Convention is not exhaustive. According to the literature and caselaw the UN is competent to appear before the court as Defendant (Seidl-Hohenveldern/Rudolph, in B. Simma, The Charter of the United Nations, A Commentary, second edition, volume II, article 104, number 10).

297. It follows from the above that the UN can be summoned to appear before the Dutch court.

II.3. Applicable law: claims founded on civil law

298. The claims of Plaintiff rest in part on civil law. The UN and the State of the Netherlands are held to be jointly liable for the fall of the Srebrenica Safe Area and the consequences thereof. The UN and the State of the Netherlands failed to fulfill their agreed obligations (agreed with Plaintiff and her murdered family). Furthermore, the UN and the State of

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the Netherlands acted in an unlawful manner towards Plaintiff and her murdered family. The UN and the State of the Netherlands also acted unlawfully towards the persons whose interests are promoted by Foundation.

299. Before elaborating on the claims, it is necessary to determine which law is applicable. This question is divisible in two parts, namely, the law applicable to the failure to fulfill obligations arising from agreement (non-performance) and the law applicable to the acting in an unlawful manner. Plaintiff and Foundation will now go into these two parts in greater detail.

II.3.a. Law applicable to the agreement

300. Plaintiff and Foundation note that the issue whether an agreement was concluded (between Plaintiff and the UN, and the State of the Netherlands, respectively), is, by virtue of Article 8 paragraph 1 EEC Convention on the Law applicable to Contractual Obligations (hereafter: Rome Convention), governed by the law (of the country) that is applicable, if the contract were to be valid. The law applicable to the creation of an agreement is consequently the same as the law (of the country) that is applicable to the assessment of the breach of contract. In the interest of completeness Plaintiff points out that despite the fact that Bosnia-Herzegovina is not a member of the EU, the Rome Convention has universal force on the ground of Article 2 Rome Convention and that therefore the Dutch court must apply the Rome Convention. To the extent that the Rome Convention is not directly applicable to the UN, it should be applied *mutatis mutandis* in the present case.

301. The question which law is applicable to the agreement (and with that to the creation of the agreement and to the non-performance), is, in the absence of a choice of law, answered on the basis of Article 4 paragraph 1 Rome Convention. That Article refers to the law of the country with which the case is the most closely connected. On the ground of Article 4 paragraph 2 Rome Convention that is presumed to be the country of the party who effects the most characteristic performance. In that regard Plaintiff will briefly set out which obligations arising from agreement were entered into by the UN and the State of the Netherlands.

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302. The UN and the State of the Netherlands entered into the following obligations to Plaintiff and her family:

(1.) The promise made in March 1993 by the then UNPROFOR Commander Morillon to the population in Srebrenica, that the war was over for them and that they fell under the protection of the UN. The population accepted that offer of protection. The UN ratified these promises by, inter alia:

(a.) adopting various resolutions for the protection of the population and the provision of humanitarian relief;

(b.) initiating demilitarisation agreements between the ABiH and the VRS with the undertaking by the UN that it assumed the protection of the population that found itself in the Safe Area (and as a result of which it disarmed). In implementation thereof the UN seized the heavy weapons of the inhabitants of the Safe Area;

(c.) concluding agreements with countries, including The Netherlands, for the dispatch by them of troops to the protected areas;

(d.) concluding agreements with NATO for the deployment of air power should the Safe Area be attacked;

(e.) the dispatch of troops to the Safe Area.

It follows from all these circumstances that an agreement was concluded between the UN and Plaintiff, to the effect that Plaintiff with her family would be protected and would be safe in the Safe Area. In anticipation of the legal characterisation on the ground of public international law, Plaintiff and Foundation note here already that the above agreement also constitutes an undertaking in a public international law sense.

(2.) In addition, the UN made promises to the population on numerous occasions concerning their safety, and did so even after the fall of the Safe Area. Those promises and the circumstances in which they were made have been extensively discussed above;

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(3.) An agreement was concluded between the UN and the State of the Netherlands for the dispatch of troops for the protection of the population in the Safe Area. That agreement establishes the right in Plaintiff and the persons whose interests are promoted by Foundation to claim performance of the obligation to provide protection (on the ground of Article 6:253 *Burgerlijk Wetboek* (Civil Code), both from the UN and from the State of the Netherlands.

303. Plaintiff will return to the consensus thus created and repeatedly confirmed. Plaintiff notes for the present that the UN and the State of the Netherlands did not fulfill their most important obligation, namely, the protection of Plaintiff and her family. The UN and the State of the Netherlands did not – when it mattered – make (sufficient) efforts to make the promised protection a reality.

304. As it was the State of the Netherlands that supplied the troops who should have protected the population, it was the Netherlands that provided the most characteristic performance and consequently Dutch law is applicable.

II.3.b. Law applicable to the unlawful conduct

305. The Conflict of Laws concerning Unlawful Acts Act (*Wet conflictenrecht onrechtmatige daad (WCOD)*) entered into force in 2001. This statute contains no transitional provisions and Article 4 General Provisions (Kingdom Legislation) Act (*Wet Algemene Bepalin gen (Wet AB)*) provides that statutes do not have retroactive force. However, the *WCOD* comprises a codification of the law then in force, and thus common ground should be sought with the WCOD (see note to *Hoge Raad* (Dutch Supreme Court) 12 November 2005, NJ 2005, 552). The application of the *lex locus delicti* encounters the problem of the multiple *locus*, given that the soldiers in Srebrenica were under the command of the government in The Netherlands, while the officers were encamped in Bosnia. The problematic also arises of *Handlungsort* and *Erfolgsort* (Article 3 paragraph 1 and paragraph 2, respectively, *WCOD*; the territory where the acting in an unlawful manner has occurred, and the territory where the harmful consequences of such

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unlawful acting arise, respectively). In addition, there is the issue of unlawful omission (the not offering of (adequate) protection).

306. Plaintiff is of the view that Dutch law is applicable to the acting in an unlawful manner. The troops sent to Bosnia were not equipped, not trained and not psychologically prepared for the assumed task (see page 2155 of the NIOD Report). The State of the Netherlands is consequently liable. The State of the Netherlands assumed responsibility for the carrying out of the protection and the implementation of that undertaking was done in an unlawful manner towards Plaintiff. Further, the State of the Netherlands made every effort at the time of the attack on the Safe Area to halt, or have halted, the air support that was essential. The UN co-operated in this and wrongfully did not press home the air support. The fact that the acting in an unlawful manner took place in the Netherlands makes Dutch law applicable by virtue of the rule derived from the *Handlungsort* (Article 3 paragraph 1 *WCOD*).

307. Arguments can be advanced on the ground of which Bosnian law could be applicable. One could here think of the rule derived from the *Erfolgsort* (Article 3 paragraph 2 *WCOD*). To the extent that Bosnian law might be applicable, Plaintiff argues for the application of Article 5 *WCOD*. The possibility exists, if there is another legal relationship, to apply the accessory connecting factor to that other legal relationship. This other legal relationship is constituted in this case by the obligations on the part of the UN and the State of the Netherlands resulting from the agreement with Plaintiff and her family. As was seen, Dutch law is applicable to that legal relationship, so that an accessory connecting factor with Dutch law is indicated as regards the acting in an unlawful manner.

308. If Dutch law is not applicable, Plaintiff invites Defendants to make a choice of law in favour of Dutch law. The parties are competent to make such a choice of law (*Hoge Raad* 19 November 1993, NJ 1994, 622 (legal consideration 4.2), the caselaw being codified in Article 6 *WCOD*). Application of Dutch law is – given the Dutch forum – also the most appropriate and beneficial in terms of cost and efficiency.

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309. Should Bosnian law be applicable and if no choice of law in the sense indicated above is made, the facts presented by Plaintiff are also sufficient for her claims to be awarded also on the ground of Bosnian law. In that case Plaintiff requests the opportunity to elucidate her claim further according to Bosnian law.

II.4. Liability under civil law

Non-performance: obligations entered into

310. The UN and the State of the Netherlands entered into obligations to ensure the protection of the Safe Area and its inhabitants. General Morillon, in his capacity as UN Commander, promised the population of Srebrenica in March 1993 that the war was over for them and that they were protected. The population only too happily accepted that offer. Consensus was thereby reached between the UN and the population, which obliged the UN to ensure the protection of the population.

311. The resolutions discussed above were adopted for the purpose of implementing the obligation that the UN had assumed as a result of the promise of General Morillon. Consensus was reached on the basis of those resolutions also between the UN, on the one hand, and the population of the Safe Area (including Plaintiff and her family), on the other. That meant that the UN would protect the population. In addition, the UN insisted that the population of the Safe Area conclude a demilitarisation agreement with the Bosnian Serbs, which led to the disarmament of the Safe Area. The population of the Safe Area would never have agreed to the disarmament arrangement, if at the same time the UN had not taken on the obligation to ensure the protection of the population.

312. In implementation of the above resolutions the UN agreed with the State of the Netherlands that The Netherlands would send troops to the Safe Area in order to ensure the protection of the population there. Such an agreement must be characterized as a third-party stipulation within the meaning of Article 6:253 Civil Code, as that agreement creates the right of the population of the Safe Area to invoke the agreement. As the third-party stipulation was made without payment, Article 6:253 paragraph 4 Civil Code provides that this is deemed to be accepted as it came to the knowledge of the

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population of the Safe Area and was not immediately rejected. The position of the population as third party under the third-party stipulation entails that after acceptance the population is deemed to be a party to the agreement (Article 6:254 paragraph 1 Civil Code) and that Plaintiff had a right to performance. With the failure to fulfill that obligation Plaintiff has the right to have, and an interest in having, her claims awarded. The same holds for the persons whose interests are promoted by Foundation.

313. Dutchbat told the population of the Safe Area on numerous occasions that Dutchbat would take care of the protection of the population. That follows already from the disarming of the population, but also from the promises that in so many words were made. Those promises were made in a number of ways including in response to requests for a return of the seized (heavy) weapons. Dutchbat repeatedly promised the population also during the fall that Dutchbat would ensure protection and that the population would be safe on the UN compound. This promise was repeated even after the fall, not least by the setting up of the mini Safe Area at the compound.

Non-performance: breach of contract

314. The UN and the State of the Netherlands failed to fulfill their obligations. That is demonstrated by the fact that some 35,000 to 40,000 people were driven out of the Srebrenica Safe Area by the Bosnian Serbs, with the abandonment of the major part of their possessions. Because of the failure to provide protection between 8,000 and 10,000 people were able to be murdered. The victims were principally men, but also boys, some still children. Among the victims there were also women and girls, who were often also the victim of rape.

315. The UN investigated the errors made by them and embodied that investigation in the UN Report. Plaintiff states here that in that connection the International Court of Justice (ICJ) in its Decision of 26 February 2007 in the Case Bosnia-Herzegovina against Serbia and Montenegro, concerning the authority of the UN Report, judged that (see number 230 of that decision):

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'*The care taken in preparing the report, its comprehensive sources and the independence of those responsible for its preparation all lend considerable authority to it. As will appear later in this Judgment, the Court has gained substantial assistance from this report.*'

316. A number of conclusions were drawn in the UN Report that are of significance for the present case. Those conclusions relate, among others, to the weapons embargo, the demilitarisation, the refusal to return weapons, the consequences of the failure of Dutchbat to offer resistance, the air strikes, and the failure of Dutchbat to report war crimes. The UN recognises that it made mistakes (see point 5 of the UN Report):

'(…) I am fully cognizant of the mandate entrusted to the United Nations and only too painfully aware of the Organization's failures in implementing that mandate.'

317. The population of Srebrenica had the choice itself to fight, to flee or to trust in the agreements made with the UN and the State of the Netherlands, or at least to trust in Dutchbat. Many refugees chose for that last option and that trust was grievously shamed. In addition, many refugees were in fact left with no other possibilities by Dutchbat than to trust in the protection of Dutchbat. As was shown above, Dutchbat maintained order among the refugees in and around the UN compound, seized the last of the weapons and even took part in the separation of the men or boys from the women. As was shown above, Dutchbat never at any time raised the alarm, preferring to preserve some form of order and to protect its own position at all costs. The exercise of authority over the refugees entailed an enormous responsibility for the fate of those refugees. It is in part the neglect of that responsibility for which Plaintiff is presently suing the UN and the State of the Netherlands. The failure to fulfil promises made in respect of the safety (and the unlawful conduct to be discussed below), must be viewed against the fact that the UN and Dutchbat actively disarmed the Safe Area (in which no Bosnian Serbs any longer lived). As was shown above, repeated requests for the release of surrendered and/or seized (heavy) weapons were constantly refused. As Dutchbat and the UN had a monopoly of force in the Safe Area, the responsibility for the promised protection weighed all the greater. The UN and Dutchbat had the possibility to destroy the (heavy)

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weapons of the VRS, or at least to stem the advance of the VRS. The fact that that did not happen is due to the unwillingness of the UN and the State of the Netherlands.

318. Plaintiff will presently deal with the adherence to the weapons embargo against the inhabitants of the Safe Area, that the UN actively impeded the resistance of the inhabitants of the Safe Area, that the UN insisted on demilitarisation, that there was no response to the requests for return of the seized (heavy) weapons, that there was no question of any defence of the Safe Area, that no air strikes took place or that those attacks were halted, and that there was no reporting of observed war crimes.

Adherence to the weapons embargo

319. The UN wrongfully adhered to the weapons embargo. That is also one of the conclusions drawn by the UN (see number 490 of the UN Report):

'*The arms embargo did little more than freeze in place the military balance within the former Jugoslavia. It left the Serbs in a position of overwhelming military dominance and effectively deprived the Republic of Bosnia and Herzegovina of its right, under the Charter of the United Nations, to self-defense. It was not necessarily a mistake to impose an arms embargo, which after all had been done when Bosnia and Herzegovina was not yet a Member State of the United Nations. Once that was done, however, there must surely have been some attendant duty to protect Bosnia and Herzegovina, after it became a Member State, from the tragedy that then befell it. Even as the Serb attacks on and strangulation of the* "Safe Areas" *continued in 1993 and 1994, all widely covered by the media and, presumably, by diplomatic and intelligence reports to the respective Governments, the approach of the members of the Security Council remained largely constant. The international community still could not find the political will to confront the menace defying it.*'

Actively hindering resistance

320. The UN ensured that the Bosnian Army (ABiH) could not defend themselves and consequently – because of the weapons embargo – were dependent on the UN. The UN committed itself to protection and gearing its actions to that. The population of the Safe Area was helplessly left at the mercy of the attacks after the UN did not protect it

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against them. It is further of importance regarding the operational actions of Dutchbat that Karremans advised the ABiH on 11 July 1995 to withdraw its forces because otherwise ABiH targets could be hit by the aerial bombardment. That was effectively the end of the resistance that the ABiH offered (see page 2404 of the NIOD Report). Dutchbat repeatedly dangled air strikes before the population but they never materialised. Following the promises of air strikes and the advice to leave their positions the ABiH left its positions in very large numbers, as set out under the facts above.

Demilitarisation

321. The UN actively insisted that the ABiH should conclude a demilitarization agreement. That is confirmed by the UN Report, which reveals that the ABiH agreed to the disarmament under pressure from UNPROFOR. The Report makes clear that the ABiH agreed to the demilitarization only because in exchange therefor it expected and was entitled to expect to be protected by UNPROFOR (number 59 of the UN Report):

'*UNPROFOR commanders, (…) convincing the Bosnian commanders that they should sign an agreement in which Bosnian forces would give up their arms to UNPROFOR in return for the promise of a cease fire, the insertion of an UNPROFOR company into Srebrenica, the evacuation of the seriously wounded and the seriously ill, unimpeded access for UNHCR and ICRC and certain other provisions. (…) President Izetbegovic was in favor of the UNPROFOR proposal, which, as he understood it, meant that the Bosnians would hand over their weapons to UNPROFOR in return for UNPROFOR protection.*'

322. The demilitarisation was a success – as far as the disarming of the inhabitants and army units within the Safe Area was concerned. Under number 62 of the UN Report it is stated:

'*On 21 April 1993 UNPROFOR released a press statement entitled "Demilitarisation of Srebrenica a success*".'

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The Bosnian Serbs (VRS) were, by contrast, not disarmed by the UN. That had the consequence that the VRS could deploy its heavy weapons, including tanks and artillery, before and during its advance and the ABiH and the inhabitants of the Safe Area could do nothing, except trust in the UN and Dutchbat. The UN is responsible for the fact that the ABiH surrendered the possibility to defend itself, and did so in exchange for protection provided by the UN. By failing to fulfill its obligations and by not protecting the population against the attacks of the VRS, the UN ensured that the population was left helpless in the face of Serb attacks.

Refusal to return weapons

323. The UN Report confirms under point 477 that Dutchbat refused to return the weapons to the ABiH on at least two occasions during the attack on the Safe Area by the VRS on the ground that it was the task of UNPROFOR to protect the Safe Area; it also gave the promise that Dutchbat would ensure the implementation of that task. The UN and Dutchbat did not implement that task. The UN Report states that the refusal to return the weapons and the reason that Dutchbat gave therefor was incomprehensible (see number 477 of the UN Report):

'*Despite the odds against them, the Bosniacs requested UNPROFOR the weapons they had surrendered under the demilitarization agreements of 1993. They requested those weapons at the beginning of the Serb offensive, but the request was rejected by UNPROFOR because, as one commander explained, "it was our responsibility to defend the enclave, not theirs". Given the limited number and poor quality of the Bosniac weapons held by UNPROFOR, it seems unlikely that releasing those weapons to the Bosniacs would have made a significant difference to the outcome of the battle; but the Bosniacs were under attack at that time, they wanted to resist with whatever means they could muster, and UNPROFOR denied them access to some of their own weapons. With the benefit of hindsight, this decision seems to have been particularly ill-advised, given UNPROFOR's own unwillingness consistently to advocate force as a means of deterring attacks on the enclave.*'

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No resistance offered by UN and Dutchbat

324. The UN states that the Safe Area was able to fall because absolutely no resistance was offered. The UN Report states that the Bosnian Serbs (VRS) decided to capture the entire Safe Area only after there was no defence by Dutchbat and it was also made impossible for the inhabitants of the Safe Area to defend themselves. It can be deduced from the UN Report that the Safe Area would not have fallen if there had been resistance. Even the Bosnian Serbs were surprised by the absence of any form of opposition offered by the UN and Dutchbat. When the attack took place it was not at first, according to the UN, directed at capturing the entire Safe Area in one push. That changed as a consequence of the absence of defence (see number 264 of the UN Report):

'*The report of the United Nations military observers concluded with an assessment that "the BSA offensive will continue until they achieve their aims. These aims may even be widening since the United Nations response has been almost non-existent and the BSA are now in a position to overrun the enclave if they wish". Documents later obtained from Serb sources appear to suggest that this assessment was correct. Those documents indicate that the Serb attack on Srebrenica initially had limited objectives. Only after having advanced with unexpected ease did the Serbs decide to overrun the entire enclave. Serb civilian and military officials from the Srebrenica area have stated the same thing, adding, in the course of discussions with a United Nations official, that they decided to advance all the way to Srebrenica town when they assessed that UNPROFOR was not willing or able to stop them.*'

It is likely that the Bosnian Serbs had planned their attack some time before and that the UN was aware of that. If that is so then it is established that the UN and Dutchbat did nothing with that information.

325. It follows from the above that by offering even some resistance the UN and Dutchbat could have prevented the entire Safe Area from falling. Even the UN accepts that resistance could have made the difference (see number 472 of the UN Report):

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'It is true that the UNPROFOR troops in Srebrenica never fired at the attacking Serbs. They fired warning shots over the Serbs' heads and their mortars fired flares, but they never fired directly on any Serb units. Had they engaged the attacking Serbs directly it is possible that events would have unfolded differently.'

326. Instead of taking action from the moment that the Safe Area was attacked, every effort was made precisely to avoid fighting. Instead of demonstrating decisiveness, the UN and Dutchbat made clear to the Bosnian Serbs that force would be used only as a final resort. That moment was apparently not reached even on 10 July 1995. That was when the Force Commander Janvier telephoned General Mladic in the evening of 10 July 1995 and informed him that he would do everything to avoid using force but that that possibility had its limits. With this the UN more or less gave the Bosnian Serbs *carte blanche* just the day before the fall of the Safe Area. Nummer 289 of the UN Report states in that regard:

"*At 2120 hours, UNPROFOR headquarters in Sarajevo reported that the Serbs had bypassed the Dutchbat blocking positions, and that Dutchbat and the Bosniacs were now coordinating a joint defence. The Force Commander called General Mladic's headquarters again at 2125 hours to tell them that the situation was impossible, and that he would do everything he could to avoid the use of force, but that there were limits.*"

This attitude surpasses Plaintiff's comprehension. Two years of obstructing humanitarian relief and supplies preceded General Janvier's communication. To this must be added that on 10 July 1995 the direct attack on the Safe Area had already been going on for five days, with the result that there were many dead and wounded under the civilian population that was to be protected.

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Air Strikes

327. The UN Report established that it was an error to deploy air power so late and not to carry out air strikes. Further, the Report leaves no doubt that even with the most restrictive interpretation of the mandate, all conditions for the deployment of air power were met from the beginning of the attack (see number 480 of the UN Report):

'*Even in the most restrictive interpretation of the mandate the use of close air support against attacking Serb targets was clearly warranted. The Serbs were firing directly at Dutchbat observation posts with tank rounds as early as five days before the enclave fell.*'

And furthermore, number 483 of the UN Report states:

'*At the same time, we were fully aware that the threat of NATO air power was all we had at our disposal to respond to an attack on the* Safe Areas*. (…) For the reasons mentioned above, we did not use with full effectiveness this one instrument at our disposal to make the Safe Areas at least a little bit safer. We were, with hindsight, wrong to declare repeatedly and publicly that we did not want to use air power against the Serbs except as a last resort, and to accept the shelling of the Safe Areas as a daily occurrence.*'

328. The UN thus itself recognises that it deployed insufficient means. As shown by the facts above, the UN and Dutchbat did not make even a beginning with the defence of the Safe Area. Resistance could have been offered with the means that were available. Besides, it should also be taken into account that the VRS never fired directly at Dutchbat soldiers with intent to kill. The Dutchbat soldiers were aware of that (see, for example, H. Praamsma, J. Peekel, T. Boumans, Herinneringen aan Srebrenica, 171 Soldatengesprekken, (Memories of Srebrenica, 171 Conversations with Soldiers), page 68):

'*(…) they fired over our heads, they never blew us away, even though they could easily have done so.*'

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And another statement of a Dutchbat soldier at OP-F (see page 73 ibid.):

'*I was not afraid of the Serb bullets, they always fired deliberately wide (…)*'

And finally a Dutchbat officer (see page 177 ibid.):

'*(…) I had spent days lying on the roof with the commandos, watching, and I knew that the Serbs deliberately fired wide. If they had wanted to hit us, they would have done it.'*

Instead of offering resistance, the UN and Dutchbat followed a policy of surrender and withdrawal, exclusively with an eye on the fact that their own safety could possibly be at risk.

The non-reporting of war crimes

329. When dealing with the facts Plaintiff extensively set out how Dutchbat and the UN observers (UNMOs) were witness in the period from 6 through 13 July 1995 to many war crimes that should have been reported. The UN Report found, however, that even on 13 July 1995 no single report of war crimes had been made (see number 346 of the UN Report):

'*Neither the military observers nor Dutchbat reported that they had observed or had reason to believe that any other abuses had been committed thus far.'*

330. The UN established that Dutchbat was certainly a witness to war crimes (see number 357 of the UN Report). Those crimes, however, were not, or only in very limited terms, passed on to higher authority (see number 358 of the UN Report):

'*However, it appears that only a very limited number of the accounts in paragraph 357 above were formally reported up the UNPROFOR chain of command on 13 July, or the following day – even though it appears that some of the Dutchbat personnel, who were not being held captive by the Serbs, may have had the means to do so at the time.'*

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331. That Dutchbat did see more war crimes, a fact extensively discussed above, also emerges from the statement of a Dutchbat soldier who returned from the UN compound on 17 July 1995 (see number 389 of the UN Report):

'*The same day, one of the Dutchbat soldiers, during his brief stay in Zagreb upon return from Serb-held territory, was quoted as telling a member of the press that "hunting season [is] in full swing … it is not only men supposedly belonging to the Bosnian Government who are targeted … women, including pregnant ones, children and old people aren't spared. Some are shot and wounded, others have had their ears cut off and some women have been raped.*'

Despite this these war crimes were not reported, as also appears from number 390 of the UN Report:

'While many of these reports emerge from refugees, they are widespread and consistent, and have been given credence by a variety of international observers, including UNHCR. We have however, received nothing on the subject from UNPROFOR.'

332. It is unlawful towards Plaintiff and her murdered family (who were entitled to trust that they would be protected) that Dutchbat did not report the war crimes that it was witness to from 6 July 1995, as well as the many indicators of such crimes. It was a responsibility to do so (see number 474 of the UN Report):

'*It is harder to explain why the Dutchbat personnel did not report more fully the scenes that were unfolding around them following the enclave's fall. Although they did not witness mass killing, they were aware of some sinister indications. It is possible that if the members of the battalion had immediately reported in detail those sinister indications to the United Nations chain of command, the international community might have been compelled to respond more robustly and more quickly, and that some lives might have been saved. This failure of intelligence-sharing was also not limited to the*

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fall of Srebrenica, but an endemic weakness throughout the conflict, both within the peacekeeping mission, and between the mission and Member States.'

333. An explanation for the fact that war crimes were not reported and later were also not mentioned by Dutchbat soldiers, is possibly to be found in the statement of an internal Dutchbat spokesperson of a conversation that he had with the Dutch General Couzy on 23 July 1995 (see H. Praamsma, J. Peekel, T. Boumans, Herinneringen aan Srebrenica, 171 Soldatengesprekken, page 214):

'*I am totally disillusioned with the army command. A man such as Couzy still has to explain a few things to me. I spoke to him in Zagreb on 23 July for a quarter of an hour. He said then:'Adjutant (…) note my words: the world press will soon be here and they will want to hear from you that you have seen all manner of things. But you saw nothing, because nothing happened'.*'

334. It was concluded in the Report of the French Parliament that the reason for the non-reporting of the observed war crimes lay in the fact that during the entire crisis the priority of the Dutch government lay in the protection of the Dutchbat soldiers held captive by the Bosnian Serbs (VRS) (see the Report of the French Parliament, Part I, page 102). The State of the Netherlands allowed by that balancing of interests a possible danger for some tens of soldiers to weigh more heavily than the lives of many tens of thousands of refugees. That is unlawful towards Plaintiff. Plaintiff and Foundation recall what was stated under the facts, namely, that the Dutchbat soldiers concerned voluntarily allowed themselves to be taken hostage by the VRS, while the Deputy Battalion Commander of Dutchbat, Major Franken, had dismissed the danger posed to those soldiers as he was certain that the VRS had every interest in not killing any UN soldiers (see page 2241 of the NIOD Report). Finally, Plaintiff and Foundation note in this connection that not a single Dutchbat soldier was killed by the VRS.

335. The facts and circumstances set out above lead to the conclusion that the UN and the State of the Netherlands unlawfully failed to fulfill their obligations or at least made insufficient efforts to do so.

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Unlawful acting by the UN and State of the Netherlands

336. Should the obligation to provide the population with protection, or at least the obligation to make sufficient efforts thereto, not arise from agreement, then the failure of protection, or at least the failure to make sufficient efforts to ensure protection, is to be characterized as unlawful conduct towards the population of the Safe Area, which includes Plaintiff and the persons whose interests are promoted by Foundation. Dutchbat was present in the Safe Area precisely with the object of preventing that which ultimately occurred. Dutchbat was obliged to act and wrongly failed to do so or at least failed to make sufficient efforts thereto. This must be regarded as acting contrary to a statutory duty, alternatively as a breach of that which is deemed to be proper behaviour in social intercourse according to unwritten law. The non-performance, alternatively the unlawful conduct, meant that Plaintiff lost hearth and home and her family members were murdered. As a result Plaintiff is forced to try to rebuild a life elsewhere far from her original domicile. The same holds for the persons whose interests are promoted by Foundation.

337. To the extent that this Court might hold that the State of the Netherlands and the UN might not be liable on the basis of civil law in the present proceedings, Plaintiff and Foundation note that liability of the State of the Netherlands and the UN in that case arises under public international law. The underpinning of the action on the basis of public international law follows below.

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II.5. Responsibility under International Law

II.5.a. Introduction

338. Plaintiff and Foundation have instituted proceedings on the basis of public international law against both the UN and the State of the Netherlands. Plaintiff and Foundation will deal with their claims against each Defendant separately.

339. The most important body in the field of the codification of public international law is the International Law Commission (ILC), the UN Commission for international law.
The ILC is a commission of the General Assembly of the UN. The ILC was founded in 1948 and by virtue of Article13 paragraph 1 under a of the UN Charter has as its objective:

'*The General Assembly shall initiate studies and make recommandations for the purpose of (…)*
(a) (…) encouraging the progressive development of international law and its codification.'

The ILC comprises 34 independet experts in the field of public international law (see, K. Ipsen, Völkerrecht, 5th edition, 2004, § 16, note 50, page 229).

340. The ILC laid down the responsibility of States under international law in 2001 in a draft (ILC's Articles on the Responsibility of States for Internationally Wrongful Acts; Annex to General Assembly Resolution 56/83, 12 December 2001, hereafter: 'the ILC Articles for States'). That draft reproduces the customary international law in force on the responsibility of States under international law. The draft has not yet been ratified by States but there is general acknowledgment in the literature that the ILC Articles for States are a reflection of the law in force (see, M. Zwanenburg, Accountability of Peace Support Operations, 2005, page 51). The International Court of Justice (ICJ) once again confirmed the application of the ILC Articles for States in its recent Decision of 26 February 2007 (Bosnia-Herzegovina/Serbia and Montenegro) by reviewing against those articles (see, legal considerations 173, 385 and 420 of the Decision).

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341. The ILC is also charged with the codification of the responsibility of international organisations under international law (ILC's Articles on the Responsibility of International Organizations; herafter: ILC Articles for International Organisations). The draft in which the law in force for international organisations is being codified is not yet complete and ratification has not yet taken place. The articles that have already been drafted are a reflection of the law in force (see, Reports of the ILC, Fifty-fifth session 2003, Fifty-sixth session 2004 and Fifty-seventh session 2005; hereafter 'the 1st, 2nd and 3rd ILC Report over the ILC Articles for International Organisations, respectively').

342. Plaintiff and Foundation will below address successively the requirements for the responsibility of States, the requirements for the responsibility of international organisations, attribution to the UN and attribution to the State of the Netherlands. Finally, Plaintiff and Foundation will (with respect to the UN and the State of the Netherlands jointly) argue that there is here an issue of a breach of international law that leads to responsibility.

Requirements for responsibility of States

343. Article 2 of the ILC Articles for States provides that a state is responsible if two requirements are satisfied:

'*There is an internationally wrongful act of a State when conduct consisting of an action or an omission:*

a. Is attributable to the State under international law; and
b. Constitutes a breach of an international obligation of the State.'

344. The ILC Articles for States do not stipulate the obligations that a state has. Those obligations arise from other sources of international law, such as international humanitarian law (for example: the Geneva Conventions, the Hague Convention respecting the Laws and Customs of War on Land of 1907, the European Convention for the Protection of Human Rights and Fundamental Freedoms (EECHR), and the

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Genocide Convention, as well as the caselaw of the ICJ). The ILC Articles for States provide, inter alia, a definition of a breach of international law, elaborate the requirements for attribution and also determine what the consequences are of an attributable breach of international law. Plaintiff will return below to those matters.

Requirements for responsibility of international organisations

345. The ILC Articles for International Organisations, like the UN, are grafted onto the principles of the ILC Articles for States. The principles that are applicable for States are *mutatis mutandis* applied to the international organisations (see, R.J. Dupuy et al, A Handbook on International Organizations, 1998, pages 886 and 887, and M. Zwanenburg, op. cit., pages 70 and 71).

346. Article 3 of the ILC Articles for International Organisations states:

'Article 3 – General Principles

1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.
2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
(a) Is attributable to the international organization under international law; and
(b) Constitutes a breach of an international obligation of that international organization.'

II.5.b. Attribution

347. In both the ILC Articles for States and in the ILC Articles for International Organisations the concept of 'attribution' is, together with a breach of international law, a requirement for the responsibility of the state, or the international organisation, respectively. Before turning to the breach of international law, Plaintiff will address the question to whom can the conduct of Dutchbat and UNPROFOR be attributed. Plaintiff will conclude that this conduct must be attributed both to the UN and to the State of the Netherlands.

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Attribution to the UN

348. It is generally accepted that the UN is responsible for the actions of bodies or an agency of the UN. This principle is confirmed in the ILC Articles for International Organisations under Article 4. That Article deals with the situation in which a body or agency of the UN itself is concerned, or in which the body or agency concerned is placed fully at the disposal of the UN.

349. Article 5 ILC Articles for International Organisations envisages, on the contrary, situations where the body or the agency is not placed fully at the disposal of the UN and certain powers remain with the State providing troops. By virtue of Article 5 ILC Articles for International Organisations, the acts of a body (of a state) that is placed at the disposal of an international organisation are attributed to the international organisation under the following circumstances (see, 2nd ILC report over the ILC Articles for International Organisations (A/CN.4/L.654/Add.1, page 11 no. 2)):

'*The conduct of an organ of a State (…) that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct*.'

The Explanatory Memorandum of the ILC Commission to these articles shows that Article 5 applies in particular to peacekeeping forces of the UN. In that case the State providing troops retains, for example, powers over disciplinary matters and the criminal jurisdiction (see, A/CN.4/L.654/Add.1, commentary article 5, page 11, number 1).

350. The actions of peacekeeping forces are according to the ILC Articles accordingly attributable to the UN, if the UN has exercised effective control over such peacekeeping forces. The UN assumes in principle that it exercises exclusive control (and thus naturally also effective control) over its peacekeeping forces (see, the 2nd ILC Report over the ILC Articles for International Organisations, A/CN.4/L.654/Add.1, page 13, number (5)):

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'The United Nations assumes that in principle it has exclusive control of the deployment of national contingents in a peacekeeping force.'

351. The concept of 'command and control' is often used when authority over the troops of the UN is discussed in the literature. According to the NIOD Report and numerous other sources The Netherlands transferred command and control in principle to the UN. There was no written agreement. It was stated at numerous places that Dutchbat was under the command and control of the UN. As far as the transfer was concerned the NIOD Report states on page 1189 et seq. that:

'The transfer of the operational control to the UN was usually set out in an agreement regarding transfer of authority. The State providing troops must in such case agree to every change in the operational control. A government can in principle decide independently to withdraw the unit without any consultation with the UN. What applied in the case of Dutchbat, however, was that this battalion was placed at the disposal of the UN for UNPROFOR without conditions (…). Dutchbat was under the operational control of UNPROFOR from the moment of its arrival in the former Yugoslavia. No conditions were attached to the deployment.'

352. Besides the fact that there was no written agreement (as is usually concluded between the UN and the state providing troops), the NIOD also established that The Netherlands retained sovereign authority and that the administrative and logistical responsibilities remained in practice Dutch responsibilities. The NIOD established further that the authority that was transferred did not extend beyond Operational Control, which, according to the NIOD, was a more restricted form of authority than Operational Command.

353. Where there are no formal arrangements in place, then, according to the Secretary-General of the UN, the following applies (see, Report of the Secretay-General on Financing of the United Nations Protection Force (…), of 20 September 1996 (A/51/389, paragraphs 17-18, page 6):

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'*In the absence of formal arrangements between the United Nations and the State or States providing troops, responsibility would be determined in each and every case according to the degree of effective control exercised by either party in the conduct of the operation.*'

354. It must be presumed that the conduct of Dutchbat and, in a wider sense, the UN forces (for example, the airplanes that should have carried out air strikes), must be attributed initially to the UN, for as long as and to the extent that the UN exercised effective control over the UN forces.

355. The presumption of attribution to the UN can be rebutted by demonstrating that effective control was lacking (see, the 2nd ILC Report over the ILC Articles for International Organisations, 14/15 number (7)):

'*For instance, it would be difficult to attribute to the United Nations conduct of forces in circumstances such as those described in the report of the Commission of inquiry which was established in order to investigate armed attacks on UNOSOM II personnel:*

The force Commander of UNOSOM II was not in effective control over several national contingents which, in varying degrees, persisted in seeking orders from their home authorities before executing orders of the Forces Command. Many major operations undertaken under the United Nations flag and in the context of UNOSOM's mandate were totally outside the command and control of the UN, even though the repercussions impacted crucially on the mission of UNOSOM and the safety of its personnel.'

In explanation of the above quotation Plaintiff notes that the reference to UNOSOM indicated the UN peace mission in Somalia.

356. Whether effective control exists is a factual criterion, according to the 2nd Report of the ILC for International Organisations (see, page 16, number (8)):

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'While it is understandable that, for the sake of efficiency of military operations, the United Nations insists on claiming exclusive command and control over peacekeeping forces, attribution of conduct should also in this regard be based on a factual criterion.'

In the final analysis there is attribution to whoever factually exercises effective control. What is determinative is not who officially, but who factually exercises actual control over the UN troops. In other words, it is not about the presumption who exercises exclusive control but about the factual establishment of who has exercised effective control (see, ook M. Zwanenburg, op. cit., page 72).

357. That the presumption of attribution to the UN can be rebutted is confirmed expressly in the literature (see, M. Zwanenburg, op. cit., page 102):

'*The presumption can be rebutted if it is established that the organ acted under the direction and control of the sending state, the clearest example of which would be specific instructions.*'

358. It is stated in the literature that The Netherlands exercised effective control in the present case if Dutchbat received instructions from The Netherlands (see, M. Zwanenburg, op. cit., page 101):

'*An example in which conduct would be attributable to the troop contributing state is the hypothetical situation that the Netherlands contingent of UNPROFOR in Srebrenica received instructions from its government concerning the attitude it must take towards the transfer of the local population by Bosnian Serb forces. If such were the case, the conduct of the contingent would be attributable to the government, even though the agreement betweand the Netherlands and the UN concerning the participation of Dutch troops in the operation specified that the UN was in command. In the case at hand the government has denied that it gave instructions to the contingent.*'

359. However, it is not essential for the exercise of effective control that the State supplying troops gave express instructions. It is sufficient that the troops in question effectively

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acted under the control of the State concerned, in which case the conduct must be attributed to that State (see, M. Zwanenburg, op. cit., pages 100 and 126):

'*It is not necessary that the sending state gave express instructions in this regard, because it is sufficient that the troops in question acted under the direction and control of the state.*'

360. The ICJ also confirmed in its Decision of 26 February 2007 under legal consideration 400 that effective control can be exercised without explicit instructions being given.

361. The above entails that if the State of the Netherlands effectively directed the conduct of Dutchbat, the conduct of Dutchbat must be attributed to the State of the Netherlands. That does not mean, however, that this conduct can not also be attributed to the UN. This issue of dual attribution will be addressed below.

Dual attribution

362. The conduct of UN troops is in some cases attributed to both the UN and to the sending State (see, R. Hofmann, in R. Hofmann et al, Die Rechtskontrolle von Organen der Staatengemeinschaft, 2007, page 29, and also, M. Zwanenburg, op. cit., page 72):

'Although a contingent might officially have been placed under the command of a UN force Commander, it would be difficult to attribute its conduct to the UN if he was not in effective control. What matters is not exclusive control, which for instance the UN never has over national contingents, but the extent of effective control. This would also leave the way open for dual attribution of certain conduct.'

In the present case both the UN and the State of the Netherlands exercised effective control and the conduct/failure to act can therefore be attributed to both. Plaintiff will demonstrate below that effective control was exercised by the State of the Netherlands, and also the manner in which that was done.

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363. The possibility of dual attribution is confirmed in the 2nd ILC Report on the ILC Articles for International Organisations (see, Addendum number 4, page 2).

Effective Control by The Netherlands

364. The State of the Netherlands had ensured that it could allow its influence to count by nominating Dutch officers for senior positions within UNPROFOR. The position of the Government was also that The Netherlands had much more of a voice than would be the case if the command and control were to be left entirely with the UN (see, page 2283 of the NIOD Report):

'*The Minister of Defense, Voorhoeve, adopted the position with NIOD that these rules relating to Command and Control in The Netherlands, and the question where the individual responsibilities lay, was more or less clear, but that in practice it transpired that it was not possible to separate these sorts of matters, with the result that they became entwined. In his view, it was possible to argue logically in pure international law terms that The Netherlands had placed contingents at the disposal of the UN, and that The Netherlands only retained the right to recall those contingents but that otherwise everything was a matter for the UN. To this The Hague would say: these soldiers are now UN blue helmets, and consequently this is not our problem. But that's not how matters were in practice, said Voorhoeve.*'

The above quotation demonstrates that The Netherlands exercised joint effective control.

365. It has been shown above under the facts relating to the refusal to permit air strikes and their cessation that the State of the Netherlands exercised effective control on that matter, and did so in order not to endanger the position of Dutchbat. This involved explicit instructions of the State of the Netherlands. The same was true for the conduct of Dutchbat to surrender observation posts contrary to the orders of the UN, not to defend the blocking positions, not to start the defence of the Safe Area and not to offer any humanitarian relief and protection to the refugees after the fall. Even the non-reporting of war crimes is, according to the Report of the French Parliament, to be traced back to the desire not to endanger the safety of the Dutchbat soldiers who were

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held hostage (see, Part I, page 102 of the Report of the French Parliament). These issues were possibly affected by the explicit instructions of the State of the Netherlands. Taking account of the enduring pattern of conduct of Dutchbat to allow its own interests to prevail in these issues contrary to the express orders of the UN, it is certain that the conduct of Dutchbat is a consequence of the effective control that was exercised by the State of the Netherlands. Plaintiff here recalls that the exercise of effective control does not require explicit orders to be given.

366. Besides, a number of explicit orders emerge from the facts recounted above. It has already been shown above that Voorhoeve declared on television on 9 July 1995 that the safety of the Dutch soldiers must have priority over air support (see, page 2147 of the NIOD Report). The Chief of the Defense Staff, Van den Breemen, in the presence of Voorhoeve informed Kolsteren in Zagreb from The Hague on 11 July 1995 that the safety of Dutchbat prevailed over everything (see, page 2236 of the NIOD Report).

367. Besides the fact that Voorhoeve assumed that the State of the Netherlands jointly determined the conduct of Dutchbat, the senior Dutchbat officers also assumed that The Netherlands exercised influence on important matters. Karremans thus declared before the French Commission of Enquiry that it was not a double key that was required for air support to be allowed (the UN and NATO), but a triple key as the State supplying troops also had to agree to the deployment of air support (see, the Report of the French Parliament, Part II, page 476). Moreover, there is film footage showing Karremans informing Mladic verbatim that he has received instructions from the Ministry of Defense to give humanitarian relief (in the NOS archive (access via www.nos.nl, ‘dossier Srebrenica’, under ‘Mladic ontvangt Moslimdelegatie’ (Mladic receives Bosniac delegation)).

368. The conclusion to be drawn from the above is that (in addition to the attribution to the UN) the conduct of Dutchbat and UNPROFOR must also be attributed to the State of the Netherlands as The Netherlands jointly exercised effective control. The UN and the State of the Netherlands are therefore also jointly responsible for the situation whereby the Safe Area could fall.

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Attribution to The Netherlands for the failure to ensure observance of the Geneva-Conventions

369. There exists another basis for attribution in addition to that which has been addressed above regarding attribution on the ground of the exercise of effective control, and that rests on the obligation of States under international law to ensure that the Geneva Conventions are observed. Article 1 of all four Geneva Conventions obliges the States Parties to the Convention to do the following:

'*The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.*'

370. The ICJ held in its '*Advisory Opinion on the Legal Consequenses of a Wall in Occupied Palestinian Territory* ', of 9 July 2004, point 158, that Article 1 of the Geneva Conventions obliges the Contracting States to ensure that the obligations that arise from the Conventions are fulfilled, irrespective of whether that State is party to the conflict in question:

'*It follows from the provision that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with.*'

371. It follows from the above that where a sending State transfers powers without ensuring that the Geneva Conventions will be observed, the sending State is responsible if the Geneva Conventions are breached by the contingent that is dispatched. The absence of a sufficient guarantee that the Geneva Conventions will be observed will in any event be assumed if the dispatched troops are inadequately instructed and trained regarding the Geneva Conventions. This principle is confirmed in the literature (see, M. Zwanenburg, op. cit., page 107 et seq., and also page 128).

372. The above rule is confirmed in the Report of 8 May 2002 of the Advisory Commission on Issues arising under Public International Law (Commissie van Advies inzake

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Volkenrechtelijke Vraagstukken (CAVV Report), entitled, '*Advies inzake aanspakelijkheid voor onrechtmatige daden tijdens UN vredesoperaties*' (Advisory Opinion on responsibility for wrongful acts during UN peace operations). This Commission is charged with advising of the Government and the Upper and Lower Houses on public international law (see, Article 2 of the *Wet op de commissie van advies inzake volkenrechtelijke vraagstukken*, (Act on the Advisory Commission on Issues arising under Public International Law) of 12 March 1998).

373. In the case given above (that observance of the Geneva Conventions is not guaranteed by the State providing troops), the CAVV is of the opinion that States providing troops are to be held responsible in addition to the UN (see, 4.3 of the CAVV Report). As was noted above there existed no written agreement between the UN and the State of the Netherlands regarding the transfer of authority. The State of the Netherlands dispatched troops without guaranteeing that the Geneva Conventions would be observed. The State of the Netherlands concluded no agreements with the UN, paid insufficient attention to the instruction given to Dutchbat on the obligation to report war crimes and neglected to create supervisory mechanisms, or at least to enforce such mechanisms.

374. It may already be deduced from the fact that the war crimes described above and to which Dutchbat was witness were not reported that the instruction given to Dutchbat regarding the reporting of war crimes was inadequate. An adequate course of instruction would have ensured by definition that such crimes were reported. Many Dutchbat soldiers received inadequate or even no lessons in the laws of war (see, page 2656 of the NIOD Report). Another explanation for the non-reporting of observed war crimes is given in the Report of the French Parliament. That Report concludes that Dutchbat consciously made no reports on war crimes in the light of the safety of the Dutchbat soldiers who were being held by the Bosnian Serbs. In both cases the non-reporting of war crimes must be attributed to the State of the Netherlands as the obligation to ensure that the Geneva Conventions were observed was not fulfilled.

375. The above means that for the reasons there enumerated the State of the Netherlands is responsible, in addition to the UN, for a breach of international humanitarian law during

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the deployment of Dutchbat. That such breaches (that are naturally also significant in the framework of the review of the ILC Articles and the fact that there is a question of conduct contrary to that which properly pertains in social intercourse) did occur is addressed below.

II.5.c. Breach of international law

376. Plaintiff has addressed above the attribution to the UN and the State of the Netherlands. For responsibility to attach – both where the the responsibility of a state and where the responsibility of an international organisation is concerned – a breach of international law is required. Article 12 of the ILC Articles for States states:

'*There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.*'

Article 8 of the ILC Articles for International Organisations contains a comparable provision:

'*There is a breach of an international obligation by an international organization when an act of that international organization is not in conformity with what is required of it by that obligation, regardless of its origin or character.*'

The breach of international law will be elaborated below. That elaboration applies to both the UN and the State of the Netherlands jointly.

377. The following breaches of international law took place:

- breach of the mandate by failing to take the measures necessary to provide humanitarian relief, as well as by the absence of defence of the Safe Area and the population that found itself there;
- breach of international humanitarian law by the failure to report war crimes;
- the failure to prevent genocide;

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- breach of human rights, comprising, inter alia, the breach of the right to life.

Plaintiff will address these breaches in greater detail below.

Breach of the mandate

378. The content of the mandate of the UN regarding the Safe Areas has already been addressed. The assignment – as laid down in the various UN resolutions of the Security Council – was to protect the Safe Area and the population that found itself there. The non-defence of the Safe Area constituted a breach of the mandate. The consequence of that is that the Safe Area fell, Plaintiff was forced to leave hearth and home and the population was left to the mercy of the Bosnian Serbs' bloodlust.

379. The breach of the mandate can be deduced from, inter alia, the fact that the relief convoys and the supplying of UNPROFOR were not enforced when these were obstructed or prevented by the Bosnian Serbs, the inadequate equipment and instruction of Dutchbat, the surrender of the observation posts, the non-defence of the Safe Area and the blocking positions, the failure to enforce the mini Safe Area, and the non-deployment of air power. These breaches have been extensively addressed in the framework of the discussion of the facts and the responsibility at civil law, to which for the sake of brevity Plaintiff here further refers.

380. With respect to the non-deployment, or at least insufficient, deployment of air power Plaintiff notes the following. According to the text of UN resolutions 836 and 844, as well as the Explanatory Memorandum to them in the Report of the Secretary-General of the UN, air support could be deployed in enforcement of the mandate of UNPROFOR, where that was required.

381. That appeared also from number 480 of the UN Report, where it was concluded that the requirements for air support since 6 July 1995 were met:

'*Even in the most restrictive interpretation of the mandate the use of close air support against attacking Serb targets was clearly warranted. The Serbs were firing directly at*

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Dutchbat observation posts with tank rounds as early as five days before the enclave fell.'

382. Even Karremans confirmed the following in his witness statement before the French Parliamentary Commission of Enquiry about the six days before the fall of Srebrenica (in English translation):

'I appear before you as the Commander of Dutchbat III, who for six days requested air support on several occasions and did so emphatically. I justified these requests on the following grounds:

- Our observation posts were frequently attacked. In other words, the lives of a number of my soldiers were endangered;
- secondly, it was evident that the Safe Area was being attacked by Bosnian Serbs, and that there had been a great number of victims as a consequence of those attacks. There were many dead and injured civilians among the population who had already suffered much; it often rained bullets in the town, with the inevitable consequences.

I had to explain to the people, to the men and women, why my battalion could not guarantee their safety.'

The refusals to provide air support, first on 3 June 1995 and then from 6 through 10 July 1995, as well as the calling-off of the air support on 11 July 1995, are a breach of the UN mandate.

383. The surrender of the blocking positions also constitutes a breach of the mandate, in the view of Plaintiff. Dutchbat received several orders to defend the Safe Area in enforcement of the mandate. Dutchbat received on 9 July 1995 in enforcement of the mandate the order '*to assume blocking positions with all means available*' (see, UN Report number 273 and further). Dutchbat received the order to supply the soldiers at the blocking positions with as many anti-tank weapons as possible. The blocking

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positions were, however, withdrawn from almost immediately without there being any question of defending them.

384. Dutchbat received an order for defence and protection of the civil population on 11 July 1995 from the headquarters in Sarajevo (see, UN Report, number 312):

'*Take all reasonable measures to protect refugees and civilians in your care'*,

and,

'Continue with all possible means to defend your forces and installations from attack. This is to include the use of close air support if necessary.'

These orders were not carried out. Dutchbat did not fire even a single shot aimed directly at the attacking Bosnian Serbs (see, UN Report, number 474). Just before the fall of the Safe Area the order was also given in enforcement of the mandate to:

'*provide medical assistance and assist local medical authorities*'

Instead of providing medical relief injured refugees were sent away even though those refugees had no prospect of any alternative possibility of obtaining medical relief.

385. The supervision of the refugees on the compound at Potocari, under the guise of setting up a mini Safe Area, the refusal to permit refugees on the compound despite promises to the contrary, and co-operating in the separation of the men from the women, as well as co-operating in deportations and the non-reporting of war crimes, do not fall within the terms of the mandate but rather constitute a breach thereof.

Breach of international humanitarian law

386. International humanitarian law is a collection of rules on the rights of people in war time. It protects persons who do not or no longer engage in hostilities and it restricts the means and methods of conducting war. International humanitarian law is also termed the

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law of war or the law of armed conflicts (see, inter alia, the Hague Convention respecting the Laws and Customs of War on Land of 1907 and the Geneva Conventions etc.). The Standing Operating Procedure 208 noted above also contained rules for UN troops on the protection of the rights of people in war time and as such also formed part of the international humanitarian law in force. Plaintiff and Foundation hold the UN and the State of the Netherlands liable for having acted contrary to international humanitarian law by not reporting war crimes.

387. The question can be posed whether the UN is bound by international humanitarian law. Indeed, the UN has signed neither the Hague Convention respecting the Laws and Customs of War on Land of 1907 nor the Geneva Conventions. There is no direct applicability on that ground. As already stated above, it is indisputable that the UN possesses legal personality. The UN is in that capacity of legal person bound by international customary humanitarian law (see, R. Hofmann, op. cit., page 15).

It would also be unimaginable in this connection to imagine that the UN – as a party involved in armed conflicts – was not itself subject to international law. It is assumed that the Hague Convention respecting the Laws and Customs of War on Land of 1907 and the 4th Geneva Convention as customary humanitarian law also apply to the UN (see, A. Simon, op. cit., page 115) and that the UN is bound by the rules of international humanitarian law (see, Bothe/Dörschel, in D. Fleck, The Handbook of The Law of Visiting Forces, Oxford University Press 2001, page 500).

388. The UN is bound by international humanitarian law in respect of peace enforcement operations as being a party that engages in combat. The question is in which cases is international humanitarian law applicable to peacekeeping operations. After all, in those operations the UN is not normally a party that participates in acts of war. Plaintiff and Foundation will show that in the present case the UN was bound by international humanitarian law. The following serves as explanation.

389. The Secretary-General of the UN has stated the following on observance of international humanitarian law (see, the Secretary-General's Bulletin on the Observance by United

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Nations forces of international humanitarian law, ST/SGB/1999/13, of 6 August 1999, under Article1.1):

'*The fundamental principles and rules of international humanitarian law set out at the present bulletin are applicable to United Nations forces when in situations of armed conflicts they are actively engaged therein as combatants, to the extent and the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defense.*'

390. The basic rules of customary international humanitarian law are, according to that Bulletin (see, also Bothe/Dörschel, in D. Fleck, The Handbook of The Law of Visiting Forces, Oxford University Press 2001, page 501):

'*Protection of the civilian population, means and methods of conduct, treatment of civilians and persons hors the combat, treatment of detained persons, protection of the wounded, the sick and medical and relief personnel*.'

391. There is a question of applicability in the first place if the UN troops are involved in peace enforcement, but also if a peacekeeping mission deteriorates and the troops become involved in an action with organised armed forces (see, Bothe/Dörschel, in Fleck, The Handbook of The Law of Visiting Forces, Oxford University Press 2001, page 501). What is involved here is the factual observation that there is fighting and not the normative question whether fighting was allowed. International humanitarian law applies in such situations. Plaintiff emphasises that the operation regarding the Srebrenica Safe Area cannot be characterised as a peacekeeping mission. It was clear indeed prior to the dispatch of Dutchbat that a war was raging in the former Yugoslavia and that the Bosnian Serbs had killed large numbers of civilian victims and would do so again if they got the chance. There was absolutely no question of peace. This was a question of war and the peace had to be enforced. The resolutions provided in that respect for the possibility of air strikes. As has been observed above, the order to protect the Safe Area, which was an enforcement of the possibility of peace enforcement, followed once more on 10 July 1995.

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392. UN resolution 836 (under number 9) gave the UN troops the right to use force in self-defence, in response to attacks on or armed breaches of the Safe Area, in the case of obstruction of the Safe Area, or the obstruction of the freedom of movement of UNPROFOR or of humanitarian relief. In actual fact humanitarian relief had been obstructed for two years, the Safe Area had beeen breached on numerous occasions and UNPROFOR had been fired on. The UN troops had received the express order to protect the Safe Area. The fact that the order was ignored has no bearing on the fact that the UN troops were involved in the fighting and that therefore international humanitarian law was applicable.

393. The UN and Dutchbat acted contrary to international humanitarian law by not reporting war crimes, comprising plundering, rape, summary executions, grave mistreatment of civilians, deportation and murder. As set out above, the obligation to report war crimes arises, inter alia, from the Geneva Conventions, Standing Operating Procedure 208 and Article 1 paragraph 3 of the UN Charter. The obligation to ensure observance of the Geneva Conventions entails that war crimes must be reported so that the objectives of the Geneva Conventions are ensured. The observed war crimes were also addressed extensively in the treatment of the facts above.

Genocide

394. The Convention on the Prevention and Punishment of the Crime of Genocide (hereafter: ‘Genocide Convention’) was adopted on 9 December 1948. The Genocide Convention obliges States, inter alia, to take all measures to prevent the commission of genocide. The State of the Netherlands is a Party to the Genocide Convention, and on that account is bound by these obligations. This Convention is recognised as imperative law (see, J.A. Frowein, Encyclopedia of Public International Law, Volume Three, 1997, page 67, as well as A. Simon, op. cit., page 133). The UN has acknowledged that it is bound by imperative international law (see, Report of the Secretary-General on Financing of the United Nations Protection Force (…), of 20 September 1996 (A/51/389, paragraphs 6-8, page 4 and paragraph 16, page 6).

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395. The UN and the State of the Netherlands breached international law by not fulfilling, or at least insufficiently fulfilling, their obligations under the Genocide Convention. More particularly, the UN and the State of the Netherlands did insufficient to prevent the commission of genocide. Plaintiff and Foundation will below address the fact that genocide was committed and the obligations to prevent genocide under the Genocide Convention. Plaintiff and Foundation will establish that the UN and the State of the Netherlands did not fulfill that obligation. Plaintiff and Foundation will address also the foreseeability of the the crime of genocide that was committed.

396. The Genocide Convention defines genocide in Article II as:

'any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group requirements of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group.'

397. The ICJ established in its Decision of 26 February 2007 that genocide was committed in Srebrenica (see, legal consideration 278 et seq., together with the conclusion under legal consideration 297):

'*The Court concludes that the acts committed at Srebrenica falling within Article II (a) and (b) of the Convention were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina as such; and accordingly that these were acts of genocide, committed by members of the VRS in and around Srebrenica from about 13 July 1995.'*

398. Article I of the Genocide Convention obliges the States Parties to prevent genocide:

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'*the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.*'

399. The ICJ established in its Decision of 26 February 2007 that the prevention of genocide within the meaning of Article 1 of the Genocide Convention is an autonomous direct obligation and not a preamble to the other obligations contained in the Genocide Convention. The ICJ passed judgment on the obligation within the meaning of Article I of the Genocide Convention as follows (see, legal consideration 155 et seq., together with the conclusion under legal consideration 165):

'*(…) confirm that Article I does impose distinct obligations over and above those imposed by other Articles of the Convention. In particular, the Contracting Parties have a direct obligation to prevent genocide.*'

400. As has been set out above, the duty to prevent genocide is also recognised under customary law. This applies moreover to the UN and for the troops dispatched by it (see, A. Simon, op. cit., page 159 et seq.). As the UN exercised a definite control and sovereignty in a Safe Area, the obligation to prevent the commission of the crime of genocide in a Safe Area applies to the UN (A. Simon, op. cit., page 162).

401. The UN states further in the UN Report under number 501:

'*The international community as a whole must accept its share of responsibility for allowing this tragic course of events by its prolonged refusal to use force in the early stages of the war. This responsibility is shared by the Security Council, the Contact Group and other Governments which contributed to the delay in the use of force, as well as by the United Nations Secretariat and the mission in the field.*'

The then Secretary-General also acknowledged by this that the UN had a duty to act. This obligation to prevent genocide was again repeated by the Secretary-General of the UN on 26 January 2004 during the Stockholm International Forum:

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'To sum up, Ladies and Gentlemen, as an international community we have a clear obligation to prevent genocide.'

402. As set out above, both the UN and the State of the Netherlands exercised effective control, which entails that the obligation under Article I of the Genocide Convention to prevent genocide rested on both the UN and the State of the Netherlands. The scope of that obligation will be addressed below.

403. Article VIII of the Genocide Convention provides that every Party to the Convention is entitled to call upon the UN, with a view to preventing and suppressing acts of genocide. The duty to prevent genocide within the meaning of Article I of the Genocide Convention implies more than simply calling upon the UN. The ICJ held in its Decision of 26 February 2007 that the Contracting States are obliged to employ all necessary measures in order to prevent the commission of genocide even if the UN has already been involved (see, legal consideration 427).

404. The ICJ held further that the obligation to prevent the commission of genocide did not involve an obligation of result but rather an obligation of conduct. That obligation of conduct is, however, an extensive one and entails that every possible means must be deployed to prevent genocide. A state is not responsible if the desired result is not achieved but is responsible if all measures that lay in the power of that state to deploy are not taken. Article I Genocide Convention is therefore also breached if the state fails to deploy all means even if the deployment of all those means would not have prevented the commission of the genocide (see, legal consideration 430 of the ICJ Decision of 26 February 2007):

'(…) it is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the

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desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of "due diligence", which calls for an assessment in concreto, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State's capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality of genocide. On the other hand, it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce.'

405. The UN and the State of the Netherlands were in breach of their obligation to do all in their power to prevent genocide. That is shown by the facts described in this writ of summons. The State of the Netherlands dispatched Dutchbat without sufficient armament and with insufficient training. The armaments that were sent were not employed when that was necessary. The UN and the State of the Netherlands should have protected the population in accordance with the agreements and promises made. Air power was not deployed, or at least not in time and insufficiently. Further, the air strike that was finally deployed was halted by the interference of the State of the Netherlands. In the result, every effort was not made to prevent the commission of

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genocide. Worse still, The Netherlands actively halted the little action that was undertaken to prevent genocide. In addition, the observed war crimes should have been reported, which would have saved many lives. It is here repeated that the ICJ has held that it is not relevant for the breach of Article I Genocide Convention whether the genocide would have been prevented by the deployment of the available means.

406. When assessing whether a breach of Article I Genocide Convention has been committed, it is not relevant that the conduct that is called into question (or at least the failure that is questioned), occurred prior to the genocide that was committed from 13 July 1995. The prevention of genocide is after all by definition a course of conduct that is taken at a time prior to the genocide. The ICJ has held on this in its Decision of 26 February 2007 that (see, legal consideration 431):

'(…) a State can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed. (…) This obviously does not mean that the obligation to prevent genocide only comes into being when perpetration of genocide commences; that would be absurd, since the whole point of the obligation is to prevent, or attempt to prevent, the occurrence of the act. In fact, a State's obligation to prevent, and the corresponding duty to act, arise at the instant that the State learns of, or should normally have learned of, the existence of a serious risk that genocide will be committed. From that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harboring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit.'

407. The above statement means that the UN and the State of the Netherlands should have deployed all means available to them from the time that they suspected or reasonably should have suspected that genocide would be committed. As was addressed above and will be addressed again below, the UN and the State of the Netherlands knew already as early as 1993 of the impending threat of genocide. Moreover, the UN and the State of the Netherlands knew that the Bosnian Serbs were constantly attacking the Safe Area and that the ethnic cleansing of this area was the aim of the Bosnian Serbs. The facts and

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circumstances described above that took place under the eyes of Dutchbat were also an unequivocal announcement of what would take place. Most of the murders were committed in the days following the fall of the Safe Area.

408. The knowledge that the threatened genocide was also specifically known to the UN and the State of the Netherlands appears from the following. In the UN Report of 30 April 1993 (UN, S/25700, Report of the Security Council established pursuant to resolution 819 (1993)) is the following statement:

'*(14) UNPROFOR had participated actively in the drafting and the process of convincing the Bosnian Commander to sign the agreement* (lawyer's note: demilitarisation agreement of 18 April 1993*). The alternative could have been a massacre of 25,000 people.*

(…)

(17) There is no doubt that had this agreement not been reached, most probably a massacre would have taken place, which justifies the efforts of the UNPROFOR Commander.

(…)

(19) During the Mission's briefing at Srebrenica, the representative of ICRC informed it that the Serbs were not allowing surgeons to enter the city, in direct breach of international humanitarian law. There were many wounded requiring surgery. The only surgeon in the city has not been authorized to stay by the Serbs. To impede medical assistance is a crime of genocide. This action, together with the cutting of the water supply and electricity, have put into effect a slow-motion process of genocide.

(…)

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(27) (g) (…) The attitude of defiance of the Serbs towards the United Nations in general is a matter that should concern the Council. The Serbs obviously have little respect for UNPROFOR's authority.'

409. It was known to the UN – and to the State of the Netherlands – that genocide threatened in Srebrenica even before Dutchbat was dispatched to Srebrenica. The UN accepted as early as 1993 that genocide could be committed in Srebrenica. It was precisely the prevention of genocide that was the object behind the setting up the Srebrenica Safe Area. Moreover, it is clear from the UN Report of 30 April 1993 referred to above that the Bosnian Serbs already at that time had no respect for the UN and its resolutions. The UN and the State of the Netherlands must consequently have known already in 1993 that they could not trust that the Bosnian Serbs would respect the Safe Area and that the inhabitants of the Safe Area required protection against the impending threat of genocide.

410. The ICJ also held in its Decision of 26 February 2007, under legal consideration 438, that the climate of deeply ingrained hatred between the population groups was known and that:

'*(…) given all the international concern about what looked likely to happen at Srebrenica, (…), it must have been clear that there was a serious risk of genocide in Srebrenica.*'

411. The above leads to the conclusion that genocide was committed in Srebrenica and that the UN and the State of the Netherlands acted inadequately to prevent that genocide, despite the knowledge of the UN and the State of the Netherlands that such genocide was threatened. As a result thereof the UN and the State of the Netherlands were in breach of international law.

Breach of human rights

412. Human rights are defined by various conventions, such as the EECHR. The human rights defined in these conventions are a codification of customary law. The UN is, it is

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true, not a Contracting Party but it is generally acknowledged that the UN is bound by the general standard relating to human rights if it exercises by means of peacekeeping forces sovereignty comparable to a State Party (see, A. Simon, op. cit., pages 137 and 140).

Right to life

413. The right to life is a fundamental human right that is laid down, inter alia, in Article 2 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (EECHR) and Article 6 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR). The right to life is also acknowledged under customary law. A duty on states arises from this right, being the obligation to take measures for the protection of the lives of civilians against attacks by other private persons. This obligation certainly holds in the event of serious threat such as large-scale violence (see, A. Simon, op. cit., page 171 et seq.). Without this obligation actively to take measures the right to life would not be sufficiently guaranteed. This duty holds also for UN troops in a Safe Area, at least to the extent that the troops have assumed governmental tasks (see, R. Hofmann, op. cit., page 16 and A. Simon, op. cit., pages 175 and 176). In Srebrenica Dutchbat had, according to UN resolution 836, the task, inter alia, of preventing attacks against the Safe Area. According to the Secretary-General of the UN Dutchbat's principal task was the protection of the civilian population (see, Report of the Security Council established pursuant to resolution 844, 1993, of 9 May 1994, (S/1994/555), page 5 number 16). The UN was consequently obliged as a minimum to protect the population against large-scale attacks on life and health (see, A. Simon, op. cit., page 176).

414. The duty of protection owed by a UN force is restricted to the means that are available to it and to the measures that may reasonably be expected of it (see, A. Simon, op. cit., page 177). There is thus a serious charge against the State of the Netherlands inherent in the armament chosen for Dutchbat. The UN was obliged to prevent the capture of the Safe Area and the resulting mass murder with assistance of the means at its disposal. Plaintiff and the Foundation conclude that Dutchbat and the State of the Netherlands were not prepared, however, to protect the Safe Area against Serb attacks. Plaintiff and

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the Foundation hold it against Dutchbat that the observed atrocities were not reported. Dutchbat fulfilled the obligations so inadequately that the UN and the State of the Netherlands are liable. Plaintiff and the Foundation hold the UN liable for its unresponsive attitude to the provision of air support, the calling-off of air support, the absence of a defence plan and an evacuation plan, poor information management and a faulty assessment of the situation. All this is also held against the State of the Netherlands (see, A. Simon, op. cit., page 178 through 181). These various matters led to the right to life of the murdered family of Plaintiff and the murdered family of the persons whose interests are promoted by Foundation being breached.

415. Moreover, the Dutchbat soldiers – without themselves being endangered – should in any event have reported the crimes that they witnessed. Dutchbat wrongfully neglected to do so (see, the UN Report under number 474):

'*It is harder to explain why the Dutchbat personnel did not report more fully the scenes that were unfolding around them following the enclave's fall. Although they did not witness mass killing, they were aware of some sinister indications. It is possible that if the members of the battalion had immediately reported in detail those sinister indications to the United Nations chain of command, the international community might have been compelled to respond more robustly and more quickly, and that some lives might have been saved. This failure of intelligence-sharing was not only limited to the fall of Srebrenica, but an endemic weakness throughout the conflict, both within the peacekeeping mission, and between the mission and Member States.*'

416. The Report of the French Parliament contains an explanation why the observed war crimes were not reported, namely, out of fear that the position of the Dutchbat soldiers held hostage could possibly be endangered (see, page 102, Part 1, the Report of the French Parliament). That consideration is gravely culpable. The non-reporting of the observed war crimes also constitutes a breach of the right to life, all the more so as such reporting could have saved the lives of many.

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Humanitarian care

417. Human rights include, inter alia, the right to food, accommodation and medical care. This right to humanitarian care is acknowledged under customary law (see, A. Simon, op. cit., page 184). Consequently, Dutchbat was obliged to attend to the humanitarian care of the population in the Safe Area (see, A. Simon, op. cit., page 184 et seq.). That Dutchbat evidently did not have available to it sufficient means of coercion was – as was shown above – a direct consequence of a political consideration that in part related to the desirability of being able to procure helicopters, poorly reasoned decision-making, the desire to deploy the Air Brigade at all costs and a failure of intelligence. The State of the Netherlands cannot argue the absence of means against Plaintiff. The UN and the State of the Netherlands accepted without noticeable response that the humanitarian relief was seriously obstructed.

II.5.d. Legal consequences of responsibility under public international law

418. It is a principle of public international law that states that commit a wrongful act are obliged to undo the damage that occurred as a result of the wrongful act. If that is not possible, compensation must be paid. This is made clear by the ILC Articles for States to be addressed further below. The ICJ in its Decision of 26 February 2007 held that the relevant ILC Articles reflected the international customary law in force (see, legal consideration 460 of that Decision):

'*The principle governing the determination of reparation for an internationally wrongful act is as stated by the Permanent Court of International Justice in the Factory at Chorzów case: that "reparation must, so far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed*' (…)

The ICJ referred under legal consideration 460 also to Article 31 ILC Articles for States, which again confirms that the ILC Articles for States contain the international customary law in force. It is self-evident that restoration in the present case of the murder of 8,000 to 10,000 persons and the deportation of an even larger group of persons is impossible.

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419. Where restitution is not possible compensation must be paid (see, the continuation of legal consideration 460):

'*Insofar as restitution is not possible (…) it is a well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it.*'

The ICJ referred here to Article 36 of the ILC Articles for States. Plaintiff notes that it is aware that Articles 31 et seq. of the ILC Articles for States aim to regulate only the claim of one state against another state. That is also expressly stated in Article 33 paragraph 2 of the ILC Articles for States. That Plaintiff and the Foundation nevertheless also have a right of action will be addressed below with the discussion of the enforcement of liability.

420. Article 31 paragraph 2 ILC Articles for States provides that the concept of damage comprises every form of material and non-material damage caused by the wrongful conduct:

'*Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.*'

The Explanatory Memorandum to the ILC Articles for States elaborates what is to be understood by non-material damage, namely, that it includes the loss of loved ones, pain and suffering, ill-treatment or an intrusion into one's personal private life. Such non-material damage must be compensated, according to the Explanatory Memorandum (see, Explanatory Memorandum to Article 36 ILC Articles for States, number 16, page 252):

'*Compensable personal injury encompasses not only associated material losses, such as loss of earnings and earning capacity, medical expenses and the like, but also non-material damage suffered by the individual (sometimes, though not universally, referred*

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to as "moral damage" in national legal systems). Non-material damage is generally understood to encompass loss of loved ones, pain and suffering as well as the affront to sensibilities associated with an intrusion on the person, home or private life. No less than material injury sustained by the injured State, non-material damage is financially assessable and may be the subject of a claim of compensation (…).'

421. It is generally acknowledged that the UN is also obliged to pay compensation for breaches of public international law committed by its bodies (see, R.J. Dupuy et al., A Handbook on International Organisations, second edition, 1998, page 887, and A. Simon, op. cit., page 264.) That is also acknowledged by the UN itself (Report of the Secretary-General on Financing of the United Nations Protection Force (…), of 20 September 1996 (A/51/389, paragraphs 6-8, page 4). A ccodification of the ILC Articles for International Organisations comparable to Articles 31 et seq. ILC Articles for States is not yet finished. That does not detract from the fact that the international customary law for international organisations is comparable to Articles 31 et seq. of the ILC Articles for States (see, R.J. Dupuy et al, op. cit., page 887, and M. Zwanenburg, op. cit., pages 70 and 71).

422. The UN and the State of the Netherlands must consequently pay compensation to Plaintiff and Foundation for the breaches of the international law set out above (see, K. Schmalenbach, Die Haftung Internationaler Organisationen, 2004, page 453, and A. Simon, op. cit., page 265).

II.6. Enforcement of liability

423. A distinction must be drawn when describing the enforcement of liability according to the type of norm that is violated. In the case of breaches of norms of public international law in principle only states can enforce liability. This situation is regarded as unsatisfactory in the literature and the caselaw. Following research by the CAVV and the UN it has been established that this principle should be set aside and that individuals also can bring a claim against states and the UN on the basis of norms of public international law.

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424. Plaintiff and the Foundation have above already introduced the CAVV. The CAVV concluded that an exception exists to the principle that only a state can enforce a claim on the ground of public international law. That exception applies to norms of public international law that confer rights directly on individuals on the ground of public international law. Into this category fall, inter alia, norms of human rights (see, CAVV Opinion, no. 3.5).

425. The UN appointed independent experts to research the problematic of the enforcement of the rights of the individual. These experts conducted their investigations over a period of fifteen years. Member States of the UN, international organisations and NGOs were consulted during that investigation. The investigation led to the UN resolution of 16 December 2005 (number 60/147), 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' (hereafter: 'Basic Principles'). The Basic Principles are based, inter alia, on Article 8 of the Universal Declaration of Human Rights (UDHM). This right to an effective legal remedy also arises from Article 6 EECHR (see, A. Reinisch, in R. Hofmann et al., Die Rechtskontrolle von Organen der Staatengemeinschaft, 2007, page 85) and Article 2 paragraph 3 under a of the ICCPR.

426. The UN under Article 2 of the Basic Principles recommends that the Member States enforce these guidelines and apply them in the caselaw, and does so in the following words:

'*Recommends that States take the Basic principles and Guidelines into account, promote respect thereof and bring them to the attention of members of the executive bodies of government, in particular law enforcement officials and military and security forces, legislative bodies, the judiciary, victims and their representatives, human rights defenders and lawyers, the media and the public in general.*'

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427. With a view to guaranteeing the enforcement by the Member States of the Basic Principles, Article I, number 2 under b, c and d of the Basic Principles provides that the Member States of the UN must ensure under international law that they do the following:

'*(b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;*
(c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;
(d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.'

428. Article II, number 3, under c and d of the Basic Principles determines the scope of the obligations of the Member States. The Member States are under the obligation to:

'(c) *Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation;*
and
(d) Provide effective remedies to victims, including reparation, as described below.'

429. Article V, number 8 of the Basic Principles defines the concept of victim:

'*(…) victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. (…) the term "victim" also includes the immediate family or dependants of the direct victim (…).*'

Plaintiff and the the persons whose interests are promoted by Foundation are victims within the meaning of the Basic Principles. As was shown above, they, or at least their

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murdered family, are indeed the victims of gross violations of human rights and international humanitarian law.

430. The Basic Principles provide that individuals who are the victims of a gross violation of their human rights or international humanitarian law, can enforce their rights under international law like a state. Member States must ensure that victims have available to them all appropriate legal means in order to be able to exercise their rights: see, Article VIII, number 12 through 14 of the Basic Principles which provide that:

'A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. (…) Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:
(…)
(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.'

A Member State should ensure on the ground of Article VIII, number 13 of the Basic Principles that not only individuals but also groups of victims can enforce their rights. The Foundation constitutes a group of victims within the meaning of Article VIII number 13 of the Basic Principles.

431. The family of Plaintiff and the persons whose interests are promoted by Foundation are victims of gross breaches of human rights, such as the the right to life and to humanitarian care. Moreover, the mandate of the UN implied the protection of human rights. The resolutions adopted by the Security Council gave the order to protect the Safe Area and the civilians who found themselves there. Given that the protection of human life was the object of the resolution, UN resolutions 836 and 844 also confer rights directly on individuals.

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432. Both the CAVV Report and the Basic Principles lead to the result that Plaintiff and Foundation can in this case enforce their rights, deriving from public international law, before the Dutch Court. As that applies for gross breaches of human rights, so it applies all the more for the breach of the obligations arising from the Genocide Convention. Plaintiff and Foundation have a claim against the UN and the State of the Netherlands on the ground of public international law as the violated norms of public international law confer rights directly on the individual (see, CAVV Opinion, nos. 3.5.1 and 3.5.2).

433. The Basic Principles provide also that victims have a right to compensation if restoration of the situation that existed prior to the damage-causing facts is not possible. Such compensation is awarded, inter alia, for physical and mental injury, lost chances, including employment, education and social security benefits. Compensation is also awarded for material damage and loss of profit or earnings and for non-material damage (see, Article IX, number 20 of the Basic Principles). In the light of the above the UN and the State of the Netherlands must pay Plaintiff and the persons whose interests are promoted by Foundation compensation on the ground of public international law.

434. In connection with the possibility as an individual to derive rights from provisions under international conventions Plaintiff and Foundation refer, in addition to the Basic Principles addressed above, to Article 93 of the Netherlands Constitution. Article 93 Constitution provides:

'Provisions of conventions and of decisions of international law organisations, whose content can be universally binding, shall have binding force following publication'

This direct applicability of international conventions in the Netherlands legal order is of importance where the international conventions also contain universally applicable and directly binding provisions. Provisions that are universally applicable and directly binding are provisions that have binding force on civilians (private persons), including legal persons under civil law (see, J.W.A. Fleuren, *Tekst & Commentaar, Grondwet* (Text & Commentary, Constitution), 2004, Article 93 number 3). Whether an international treaty contains a universally applicable and directly binding provision is a

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matter exclusively for the judgment of the Dutch Court (see, F.M.C. Vlemminx and M.G. Boekhorst, *De Grondwet* (The Constitution), 2000, Article 93 number 7; J.W.A. Fleuren, op. cit., number 4 with reference to the relevant Parliamentary Documents; P. van Dijk and B.G. Tahzib in S.A. Riesenfeld and F.M. Abbott, Parliamentary Participation in the Making and Operation of Treaties, 1994, page 113).

435. The so-called self-executing character of such provisions in international conventions must be assessed by the Dutch Court as a matter of fact. In the present case the Genocide Convention, the Geneva Conventions and the EECHR have been incorporated into the Netherlands legal order as international conventions by Article 93 Netherlands Constitution. The Genocide Convention and the Geneva Conventions were created precisely to protect the civilian population, and thereby individual civilians, from wrongdoing. The same applies for Articles 2 paragraph 1 of the EECHR and Article 6 paragraph 1 of the ICCPR, that primarily go to the protection of the individual.

436. The fact that the State of Bosnia-Herzegovina can also bring its own claims against the UN and the State of the Netherlands is of no concern to Plaintiff and Foundation in the present case. The State of Bosnia-Herzegovina has brought no pertinent action in the past twelve years and to the present has shown no evidence of any such intention.

437. Given that Plaintiff and Foundation can personally enforce rights under the international conventions, the issues of damage and the causal relationship will be addressed below.

II.7. Damage and causal relationship

438. Plaintiff has suffered damage as a consequence of the failure of the UN and the State of the Netherlands to fulfill their obligations, or at least by their wrongful actions or omissions. It holds also that Plaintiff has suffered damage as a result of those breaches of norms of international law.

439. The damage to Plaintiff consists of the fact that the Plaintiff's family has been murdered and the fact that she has lost her hearth and home in Srebrenica. As far as the family that Plaintiff has lost, Plaintiff refers to her statement (see, Exhibits 1 through 10). In Bosnia

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– where there is little or no adequate social security – the loss of the breadwinner and the loss of one or more children, who normally take financial care of the parents when they can no longer work, is also a financial disaster as well as being an emotional one. Plaintiff wishes her damage to be further quantified in a procedure for assessment of the loss. In addition, Plaintiff claims an advance on her damage of EUR 25,000 for each Plaintiff.

440. The Foundation represents the interests of the surviving relatives from Srebrenica. All these surviving relatives share comparable circumstances with Plaintiff. These surviving relatives have jointly attempted through the offices of their lawyers to obtain that which is claimed by conferring with the UN and the State of the Netherlands (see, Article 3:305a paragraph 2 Civil Code (*Burgerlijk Wetboek*). Thus, for example, attempts were made to enter into consultation on these matters by letter of 18 October 2002 and 4 October 2006 addressed to the UN and by letter of 11 April 2006 addressed to the State of the Netherlands. The UN and the State of the Netherlands have not accepted those invitations to begin consultations. Now the Foundation has no alternative other than the institution of legal proceedings in order to obtain the judicial declaration in the terms yet to be determined.

441. It was shown above that if a start had been made with defence, or at least some form of resistance, the Bosnian Serbs would not have captured the entire Safe Area. The decision to capture the entire Safe Area was taken only on 9 July 1995 when no defence was offered. That has already been extensively addressed above on the basis of sources and was additionally confirmed by the ICJ in its Decision van 26 February 2007, under legal consideration 283. It was only the capture of the entire Safe Area that made possible the murder of 8,000 to 10,000 persons and the driving away of Plaintiff from hearth and home. Those consequences, as has been elaborated above, were foreseen. There is a direct relationship between the culpable conduct of the UN and the State of the Netherlands and the consequences that occurred. The same applies for the relationship between the non-reporting of the observed war crimes and the murders that were subsequently committed. If reports had been made, the lives of many could have been saved.

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III. Defence offered by the State of the Netherlands and UN

442. Plaintiff holds the UN and the State of the Netherlands jointly responsible for the fall of the Srebrenica Safe Area and the events that thereupon could occur. Prior to commencing these proceedings the legal representatives of Plaintiff and the persons whose interests are promoted by Foundation held both the State of the Netherlands and the UN liable. The State of the Netherlands summarily dismissed any question of liability and did not wish to enter into consultation on satisfaction. The State of the Netherlands did, however – through its ambassador in Sarajevo – advance a number of arguments in 2004 that would argue against liability. Plaintiff and the Foundation will briefly address those arguments below. Further, the possibility exists that the UN will attempt to plead immunity under Article 105 of the UN Charter. Plaintiff and the Foundation will also address that argument.

III.1. Defence by the State of the Netherlands

443. The State of the Netherlands initially characterised its own actions in a most positive light. The Ministry of Foreigh Affairs issued a public statement which was given a very wide circulation, also abroad. The text of that statement of 14 July 1995 stated (see, page 2373 of the NIOD Report):

'*Praise has been expressed from all quarters, not least also from that of the Security Council, for the professional and courageous conduct of the Dutch blue helmets. Praise has been expressed in particular for their attempts to block the Bosnian Serb advance from the south and to the crucial help that they provided to the population during the transfer from Srebrenica to Potocari. (…) Dutchbat did everything in Srebrenica that lay within its abilities to prevent the fall of the enclave and adequately to protect the population of Srebrenica but unfortunately did not succeed in that. (…) Dutchbat is presently sharing its scarce food supplies with the population and is attempting to exert a positive influence on developments.*'

In the days that followed the State of the Netherlands lavishly praised the conduct of Dutchbat. Thus, Van Mierlo referred in the European General Council of 18 July 1995

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to the '*courageous and professional conduct of Dutchbat*' (see, page 2377 of the NIOD Report). It should have become clear that the facts were different to those that the State of the Netherlands initially presented to the world.

444. The statement of 14 July 1995 cited above was unjustly laudatory of the conduct of Dutchbat. Moreover, there was no longer any refugee present on the compound on that date. As has been set out above, fierce criticism of the conduct of Dutchbat was expressed by countries that were reasonably well-informed on the actual state of affairs (page 2374 of the NIOD Report). France raised the issue that Srebrenica had fallen without any noticeable response from UNPROFOR. The Dutch UN soldiers had, according to France, offered too little resistance and were accessory to ethnic cleansing. President Chirac stated that the conduct of Dutchbat came down to the fact that UNPROFOR in Srebrenica (see, page 2376 of the NIOD Report):

'*militairement avait mal conduit.*'

[Lawyer's translation:
in military terms had failed.]

445. The then Cabinet under the premiership of Prime Minister Kok resigned following the publication of the NIOD Report in April 2002. In his explanatory memorandum to the decision to resign Kok stated that the Government wished '*to manifest the political contributory responsibility*' for the situation. Kok also stated that the international community had failed in the protection of the persons in the Srebrenica Safe Area (statement of Kok of 16 April 2002 to the Speaker of the Lower House). In Kok's view the international law apect of the case exonerated The Netherlands (it was not the state providing troops that was responsible but the UN). It has already been addressed above that The Netherlands itself repeatedly exercised effective control and that the question who officially exercised command and control is irrelevant. That Kok's international law approach is incorrect follows, for example, also from the earlier statement of Minister Voorhoeve (see, page 2283 of the NIOD Report):

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'The Minister of Defense, Voorhoeve, adopted the position with NIOD that these rules relating to Command and Control in The Netherlands, and the question where the individual responsibilities lay, was more or less clear, but that in practice it transpired that it was not possible to separate these sorts of matters, with the result that they became entwined. In his view, it was possible to argue logically in pure public international law terms that The Netherlands had placed contingents at the disposal of the UN, and that The Netherlands only retained the right to recall those contingents but that otherwise everything was a matter for the UN. To this The Hague would say: these soldiers are now UN blue helmets, and consequently this is not our problem. But that's not how matters were in practice, said Voorhoeve.'

446. In a letter of 30 September 2004 to the Bosnian lawyers of Plaintiff, the State of the Netherlands maintained the position that the premises underlying the UN resolutions did not reflect reality. In particular, the VRS would not be overly concerned about its obligations under public international law. That defence is ill-founded, given that the hostilities and proclaimed bloodbaths were already known to the UN and The Netherlands at the time of the resolutions. The premise can consequently not have been that the Bosnian Serbs should adhere to their obligations under public international law. The fact that they did not adhere to their obligations was precisely the reason for the UN resolutions. The State of the Netherlands stated further that Dutchbat was not equipped to enforce compliance of the Safe Area and that in practice the air support never had any true value. Plaintiff has already noted on that subject that the State of the Netherlands itself determined the equipment and training of Dutchbat. The fact that the equipment and training of Dutchbat was inadequate does not exonerate the State of the Netherlands. On the contrary, those circumstances lead in themselves to liability towards Plaintiff. The fact that the air support did not have the desired result is traceable back to the decisions that were taken by the State of the Netherlands, or by the Dutch officers in the UN command structure, respectively.

The State of the Netherlands stated further in the letter referred to above that no individual right of action accrues to Plaintiff. That Plaintiff definitely has such right of action has already been addressed above. The State of the Netherlands has stated,

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moreover, that Dutchbat did not breach any norms of humanitarian law. The inaccuracy of that defence has likewise been addressed above.

III.2. Immunity of the UN

447. Plaintiff does not exclude that the UN will invoke in this case Article 105 of the UN Charter, which deals with the immunity of the UN. Plaintiff will show below that in such case the claim to immunity should not be upheld.

448. Article 105 paragraph 1 UN Charter states:

'*The organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.*'

The UN consequently has immunity to the extent that it is necessary for the fulfilment of the purposes of the UN. This does not relate exclusively to the general purposes of the UN but also to the purposes that arise from a specific mandate, such as the mandate to ensure protection of the Srebrenica Safe Area and its population.

449. Article 105 paragraph 3 UN Charter provides that the General Assembly of the UN can propose Conventions with a view to determining the details of the application of paragraphs 1 and 2 of Article 105 UN Charter. That does not entail, of course, that such elaboration can set aside the rule laid down in Article 105 paragraph 1 UN Charter. The Convention on the Privileges and Immunities of the UN was adopted by the General Assembly of the UN in 1946. It follows from that Convention that where the UN has immunity, the UN can waive that immunity. Article II paragraph 2 of this Convention states:

'*The United Nations (…) shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity.*'

In the present case there is no question of any waiver as the UN has no immunity, as will be shown.

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450. In the case of Manderlier against the UN from 1966 cited above (in the framework of addressing the issue of the legal personality of the UN) the UN advanced no defence on the merits but invoked immunity under Article 105 of the UN Charter. The Tribunal in Brussels held that the complaint against the UN could not be heard on the ground of its immunity. The Court of Appeal in Brussels upheld that decision in its judgment of 15 September 1969 (69 ILR 139). In that case the Court of Appeal assumed that it followed from Article II paragraph 2 of the Convention on Privileges and Immunities that the UN was always entitled to immunity if the UN did not waive its immunity. That reasoning is faulty. Waiver is an issue only where the UN enjoys immunity and to the extent that such immunity arises under Article 105 paragraph 1 UN Charter. As was shown above the immunity defined there is restricted to what is necessary for the fulfilment of its purposes. It is self-evident that the issue of the involvment of the UN in cases of genocide certainly does not fall under a purpose of the UN and consequently must be capable of being subject to judicial review. In addition, it must be clear that a Convention promulgated on the basis of the UN Charter cannot ignore what is laid down in the UN Charter.

451. In addition, the Case of Manderlier against the UN is of an order that is not comparable with the present case. Firstly, the Manderlier Case did not involve genocide but the destruction of property. Secondly, the Decision in the Manderlier Case was given in an era when the UN was not then so extensively involved with international conflicts as it is at present. At that time it was unimaginable that genocide could be committed under the eyes of UN troops. In this case, therefore, the UN is not entitled to immunity. The following serves as explanation.

452. The Second World War led to the realisation that common action was necessary if stability and world peace were to be achieved. The idea of a global peace organisation became an objective of the Allied States (see, Grewe/Khan, in B. Simma, The Charter of the United Nations, a Commentary, Volume 1, page 1). To that end it was the intention to establish an international organisation which would act on the basis of agreement between states, in order to guarantee broad support within the international community.

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It is in this manner also that the UN resolutions that are of significance in this present case were adopted. It is here also significant that such an organisation does not run counter to the principles of a democratic state, a state governed by the rule of law.

453. It is characteristic of a democratic state governed by the rule of law that there is a separation of powers between the legislative, the executive and the judicial powers. In a system where that separation operates, the powers operate to control each other, in order to prevent a dictatorship arising. The UN exercises the legislative powers through its resolutions. Then those resolutions are enforced by UN troops. If the UN were then not to be controlled by a court under any circumstances the UN would resemble a dictatorial organisation. It is inconceivable that the states that established the UN and the states that subsequently joined it intended to establish such an organisation for world peace. It is also acknowledged that the UN Charter must be interpreted on the basis of the principles of good faith (see, G. Ress, in B. Simma, a Commentary, The Interpretation of the Charter of the United Nations, Volume 1, page 19). Such interpretation entails that a possible immunity on the part of the UN cannot be unlimited. It is for that matter also not acceptable that a person or an organisation accords itself an unlimited immunity and for an independent court to accept that. Immunity can be accorded only to others. It is contrary to the principles of a state governed by the rule of law for persons or legal persons personally to determine that they are immune.

454. A. Reinisch correctly points out that international organisations are also subject to the principles of "good governance" (see, A. Reinisch, in R. Hofmann et al., Die Rechtskontrolle von Organen der Staatengemeinschaft, 2007, page 84). The Commission of the International Law Association regarding "Accountability of International Organisations" also came to the following conclusion(see, A. Reinisch, in R. Hofmann et al., *Die Rechtskontrolle von Organen der Staatengemeinschaft*, 2007, page 84, footnote 223):

'*As a general principle of law and as a basic international human rights standard, the right to a remedy also applies to IO-s in their dealings with states and non-state parties. Remedies include, as appropriate, both legal and non-legal remedies.*'

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455. In addition, the UN serves to guarantee the fundamental rights of civilians. A fundamental right is the right of access to an independent court. That right is confirmed in Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (EECHR).

456. Article 14 paragraph 1 ICCPR states:

'*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law (…). '*

And Article 6 paragraph 1 EECHR states*:*

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.'

It is generally acknowledged that the guarantee of a "fair trial" in Article 6 paragraph 1 EECHR also implies the right of access to the court. This has been the enduring caselaw of the European Court of Human Rights since Golder v. United Kingdom (Application no. 4451/70). In the Case Waite and Kennedy v. Germany (Application no. 26083/94) the European Court of Human Rights once again confirmed this with the following judgment (legal consideration 67):

'*It should be recalled that the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial.*'

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Moreover, the European Court of Human Rights in the Case Waite and Kennedy v. Germany permitted the claim of immunity invoked by the European Space Agency (ESA) to prevail only because alternative legal remedies were available. That implies that in the present case immunity cannot be accorded as Plaintiff has no alternative legal remedy available against the UN.

Article 105 UN Charter is consequently irreconcilable with the above basic assumptions or provisions because a claim by the UN to immunity would lead in the present case to Plaintiff being afforded no access to an independent court.

457. The UN has itself realized to a certain degree the problematic regarding an alternative legal remedy. That problematic is the reason why Section 29 of the Convention provides:

'*The United Nations shall make provisions for appropriate modes of settlement of:*
(a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;'

Despite the fact that this provision originated in 1946, the UN has still at present – more than sixty years later – never established an agency for dispute settlement where Plaintiff could institute her claim. Apart from that, Section 29 of the Convention contemplated disputes arising under the civil law and expressly not any claim under public international law.

458. Plaintiff notes that the State of the Netherlands is a Contracting State to the EECHR and to the ICCPR, and has ratified these conventions. Consequently, the Dutch Court can accord no immunity to the UN because to do so would violate the fundamental right of Plaintiff and the persons whose interests are promoted by Foundation.

459. A. Reinisch also confirms that Belgium, as a party to the EECHR, should have offered Manderlier access to the Tribunal through the national court system and should not have

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upheld the claim to immunity (A. Reinisch, International Organizations before National Courts, 2000, page 289).

460. K. Wellens has expressed that same opinion in his publication, 'Fragmentation of international law and establishing an accountability regime for international organisations: The role of the judiciary in closing the gap' (see, Michigan Journal of International Law, 11 May 2004). Wellens states, with reference also to Ch. Dominicé, that the right of access to the court should weigh more heavily than the interest of immunity (K. Wellens, op. cit., page 18):

'(…) *access should prevail over immunity if no legal remedy is available.*'

461. The Advisory Commission on Issues arising under Public International Law (CAVV) referred to above, which advises the Netherlands Government on issues of international law, shares the above view that, in the absence of any other legal remedy, the right of access to the court is more important than the claim to immunity. Thus, the CAVV writes in Article 4.5.2 of its Report that the national court:

'*(…) should proceed to a prima facie investigation in the light of international legal norms of the availibility of adequate internal legal remedies that are available within an international organisation to the aggrieved party. In the event of a negative result it is desirable that national courts do not accord immunity and proceed to settlement of the dispute at hand*.'

462. It is meanwhile accepted that the immunity of international organisations, like the UN, is (no longer) self-evident (see, A. Reinisch, in R. Hofmann et al., *Die Rechtskontrolle von Organen der Staatengemeinschaft*, 2007, page 43). There are increasing numbers of national courts that do not recognise the immunity of these organisations, in order to guarantee an effective protection of legal rights.

463. In the proceedings between Manderlier and the UN, Manderlier invoked, inter alia, Article 6 EECHR and Article 10 UDHR. It was held in that dispute that the UDHR did

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not have the force of a statute (see, 45 ILR, page 451). The Tribunal in Brussel held further that only fourteen countries were Contracting Parties of the EECHR and that the EECHR could not be enforced against the UN (see, 45 ILR, page 452). To the extent that the numbers argument in 1966 was valid, that is at present certainly not the case given that now 46 countries have acceded to the EECHR. The second argument, that the EECHR does not apply to the UN, is also incorrect. The EECHR confers on civilians a direct right of access to the court, which means that the court before which a claim is brought must allow access. By so doing it is not imposing the EECHR on the the UN, but rather offering protection to the acknowledged – also by the UN – human right of access to the court.

464. In respect of the failure to establish access to the court, the Tribunal in Brussels in the Manderlier Case held that (see, 45 ILR, page 451):

'*In spite of this provision of the Declaration which the U.N. proclaimed on 10 December 1948, the Organization has neglected to set up the courts which it was in fact already bound to create by Section 29 of the Convention [on Privileges and Immunities] of 13 February 1946.*'

One must assume that also the Belgian court, now some 40 years later, would no longer accept this failure of the UN.

465. Finally, Plaintiff recalls that the UN assumed the obligation of ensuring protection of the population. That obligation was repeatedly confirmed by the UN resolutions adopted by the Security Council and also at a lower level until after the fall of the Safe Area. Moreover, the population was repeatedly informed that it was not the population itself, but the UN troops who would take care of the defence. With that the UN assumed a large responsibility. The UN did not protect the civilians of the Safe Area and made insufficient efforts to do so. The International Court of Justice (ICJ) in its Decision of 26 February 2007 in the Case Bosnia-Herzegovina against Serbia and Montenegro established that genocide was committed in Srebrenica. The theoretical discretionary competence of the UN to invoke immunity cannot apply in the present case because

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Plaintiff and the Foundation accuse the UN of being in breach of its obligations under the Genocide Convention. In the case of such a serious breach of the obligation to prevent genocide, there lies upon the UN precisely a duty not to invoke immunity. One of the objectives of the UN is to promote respect for human rights, which is also laid down in Article 1 paragraph 3 of the UN Charter. Invoking immunity would be contrary to the UN's own objectives. It seems also not to be in the interest of the credibility of the UN.

IV. Tender of evidence

466. Plaintiff and the Foundation offer to tender evidence supporting all their propositions without thereby assuming any burden of proof, other than that which arises under law, by, inter alia, hearing (examing) the witnesses:

- Mrs SabaThe a Fejzić
- Mrs Kadira Gabeljić
- Mrs Ramiza Gurdić
- Mrs Mila Hasanović
- Mrs Kada Hotić
- Mrs Šuhreta Mujić
- Plaintiff No. 7
- Mrs Zumra Šehomerović
- Mrs Munira Subašić
- Plaintiff No. 10
- Mrs Sabra Kolenović

467. The statements of these persons, which have been entered in the proceedings as Exhibits 1 through 11, show the facts that these persons can attest to (the proof of which facts Plaintiff offers). The names of those persons mentioned who can be heard for the provision of oral evidence is not exhaustive. If necessary, there are thousands of women who can testify and who can confirm the facts put forward in this writ of summons. It is inherent in the present case that virtually all the witnesses are also victims because they lost someone in the events attending the fall of the Safe Area. That does not apply for the witness, Mrs Sabra Kolenović, who was 'merely' driven from hearth and home and

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ill-treated by Bosnian Serbs.

Moreover, Plaintiff offers to prove all other facts stated by her. In order to keep the extent of this somewhat within limits it is not offered to prove each fact separately. Plaintiff expressly offers, however, to deliver that proof in part through oral evidence, more particularly by the examination of each of the above persons. In formulating a specific and relevant offer to provide oral evidence Plaintiff has encountered the problem that Plaintiff does not know the names and addresses of the Dutchbat soldiers concerned. Those names have not been released by the State of the Netherlands and the NIOD. Plaintiff petitions the Court to assist Plaintiff in this evidentiary problem and if necessary to reverse the burden of proof where oral evidence should originate from Dutchbat soldiers. The same applies to the documents that the State of the Netherlands and the UN do not wish to produce on the grounds that they have been classified as secret.

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THEREFORE:

If it pleases the Court to give judgment having immediate effect:

1) to grant a judicial declaration that the United Nations and the State of the Netherlands are guilty of an attributable failing in the fulfillment of their obligations towards Plaintiff under 1 through 10, as well as towards the persons whose interests are promoted by Plaintiff under 11, as set out in the body of this writ of summons;
2) to grant a judicial declaration that the United Nations and the State of the Netherlands acted unlawfully towards Plaintiff under 1 through 10, as well as towards the persons whose interests are promoted by Plaintiff under 11, as set out in the body of this writ of summons;
3) to grant a judicial declaration that the United Nations and the State of the Netherlands breached their obligations to prevent genocide, as laid down in the Genocide Convention,;
4) to hold the United Nations and the State of the Netherlands jointly liable to pay compensation for the loss and injury suffered by Plaintiff under 1 through 10 as well as damages yet to be determined by the court, and to settle these according to law;
5) to hold the United Nations and the State of the Netherlands jointly liable to pay Plaintiff under 1 through 10 an advance of EUR 25,000 per person of the compensation to be awarded, as claimed under point 4 of the petition;
6) to hold the United Nations and the State of the Netherlands jointly liable to pay the costs of these proceedings.

The costs of this service are borne by me, process server,

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