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Stalna Komisija u slučaju
(holandskih) ratnih zlocina
u Jugoslaviji
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NOVEMBAR 1999 MANIFEST

Ovo je poziv žrtvama NATO-agresije u Jugoslaviji.
Mi želimo da uspostavimo kontakt sa ljudima, koji su postali žrtve NATO-agresije u Srbiji i ostalim delovima Jugoslavije.
Takodje želimo kontakt sa organizacijama i ustanovama koje ove žrtve zastupaju.

Ko smo mi ?

Mi smo jedna organizacija ljudi iz Holandije, Holandske i Jugoslovenske narodnosti, koja hoće u ime žrtava od NATO-agresije u Jugoslaviji, da podnese optužbu za dobijanje odšteте.
Ova organizacija, koja je naročito zato formirana, zove se **"Stalna komisija u slučaju (holandskih) ratnih zločina u Jugoslaviji"**.

Mi upućujemo naše saučešće svim žrtvama u Jugoslaviji.

No pre nego što bismo dali bliže obaveštenje hoćemo da kažemo još ovo; ovaj poziv dolazi iz Holandije, NATO-države, koja je zajedno sa ostalim NATO-državama nanela ogromnu štetu Jugoslaviji a naročito Srbiji.
Mi možemo da zamislimo da sve što iz te zemlje dolazi ne zvuči mnogo verovatno i dobroćudno.

Kao prvo hoćemo da vam kažemo da se mi duboko stidimo za sve zločine koji su od strane Holandije naneti Jugoslaviji i Jugoslovenskom življu. Srbija, Srpski narod i sve što je Srpsko postali su žrtve na najgrublji, najnečovečniji, najužasniji način.

Holandija je intenzivno učestvovala da Jugoslaviju, zemlju koja nikada nije bila agresivna protiv bilo koje druge zemlje, NATO-bombardovanjem ruinira.
Ta zemlja i njen narod koji su vekovima junački branili jugoistočni deo Evrope, pretrpeli su veću štetu od NATO-bombardovanja nego od nacističke Nemačke u Drugom Svetskom Ratu.

Sa gnušanjem saznzjemo da su od posledica NATO-bombardovanja milioni ljudi ostali bez posla, bez primanja i najosnovnijih uslova za život i da ih teška i nesigurna budućnost čeka.

Naročito nas pogadja saznanje o broju žrtava, mrtvih i ranjenih, koji su pali za vreme užasnih bombardovanja od strane NATO-zemalja.
Mi hoćemo ovde da izjavimo duboko saučešće porodicama, fami-

lijama i svima bližnjima palih žrtava.
Takodje smo duboko svesni zločinačkih i kukavičkih napada koji su uništili sve ono što su generacije Jugoslovena stvorile u ekonomiji i blagostanju.

Manjina koja voli istinu.

Ali ko smo "mi"
Nažalost mi smo jedna mala manjina u Holandiji. I u ostalim NATO-zemljama su ljudi koji kao i mi misle jedna mala manjina.

Većina ljudi u Holandiji a i u ostalim NATO-zemljama nažalost misli drukčije. Svakodnevna propaganda u novinama, preko radija i televizije, vodjena protiv svega što je Srpsko, dovela je do takvog stava koji svi ti ljudi još uvek imaju prema svemu što je Srpsko.

Iz svega ovoga može da se zaključi da slobodna štampa u NATO-zemljma ne postoji. O njihovoj slobodi štampe ne veruj apsolutno nijednu jedinu reč! Svi mediji i sve novine u zapadnim zemljama su u potpunoj službi u vodjenju lažnih kampanja da Jugoslaviju i Jugoslovenski narod što više ocrne.
Drukčije mišljenje, nas kao manjine, se namerno prećutkuje.

Mi jesmo manjina u Holandiji ali to ne znači da ćutimo. Mi se osećamo dužnim da se iz sve snage suprostavimo zločinima koji se i od strane Holandije čine prema Jugoslaviji i Jugoslovenskom narodu.

Zahtev za nadoknadu za obnovu od nanete štete

Jedan od zahteva koji mi iz sve snage hoćemo da podržimo jeste zahtev za novčanu naknadu za nanetu štetu Jugoslaviji i njenom narodu.
Mi shvatamo da novac celog sveta ne može da nadoknadi i izbriše muku ibol koji im je namet, ali novčana naknada bi bar donekle to mogla da ublaži i život budućnosti učinila lakšim.

Da bi ovaj zahtev što češće mogla da postavlja, osnovana je ova **Stalna komisija u vezi sa počinjenim (holandskim) zlocinima u Jugoslaviji, skraćeno: Stalna Komisija.**
Ova komisija će sledećih godina uvek ponovo zahtevati od Holandske vlasti da NATO-zemlje pruže pomoć Jugoslaviji u obliku novčane naknade za odštetu nanete NATO-bombardovanjem. Ovaj zahtev bi morao biti postavljan i u ostalim NATO-zemljama.

Ova Stalna Komisija će svoj rad započeti iznudjivanjem novčane naknade-odštete, sudskim putem.

Nema puno izgleda da se vlade NATO-zemalja ubrzo privole za plaćanje ratne odštete za obnovu Jugoslavije.
Umesto toga NATO-zemlje čine sve da u Jugoslaviji izazovu gradjanski rat time što nekim gradovima daju a drugima ne daju pomoć za snabdevanje goriva.

Zato nećemo čekati dok NATO-zemlje odluče da počnu sa davanjem odštete već ćemo početi zahtevima za to sudskim putem.

Ove zahteve sudskim putem vodićemo u ime ratnih žrtava NATO-bombardovanja.
Žrtve NATO-agresije imaju sigurno pravo na to.

Pravo na odštetu od posledica ratnih zločina.

Iako je u NATO-zemljama, javnost protiv nas, principijelno je pravda na našoj strani.
NATO-agresijom nad Jugoslavijom grubo je oštećeno internacionalno pravo.
Napadanjem jedne suverene zemlje kao što je Jugoslavija, NATO-zemlje su počinile zločin protiv mira u svetu i zato snose krivicu za beskrajne ratne zločine namete Jugoslaviji.
Ti ratni zločini ne mogu ostati nekažnjeni.

Posle Drugog Svetskog Rata kažnjeno je dosta nemačkih ratnih zločinaca-Nacista-pri Tribunalu u Neurenburgu za njihove ratne zločine i zločine protiv mira u svetu.
Oni su i lično proglašseni odgovornim za posledice njihovih zločina.

Takodje hoćemo i mi ratne zločince iz NATO-zemalja da optužimo za njihove zločine.
Mi hocemo, ne samo NATO-zemlje već i odgovorne političare kao i vojna lica, da pozovemo na odgovornost za počinjene štete.
To sve u ime žrtava.

Stalna Komisija će ovim napraviti početak u Holandiji a nadamo se da će i u ostalim NATO-zemljama takvi procesi da slede.

To znači da ćemo mi da vodimo sudske procese u ime Jugoslovenskih žrtava protiv NATO-agresora i to pred sudom u Holandiji.
U ovim procesima zahtevaćemo odštetu za žrtve NATO-bombardovanja.

Kontakt sa ljudima u Jugoslaviji, koji su postali žrtve bombardovanja, je neophodan.

Naravno da nam je jasno da su nažalost svi stanovnici Jugoslavije postali žrtve NATO bombardovanja.
No ipak mora biti jasno da Stalna Komisija ne može da procedira za odštetu za sve žrtve.
Mi možemo istovremeno samo nekoliko zahteva odjednom da vodimo i to za ne prevelike grupe žrtava. Nazalost moramo u tome biti ograničeni.

Medjutim ako takvi sudski zahtevi budu podnošeni u više NATO-zemalja moći će više uspeha da se postigne.

U svakom slučaju pozivamo ljude u Jugoslaviji koji su postali ratne žrtve da uspostave kontakt sa nama.
To se odnosi na ljude koji su za vreme bombardovanja ranjeni, familija mrtvih, ludi koji su izgubili kuću ili drugu svojinu, takodje i ljudi koji su zbog posledice bombardovanja izgubili posao a samim tim i prihod za život.
Ti ludi hoće da zahtevaju odštetu.

Mi pozivamo te ljude da uspostave kontakt sa nama.
U ličnom kontaktu možemo sve bolje da objasnimo i da se o svemu opširnije dogovorimo.

Jos jednom, Stalna Komisija neće moći da organizuje proces za svakog pojedinačno.
Mi moramo da se ograničimo na jedan odredjen broj žrtava.

Zahtev za odštetu žrtvama bombarovanjem studija RTS u Beogradu.

U svakom slučaju hoćemo da počnemo sudski proces u ime žrtava kukavičkog bombardovanja studija RTS u Beogradu.
Mi pozivamo sve one koji su tada postali žrtve; one koji su prilikom ovog terora ranjeni i familije poginulih, da sa nama uspostave kontakt ako zato imaju snage i mogućnosti.
Na taj način možemo pobliže da se dogovorimo na koji način ćemo u njihovo ime da vodimo ovaj proces.

Prethodno objašnjenje o dvema tačkama.

Dve stvari hoćemo posebno da objasnimo.
Kao prvo: žrtve neće snositi nikakve troškove.
Sve troškove plaćaće Stalna Komisija.
Drugo: mi naravno ne možemo da garantujemo povoljan ishod vodjenja procesa. Jedino što možemo da činimo to je da se trudimo da taj proces na najbolji način vodimo i to ćemo sigurno da učinimo.
Pravda je na našoj strani a koliko će to da nam pomogne pokazaće budućnost.

U svakom slučaju je od značaja i samo vodjene ovog procesa za dobijanje odštete.
Značajno je da NATO-zlikovci za počinjena nedela ne izbegnu svaku odgovornost, već da će biti primorani da se pojave pred sud i odgovaraju za svoja nedela.

Još jednom poziv za sve.

Svako, ko ovaj manifest pročita, pozivamo da o tome upozna druge zaintersovane i nezainteresovane, jednom rečju pokušaj da upoznaš što više ljudi sa ovim manifestom.

ZNAĆI ŠIRI OVAJ MANIFEST DALJE.... OBJAVI OVAJ POZIV DALJE !

OD USTA DO USTA, PREKO MEDIJA, PREKO INTERNET, PREKO E-MAIL !

USPOSTAVI KONTAKT SA NAMA ! MOŽETE DOĆI U KONTAKT SA NAMA PREKO ADRESE DATE NA POČETKU OVOG MANIFESTA.

u ime Stalne Komisije
N.M.P.Steinen

Nov 99

VOOR DEZE LEDEN VAN DE NEDERLANDSE REGERING EN LEDEN VAN DE TWEEDE KAMER GELDT:

- VOOR HET OPHITSEN TOT EEN OORLOG TEGEN JOEGOSLAVIE
- VOOR HET DREIGEN MET EEN OORLOG TEGEN JOEGOSLAVIE
- VOOR HET DEELNEMEN AAN EEN OORLOG TEGEN JOEGOSLAVIE
- VOOR HET VERMOORDEN VAN DUIZENDEN BURGERS VAN JOEGOSLAVIE
- VOOR HET VERWONDEN VAN DUIZENDEN BURGERS VAN JOEGOSLAVIE
- VOOR HET GROOOTSCHEEPS VERNIETIGEN VAN EIGENDOMMEN EN BEZITTINGEN VAN JOEGOSLAVISCHE BURGERS
- VOOR HET GROOTSCHEEPS VERNIETIGEN VAN DE JOEGOSLAVISCHE ECONOMIE EN BESTAANSVOORWAARDEN
- VOOR HET TERRORISEREN VAN DE JOEGOSLAVISCHE BEVOLKING
- VOOR HET GEBRUIK MAKEN VAN BEESTACHTIG WAPENTUIG
- VOOR HET VERTRAPPEN VAN DE GENEEFSE CONVENTIES EN DE AANVULLLENDE PROTOCOLLEN
- VOOR DE POLITIEK VAN GENOCIDE OP HET JOEGOSLAVISCHE VOLK MIDDELS WURGENDE SANCTIES
- VOOR HET SCHENDEN VAN HET HANDVEST VAN DE VERENIGDE NATIES

DAT ZIJ, INGEVOLGE DE NORMEN VAN INTERNATIONAAL RECHT, ZOALS OOK NEERGELEGD IN HET HET HANDVEST VAN NEURENBERG EN TOKIO, ALS OORLOGSMISDADIGERS HIERVOOR PERSOONLIJK VERANTWOORDELIJK EN INDIVIDUEEL AANSPRAKELIJK ZIJN.

IN RECHTZAKEN TOT VERGOEDING VAN DE DOOR DE SLACHOFFERS GELEDEN SCHADE EN IN STRAFZAKEN ZAL DE REKENING AAN HEN PERSOONLIJK WORDEN GEPRESENTEERD.

TOT IN LENGTE VAN DAGEN.

- De eerste processen tot schadevergoeding tegen Kok c.s. persoonlijk zijn momenteel in voorbereiding.

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NATO AGGRESSION ON YUGOSLAVIA – A YEAR ON

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out through politics by subjecting politics to rules and limits. It is for that reason that while it produces law politics must be subjected to law. When politics rebel against law, we are witness to aspirations for omnipotence. The century that has just elapsed has heightened our awareness of the damaging effects of politics guided by the dream of omnipotence.

There is only one antidote to such politics, to continue the struggle in favor of law.

Today, more than ever before, the struggle for law is a struggle for peace and for the full development of fundamental human rights.

Prevela Spomenka Ninčić

Member of the PC*

The First Experiences with Legal Action against NATO War Crimes before Domestic Courts in the Netherlands

International humanitarian law and customary international law, the *ius ad bellum* and the *ius in bello*, are strong enough to offer tools for contesting breaches, even if the violators are the mightiest powers in the world. Like is the case with NATO aggressors on the Federal Republic of Yugoslavia and Serbia.

An important part of this international law is *ius cogens*, that means it is directly applicable to the domestic law systems of the NATO countries. Other parts of treaty law are incorporated in the domestic law systems by self-executing treaty regulations or by specific national rulings.

So it is clearly possible to undertake steps on infringements of international humanitarian law by NATO aggressors, not only before international fora, like the International Court of Justice of the United Nations, but also before domestic courts of NATO countries themselves.

As jurists and as people standing for peace and justice and for the integrity of the international legal order, we are also bound to make operational this opportunity.

The International Court of Justice is only open to State parties, but the domestic courts give access to everybody.

So, civilians can use these courts as well.

INDIVIDUAL RESPONSIBILITY AND LIABILITY

According to the principles of the Charter of Nürnberg all the people involved in the preparation, decision-making and committing of war crimes, crimes against peace and crimes against humanity are also personally liable and individually responsible for these crimes (Art. 6). These crimes don't become prescribed.

Thus the decision-making politicians in NATO countries are equally liable as the high-ranking military and the bombing pilots of NATO aircraft.

They can all be brought before domestic courts in NATO countries.

So in fact there is a free choice to undertake legal action against the State party or a NATO country only, or to bring certain political decision-makers, high-ranking or executive military to the court, or a mix of them.

EXPERIENCES IN THE NETHERLANDS IN SUMMARY LEGAL PROCEEDINGS

In the Netherlands we have gained experience with legal proceedings before domestic courts regarding the threat or use of force against the FRY.

Initiated by the Permanent Commission with regard to (Dutch) War Crimes against Yugoslavia (PC), a Dutch foundation raised for this aim, four legal proceedings were instituted till now.

All of them were processes of a specific character, namely in the form of summary proceedings.

This form was chosen of course because of the time factor.

In the Netherlands, and probably in all other countries – in spite of the benefits of obtaining a quick decision from the court – great disadvantages are also attached to this kind of summary proceedings.

After all, for this category of legal proceedings there is a limited judicial review and the legal judgement bears, according to Dutch law, a provisional character. So, the verdicts are more a kind of legally inspired measures of order.

To reach a really full-scale legal judgement, it is necessary to follow a standard procedure.

Nevertheless, as far as we know, it was the first time that domestic courts in a NATO country were confronted with the legal questions connected with the blatant violation of international humanitarian law and the *ius ad bellum* by NATO aggressors.

As plaintiffs in all legal proceedings appearing were from 10 to 100 persons of mainly Yugoslav origin, living in Serbia, the Netherlands and the USA, supported by some Dutch individuals and Dutch peace organizations, as well as a Dutch organization of World War II resistance, named the Association of Anti-Fascist World War II Resistance Fighters, an important sponsor of the PC.

The identity of the persons and groups were changing in each process, with the PC as an organizer and coordinator bringing them together.

In addition to these legal proceedings on a civil right base, the same groups of civilians and organizations also complained on a criminal law base. They lodged complaints with the Dutch prosecutor, obvious for gross violations of humanitarian law, against the complicity of the Dutch State and its responsible politicians and military on war chime behavior against the FRY.

In all summary proceedings the demands took roughly the form of an injunction, mostly to continue each form of contribution to the use or threat of force against the FRY, as being blatant violations of the principles of the *ius ad bellum* and international humanitarian law.

* Permanent Commision with regard to the (Dutch) War Crimes in Yugoslavia.

PROVISIONAL CONCLUSIONS

Several important conclusions are already outstanding.

The first is that neither in the summary proceedings of a civil law character, nor in the complaints of criminal law-style against the Dutch State, politicians and military regarding violation of international law, lodged with the Dutch prosecutor, the Dutch State and its perpetrators have been invoking the widespread myth of the so-called "humanitarian intervention", seeking legitimacy for NATO's violence in these legal procedures.

So, the conclusion is justified that the Dutch State party and its individual war crime perpetrators simply don't dare base their defense in whatever kind of legal action – civil law-like of criminal law-like – on this often pronounced "new doctrine" according to international law.

Thus, as far as the state of the Netherlands and further legal proceedings with regard to the Dutch complicity in NATO's war crimes are concerned, there is no need for a further juridical preparation to counter this seeming argument on the legitimacy of "humanitarian intervention" in courtroom anymore.

It is the PC's estimation that there is a big chance that also in other NATO countries the state-responsible likewise wouldn't dare focus on this fake doctrine, challenged before their domestic courts in processes with regard to their aggression and its consequences.

There is also a second important conclusion that could already be drawn from the experiences with courtroom practices in the Netherlands with regard to Dutch complicity to NATO's aggression on the FRY.

That is that the central thesis, applied by the plaintiffs in all these processes, namely that it is a principle of customary international law that all NATO participants, sharing in the aggression and in the war crimes committed against the FRY, are totally responsible for the whole of crimes and the consequences of each contribution to these actions, is neither overthrown in court room practices, nor even challenged by the lawyers of the defendants in these proceedings.

Therefore, this principle that the State of the Netherlands, according to customary international law, is fully responsible and liable for the whole of NATO's war crimes and its consequences is substantially established and confirmed in these Dutch courtroom practices.

This means that there is neither any need to find out what has been each of NATO's crimes for each individual NATO country, nor is it necessary to prove each country's specific contribution to these crimes.

It has been re-established by this Dutch court practice that the Netherlands from a legal point of view is, for instance, just as responsible and liable for the bestial bombardment on the *RTS* as the Americans, who in fact did it.

This means an enormous mitigation of evidence problems because it's unnecessary to prove that what has been contributed by a NATO country has really been directly carried out by this country.

This makes it possible, for instance, to start legal proceedings in the Netherlands for paying damages to the victims of the cowardly terror-bombardment of the *RTS*, as the PC intends to do.

There is also a third important conclusion that could be drawn.

With the exception of the first summary proceedings – when the judge did record in his verdict that "there was no need to summon also the leading members of the Dutch administration, the high-ranking military and a number of members of the Dutch parliament on a personal title, next to the State of the Netherlands, also summoned and by its very nature responsible for all" – in all other verdicts with regard to all other summary proceeding that were instituted, the Nürnberg principle that all people involved in the decision-making, preparation and execution of war crimes and crimes against peace and humanity are also personally liable and individually responsible for these crimes, was never again disputed or rejected in these judicial pronouncements.

So, the opportunity to direct legal action, even in civil law proceedings, against NATO politicians and military personally is confirmed by these court experiences.

It is possible, for instance, to address President Clinton personally in court for the damage in the FRY caused by NATO crimes.

That is what the PC intends to do with regard to Prime Minister Kook and other members of the Dutch government, Dutch members of parliament and Dutch military.

That will convince all those NATO persons concerned that nobody can conceal his personal responsibility and liability for war crimes.

THE COURSE OF THE PROCEEDINGS

All defense of the Dutch State party and its individual persons concerned and also summoned has been concentrated roughly on two points:

A juridical plea that the Charter of the United Nations, more specifically Art. 2 par. 4 of the Charter, that forbids aggression, can't be considered by the domestic judge. Because it's not a self-executing article. So, the domestic court can't judge about matters of aggression.

And this means that eventual crimes against peace are withdrawn from the judgement of the national courts.

Seeking a legal basis for NATO's aggression all governments of NATO countries have taken exactly the same position towards their parliaments, and also in reaction to their state prosecutors regarding complaints in NATO countries by individuals and organizations that their governments were blatantly committing a crime against peace.

Members of parliament and plaintiffs heard the same story all over in various NATO countries: "The violation of Security Council Resolution 1199 creates a sufficient legal basis to justify NATO's attacks on the FRY".

So, the defense is always sought within the existing framework of international law.

This mantra was constantly repeated, without adding or omitting a word in this phrasing. Without taking notice of whatever argument there is in it. NATO's political leaders evidently had simply decided, in a streamlined procedure, under no circumstances to discuss this position.

A more factual plea. Holding that there is neither proof that NATO intended to commit war crimes, nor that NATO was in fact committing war crimes.

These two mainstream pleas got credit of the Dutch domestic judges in their provisional judgements.

Though not unconditionally as far as the first plea is concerned.

In the second summary proceedings another judge of the same court pronounced that "it's not unthinkable that nevertheless under certain conditions Art. 2 par. 4 of Charter of the

United Nations could be self-executing". And so it belongs to the discretion of the judge to give his opinion about an appeal regarding the breaching of this article.

His conclusion will be discussed below.

Arguments to found the judgements in the summary proceedings that the plaintiffs had failed to prove that NATO was committing war crimes were not given either.

This despite the fact that, in the course of NATO's aggression, plaintiffs did produce already quite a lot of evidence of war crime behavior of NATO!

The Dutch courts and their presidents, approached by the plaintiffs during the awful period of NATO's overt aggression, apparently did stick fiercely to the government's position in this period of pathologic war paranoia created in the aggressor countries.

The longer it takes and the greater the distance in time, they will perhaps gain some critical sense.

In the light of the disastrous developments in Kosovo from a humanitarian point of view and the overwhelming evidence of the war crime behavior during the period of NATO's aggression, the way could be opened for another judicial approach.

FURTHER DEVELOPMENTS

In all summary proceedings there is a possibility of appeal to the higher court.

After the exchange of comprehensive written summons on both sides, the PC freezed the processes. Till all evidence of NATO war crimes, gathered by Yugoslav institutions, will be available to be brought into these proceedings.

Then the processes will be continued with the counsel's speeches.

Meanwhile the PC is preparing new legal proceedings, this time standard procedures, for the damage suffered by the victims of the barbaric NATO-aggression in the FRY.

Once again not only directed against the State of the Netherlands, but also directly holding responsible the Dutch prime minister Wick Kook and his colleagues, Map and representatives of the Dutch military.

For this purpose the best test would be the bombardment of the *RTS*. In all other cases of attacks on civilian targets, the defendants certainly will come up with the argument that it was "collateral damage", so the plaintiffs then have to prove it was not.

This complication doesn't exist with regard to the filthy attack on the *RTS*. All NATO representatives said the *RTS* was clearly the aim and prime minister Kook, as did Blair and Clinton, openly said he stood behind this action. Which is clearly for all a *prima facie* war crime.

So, the PC hopes to get permission of *RTS* victims and their families to prosecute Dutch war criminals and to claim the payment of damages for them.

We hope we get in touch with them.

All costs of the legal proceedings are for the PC.

THE OUTCOME OF THE FOUR SUMMARY PROCEEDINGS SKETCHED BRIEFLY

The first process: Stanojević c.s *vs.* The State of the Netherlands CDs.

Undertaken before the war had started.

Claim by 134 plaintiffs (Yugoslav and Dutch) to refrain from the use of force against the FRY directed towards the State of the Netherlands, prime minister Kook, the chair of the Dutch Parliament Jetlag van Nieuwenhoven, the two highest ranking militaries, admiral Croon and general Droste, and three F-16 pilots, ready for flying bombardment-missions against the FRY.

Verdict by the President of the court in The Hague in summary proceedings dd. March 18, 1999: *Dismissed.*

The plaintiffs cannot call upon Art. 2, par. 4 Charter of the United Nations, because this Article is not self-executing.

There is no indication that the right of the Yugoslav plaintiffs to life is threatened. No breach of Art. 90 of the Dutch Constitution stipulating the duty of the State to promote the international legal order. No breach of Art. 28 of the Universal Declaration, saying the same. No violation of Art. 8 of the Dutch law on criminal codes of war, putting penalties on violating "the laws and customs of war".

Appeal is pending and frozen.

Second process: Dankovic CDs. *vs.* the State of the Netherlands.

Claim immediately after the starting of the war, introduced by 8 Yugoslav conscripts, that the State of the Netherlands should stop at once its contribution to NATO force. Based, *inter alia*, upon the right to life. A right, protected absolutely by law, expressed by Art. 2 of the European Treaty on the Protection of Human Rights. The only exception is a case of dead by lawful acts of war, as indicated in Art. 15, par. 2. This war isn't lawful at all, so the threatening of the right to life of these Yugoslav soldiers is a breach of the Treaty.

Verdict by the President of the court in The Hague in summary proceedings dd. April 7, 1999 (another president of the court): *Dismissed.*

One cannot exclude that Art 2. par. 4 of the Charter of the United Nations is self-executing, like perhaps in this case.

"But the fact that the Security Council of the United Nations has not taken the decision to use force against the FRY, but the NATO Council instead, can't be indicated for certain as an unlawful practice, even if that brings the lives of plaintiffs at risk".

One cannot judge under these circumstances if there are violations of humanitarian law (*ius in bello*) taking place now.

And there is also no sufficient evidence that there is a disproportional force, being a war crime *per se*.

Appeal is pending and frozen.

Third process: Tijsterman-Banićević c.s. *vs.* the State of the Netherlands

Undertaken when the war was going on and the evidence of brutalizing the FRY by forbidden means of warfare and by forbidden weapons became outstanding.

Claim by 35 plaintiffs (Yugoslav and Dutch) to refrain from any further participation on NATO's force, because it was clear by now that NATO's illegal war degenerated also into a war crime circus.

This was a split process. The same claim was filed at the court of Amsterdam and the court of the Hague, which was possible by splitting the defendants in two parties: the State of the Netherlands on the one hand and the defendant persons on the other.

This as an attempt to split the front on judges, monopolized by the court in The Hague.

This was the Hague section.

Verdict by the President of the Court in The Hague in summary proceedings dd. May 28, 1999 (same president as in the first process): *Dismissed.*

Repeated judgement that it's impossible for the judge to sentence about the legitimacy of a war, because Art. 2, par. 4 of the Charter of the United Nations lacks self-executing power.

Not only is that Article not self-executing, but, "The same is the case regarding the right to life"(?!)

It's impossible now to determine if there is a matter of Art. 52 Additional Protocol I. Moreover, this Article, isn't self-executing either, according to the provisional opinion of the president.

Appeal is pending and frozen.

Fourth process: Dedović CDs. *vs.* Kook, Prime Minister, De Grave, Minister of Defense and Van Aartsen, Minister of Foreign Affairs.

This was the Amsterdam section of the process.

Claim by 29 plaintiffs (Yugoslavs only) before the court in Amsterdam.

Same claim and same arguments as in the former legal proceedings.

Verdict by the President of the court in Amsterdam in summary proceedings dd. June 3, 1999; *Dismissed.*

The judge in Amsterdam delayed his verdict in order to acquire the opportunity to copy the verdict of its colleague in The Hague, even though the Hague process took place much later.

He added, as a decision of its own, that there was no evidence that the defendants as "organs of the State" had committed *abuse de pouvoir* by participating in the ware waged like this.

Appeal is pending and frozen.

Complaint lodged with the Dutch public prosecutor *against* the State of the Netherlands, Prime Minister Kook, Minister of Foreign Affairs Van Aartsen, Minister of Defense de Grave, the Chair of the Dutch Parliament Jeltje van Nieuwenhoven, Admiral Kroon, General Droste, known Dutch F-16 pilots, taking part in the bombardment-aggression against the FRY.

Claim: to prosecute these persons on account of committing crimes *against* peace, war crimes, and crimes against humanity.

More than 100 persons were involved, a lot of them living in the FRY, others of Dutch nationality.

Dismissed.

Motivation: there is neither sufficient evidence that NATO is committing war crimes by its bombardment of the FRY, nor is there sufficient proof of using disproportional force.

As far as the inducement of crime against peace is concerned, the prosecutor stated that it must be considered to be beyond his competence to deal with that. This question must be judged by international fora, such as the International Court of Justice in The Hague. He further stated regarding this specific point: there isn't such a thing as 'crimes against peace' as generally accepted law. The invoking by the complainants of the Nürnberg and Tokyo norms as prevailing standards of international law fails. The establishing of crimes of aggression there was bound on the specific circumstances of German and Japanese aggression in World War II and cannot be generalized.

This last defense is clearly not his own idea. The same arguments are put forward by a bunch of American legal advisers, surrounding the prosecutor of the so-called ICTY, in reaction to charges for crimes against peace by Canadian international law experts. So, this is unmistakably inspired by NATO's legal advisers.

Nevertheless it can easily be proved that this is a misconception.

In the report dd. of May 3, 1993, S/25704 of the Secretary General pursuant to paragraph 2 of Security Council Resolution 808 (1993) with regard to the establishment of the ICTY, under 35 it is stated as follows:

"The part of conventional international humanitarian law which has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of August 12, 1949 for the Protection of War Victims... 3) the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of October 18, 1907; 4) the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948; 5) and the Charter of the International Military Tribunal of August 8, 1945".

So, it has been re-established by that report of the Secretary General that the complete Charter of Nürnberg is part of international customary law.

The Charter of the International Military Tribunal of August 8, 1945 defines crimes against peace in general terms.

Under 42 the report of the Secretary General goes on like this:

"The Nürnberg Tribunal recognized that many of the provisions contained in the Hague Regulations, although innovative at the time of their adoption were, by 1939, recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war. The Nürnberg Tribunal also recognized that war crimes defined in Article 6 (b) of the Nürnberg Charter were already recognized as war crimes under international law, and covered in the Hague Regulations, for which *guilty individuals were punishable.* (emphasis added)

So, it is beyond any doubt that: (1) also crimes against peace – "the most serious sort of war crimes", as is stated during the Nürnberg sessions – are part of international customary law; (2) individuals, guilty of such crimes, according to the definition in Art. 6 of the Nürnberg Charter, are punishable as a person; (3) they are punishable for that all over the world, not only by the ICTY, which isn't holding any monopoly (*see* the ICTY Charter), but also before domestic courts.

So if the ICTY, as an instrument of American power, doesn't do it, the more reason there is for domestic courts to deal with that.

The framework for a new indictment is made now.

As soon as the full scope of evidence gathered by Yugoslav and Serbian authorities is available for the PC and victims of bombardments are found prepared to give their consent to that, also a new complaint will be lodged with the Dutch prosecutor against Dutch war criminals in politics and the military. And later on, if necessary, brought before the High Court.

Paper for the International Conference "The effects of NATO Aggresion against FR Yugoslavia"
Belgrade, 24-27 March 2000

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THE FIRST EXPERIENCES WITH LEGAL ACTION AGAINST NATO-WAR CRIMES BEFORE DOMESTIC COURTS IN THE NETHERLANDS

Introduction

International humanitarian law and customary international law, the ius ad bellum and the ius in bello, are strong enough to offer tools for contesting breaches, even if the violaters are the mightiest powers in the world. Like is the case with NATO-agressors on the Fed. Republic of Yugoslavia and Serbia.

Important parts of this international law are ius cogens, that means they are directly applicable in the domestic law systems of the NATO-countries. Other parts of treaty law are incorporated in the domestic law systems by self executing treaty-regulations or by specific national rulings.

So it is clearly possible to undertake steps on infringements of international humanitarian law by NATO-agressors, not only before international fora, like the International Court of Justice of the United Nations, but also before domestic courts of NATO-countries themselves.

As jurists and as people standing for peace and justice and for the integrety of the international legal order, we are bound also to make operational this opportunity.
The International Court of Justice is only open for State parties, but the domestic courts are giving access to everybody.
So civilians can use these courts as well.

Individual responsibility and liability

According to the principles of the Charter of Nürnberg all the people involved in the preparation, decision-making and committing of war crimes, crimes against peace and crimes against humanity are also personally liable individually resposible for these crimes (Art 6). These crimes don't become prescribed.

Thus the decision-making politicians NATO's countries are equally well liable as the high-ranking military and the bombing-pilots of NATO's aicraft.
They all can be brought before domestic courts in NATO's countries.
So in fact there is a free choice to undertake legal action against the State party of a NATO-coutry only, or to bring certain political decision-makers, high ranking or executive military to the court, or a mix of them. –

Experiences in The Netherlands in summary legal proceedings

In The Netherlands we have gained experience with legal proceedings before domestic courts regarding the threat of force and the use of force against the FRY.

Initiated by the Permanent Commission.with regard to (Dutch) Warcrimes against Yugoslavia (PC), a Dutch foundation raised for this aim, till now four legal proceedings were undertaken. All of them were processes of a specific character, namely in the form of summary proceedings.
This form was choosen of course because of the time factor. In the Netherlands, and probably in all other countries, - in spite of the benefits of obtaining a quick decision from the court - to this kind of summary proceedings are also attached great disadvantages.

After all for this category of legal proceedings there is a limited judicial review and the legal judgement bears, according to Dutch law, a provisional character. So the verdicts are more a kind of legally inspired measures of order.
So to reach a really full scale legal judgement, it's necessary to undertake a standard procedure.

Nevertheless, as far as it's known to us, it was the first time that domestic courts in NATO-countries were confronted with the legal questions, connected with the blatant violation of international humanitarian law and the ius ad bellum by NATO-aggressors.

As plaintiffs in all legal proceedings were appearing from 10 to 100 persons from mainly Yugoslav origin, living in Serbia, The Netherlands and the USA, completed with some Dutch individuals and Dutch peace organisations, as well a as Dutch organisation of World War II resistants, named the Association of Anti-Fascist World War II Resistance Fighters, an important sponsor of the PC.
The identity of the persons and groups were changing every process. With the PC as an organiser and coordinator, bringing them together.

Except for this legal proceedings on a civil right base the same groups of civilians and organisations did also complain on a criminal law base, lodged with the Dutch prosecutor, obvious for gross violations of humanitarian law, against the complicity of the Dutch State and his responsible politicians and military on war cime behaviour against the FRY.

In all summary proceedings the demands took roughly the form of an injunction, mostly to continue each form of contribution on force or threat of force against the FRY, as being blatant violations of the principles of the ius ad bellum and international humanitarian law.

Provisional conclusions

Several important conclusions are already outstanding.

First conclusion

The first is that neither in the summary proceedings of a civil law character, nor in the complaints of criminal law-style against the Dutch State, politicians en military on violation of international law, lodged with the Dutch prosecutor, the Dutch State and its perpetrators have been appealing on the wide-spread myth of the so-called "humanitarian intervention", seeking legitimacy for NATO's violence in these legal procedures.
So the conclusion is justified that the Dutch State party and its individual war crime-perpetrators simply don't dare to base their defence in wathever kind of legal action - civil law-like of criminal law-like - on this often pronounced "new doctrine" according to international law.
Thus implicitly recognizing that this "new doctrine" is worthless and completely untenable from a legal point of view.

Thus, as far as the State of The Netherlands and further legal proceedings with regard to the Dutch complicity in NATO,s war crimes are concerned, there is no need for a further juridical preparation to counter this seeming argument on the legitimacy of "humanitarian intervention" in courtroom anymore.
It is the PC's estimation that there's a big chance that also in other NATO-countries the state-responsibles likewise wouldn't dare to focus on this fake-doctrine, challenged before their domestic courts in processes with regard to their aggression and his consequences.

Second conclusion

There is also a second important conclusion, that already could be drawn from the experiences with court room-practises in The Netherlands with regard to Dutch complicity to NATO's aggression on the FRY.
That's that the central thesis, applied by the plaintiffs in all these processes, namely that it's a principle of customary international law that all NATO-participants, sharing in the agression and in the war crimes committed against the FRY, are totally responsible for the whole of crimes and the subsequences of each contribution to these actions, neither is overthrown in court room-practices, nor even challenged by the lawyers of the defendants in these proceedings.
So this principle that the State of The Netherlands, according to customary international law, is fully responsible en liable for the whole of NATO's war crimes and its subsequences is substantially established and confirmed in these Dutch courtroom-practices.

This means that there is neither any need to find out what has been each part on NATO's crimes for each individual NATO-country, nor it's necessary to proof each one's specific contribution to these crimes.
It's re-established by this Dutch court-practice that The Netherlands, from a legal point of view is for instance just as responsible and liable for the beastly bombardment on the RTS as the Americans, who did it in fact.
This means an enormous mitigation of evidence problems, because it's unnecessary to proof that what's got contributed to a NATO-country is really directly carried out by this country.

This makes it possible, for instance, to start legal proceedings in The Netherlands for paying damages to the victims of the cowardly terror-bombardment on the RTS, as the PC is intended to do.

Third conclusion
There is also a third important conclusion that could be drawn.
With the exception of the first summary proceedings - when the judge did record in his verdict that "there was no need to summon also the leading members of the Dutch administration, the high ranking military and a number of members of the Dutch parliament on a personal title, next to State of the Netherlands, also summoned and by his very nature responsible for all" - in all other verdicts with regard to the all other summary proceeding wich were undertaken, the Nürnberg Principle that all people involved with the decision-making, preparation and execution of war crimes and crimes against peace and humanity are also personal liable and individual responsible for these crimes, was never again disputed or rejected in these judicial pronouncements.
So the opportunity to direct legal action, even in civil law-proceedings, against NATO-politicians and military personally is confirmed by these court-experiences.
So its possible, for instance, to adress president Clinton personally in court for the damages in the FRY by NATO's crimes.
Like the PC intend to do with regard to minister-president Kok and other members of Dutch government, dutch members of parliament and dutch military.
That will fix all those NATO-persons concerned that nobody can hide for his personal reponsability and liability for war crimes.

The course of the proceedings

All defense of the Dutch State party and its individual persons concerned and also summoned, has been concentrated roughly on two mainstreams:

1) A juridical plea that the Charter of the United nations, more specificly art. 2 par. 4 of the Carter, that forbids aggression, can't be considered by the domestic judge. Because it's not a self-executing article. So the domestic court can't judge about matters of agression.

And this means that eventual crimes against peace are withdrawn from the judgement of the national courts.

Seeking for a legal base for NATO's aggression all governments of NATO's countries have been taken exactly the same position towards their parliaments, and also in reaction of their state-prosecutors towards complaints in NATO's countries by individuals and organisations that their governments were blatantly committing a crime against peace.
Members of parliament and plaintiffs got heard the same story all over the different NATO-countries: "the violation of Security Council Resolution 1199 creates enough legal base to justify NATO's attacks on the FRY".
So the defence is always sought within the existing framework of international law.
This mantra was constantly repeated, without adding or omitting just one word in this phrasing. Without taking notice of whatever argument against it. NATO's political leaders evidently had simply decided, in a short-circuit procedure, under no circumstances to discuss this position.

2) A more factual plea. Holding that there is neither proof that NATO intended to commit war crimes, nor that NATO in fact was committing war crimes.

This two mainstream-pleas got credit of the Dutch domestic judges in their provisional judgements.
Though not unconditionally as far as it concerns the first plea..
In the second summary proceedings another judge of the same court pronounced that "its not unthinkable that nevertheless under certain conditions Art. 2 par. 4 of the Charter of the United Nations could be self-executing". And so it belongs to the discretion of the judge to give his opinion about an appeal on breaching this article.
His conclusion will be discussed here below.

Arguments to found the judgments in the summary proceedings that the plaintiffs had been failed to proof that NATO was committing war crimes were also not given.
This even though then, in the course of NATO's aggression, plaintiffs did produce already quite a lot of evidence of war crime behaviour of NATO !

The Dutch courts and its presidents, approached by the plaintiffs during the awfull period of NATO's overt aggression, apparently did stick fiercefully to the governments position in this period of pathologic war-paranoia, created in the agressor-countries.
Maybe the longer it takes and the greater the distance in time, they will gain some critical sense.
In the light of the from a humanitarian point of view catastrofical developments in Kosovo and the now overwhelming evidence of the war crime behaviour during the period of NATO's aggression, the way could be get opened for another judicial approach.

Further developments

In all summary proceedings is appealed to the higher court. After the the exchange of comprehensive written summons on both sides, the prossesses are frozen by the PC. Till all evidence of NATO-war crimes, gathered by Yugoslav institutions, will be available to be brougt into this proceedings. Then the processes wil be continued with the counsel's speeches.

Meanwhile the PC is preparing new legal proceedings, this time standard procedures, for damages by the victims of the barbarian NATO-aggression in the FRY.
Once again not only directed against the State of The Netherlands, but also directly holding responsible the Dutch prime minister Wik Kok and his collegues, MP's and representatives of the dutch military.
For this purpose the best testcase would be the bombardment of the RTS. In all other cases of attacks on civilian targets, the defendants certainly will come with the argument it was 'collateral damage', so the plaintiffs then have to prove it was not.
This complication doesn't exist with regard to the filthy attack on the RTS. All NATO-representatives said the RTS was clearly the aim and prime minister Kok, as did Blair and Clinton, openly said he stood behind this action. Wich is clearly for all a prima facie war crime.
So the PC hopes to get permission of RTS-victims and their families to persecute Dutch war criminals and to claim the payment of damages for them.
We hope we cam com in touch with them.
All costs of the legal proceedings are for the PC.

The outcome of the four summary proceedings sketched briefly

The first process: Stanojevic c.s vs. The State of The Netherlands c.s.

Undertaken before the war was started.
Claim by 134 plaintiffs (Yugoslav and Dutch) to refrain from the use of force against the FRY directed towards the State of The Netherlands, prime-minister Kok, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, the two highest ranking militaries, admiral Kroon and general Droste, and three F-16 pilots, ready for flying bombardment-missions agaist the FRY.

Verdict by the President of the court in the Hague in summary proceedings d.d. March 18, 1999

Dismissed.
The plaintiffs cannot call upon Article 2, par. 4 Charter of the United Nations, because this Article is not self-executing.

There is no indication that the right on life of the Yugoslav plaintiffs is threatened. No breach on Art. 90 of the Dutch Constitution, stipulating the duty of the State to promote the international legal order. No breach of Article 28 Universal Declaration, saying the same. No violation of Art. 8 of the Dutch Law on criminal codes of war, putting penalties on violating "the laws and customs of war".

- Appeal is pending and frozen.

Second process: Danokovic c.s. vs. The State of The Netherlands

Claim immediately after the starting of the war, introduced by 8 Yugoslav conscripts, that the State of The Netherlands should end at once their contribution to NATO-force. Based inter alia upon the right on life. A right, protected absolutely by law, expressed by Art. 2 of the European Treaty on the Protection of Human Rights. The only exception is: a case of dead by lawful acts of war, as is indicated in Art. 15, par. 2. This war isn't lawful at all, so the threatening of the right of live of these Yugoslav soldiers is a breach of the Treaty

Verdict by the President of the court in the Hague in summary proceedings d.d. April 7, 1999 (another president of the court)

Dismissed.
One cannot exclude that Art 2, par 4 of the Charter of the United nations is self-executing, like maybe in this case.
"But the fact that not the Security Council of the United Nations has taken the decision to use force against the FRY, but the NATO-council instead can't be indicated for certain as an unlawful practice, even if that brings the lifes of plaintiffs at risk."
One cannot judge under these circumstances if there are violations of humanitarian law (ius in bello) taking place now. And there is also no sufficient evidence that there is disproportionaly of force, being a war crime per se.

Appeal is pending and frozen.

Third process: Tijsterman-Banicevic c.s. vs. the State of The Netherlands

Undertaken when the war was going on and the evidence of brutalizing the FRY by forbidden means of warfare and by forbidden weapons became outstanding.
Claim by 35 plaintiffs (Yugoslav and Dutch) to refrain from any further participation on NATO's force, because it was clear by now that NATO's illegal war was degenerated also in a war crime-circus.

This was a split process. The same claim was filed at the court of Amsterdam and the court of the Hague, wich was possible by splitting the defendants in two parties: the State of the Netherlands at one hand and the defendant-persons at the other hand.
This as an attempt to split the front of judges, monopolized by the court in the Hague.
This was the the Hague-section.

Verdict by the President of the Court in the Hague in summary proceedings d.d. May 28, 1999 (same president as in the first process)

Dismissed.
Repeated judgement that it's impossible for the judge to sentence about the legitimacy of a war, because Art. 2, par 4 of the Charter of the United Nations lacks self-executing power.
Not only that Article is not self-executing, but "The same is the case on the right of life" (?!)
It's impossible now to determine if there is a matter of attacking civil targets, in breach of Art. 52 Additional Protocol I. Moreover, this Article too isn't self-executing, to the provisional opinion of the president.

Appeal is pending and frozen.

Fourth process; Dedovic c.s. vs. Kok, prime minister, de Grave, minister of defense and Van aartsen, minister of foreign affairs.

This was the Amsterdam-section of the process.
Claim by 29 plaintiffs (Yugoslavs only) before the court in Amsterdam.
Same claim and same arguments as in the former legal proceedings.

Verdict by the President of the court in Amsterdan in summary proceedings d.d. juni 3, 1999

Dismissed.
The judge in Amsterdam delayed his verdict in order to acquire the opportunity the copy the verdict of its collegue in the Hague, even though the the Hague-process took place much more later.
He added, as a decision of its own, that there was no evidence that the defendants as "organs of the State" had committed 'abus de pouvoir' by participating in the like this waged war.

Appeal is pending and frozen.

Complaint lodged with the Dutch public prosecutor against the State of The Netherlands, prime minister Kok, minister of foreign affairs Van Aartsen, minister of defence de Grave, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, admiral Kroon, general Droste, known Dutch F-16 pilots, taking part in the bombardment-aggression against the FRY

Claim: to prosecute these persons on account of committing crimes against peace, war crimes and crimes against humanity. More than 100 persons were involved, a lot of them living in the FRY, others from Dutch nationality.

Dismissed.
Motivation: there is neither sufficiënt evidence that NATO is committing war crimes with its bombardments on the FRY, nor is there sufficiënt proof of using disproportional force.

As far as the indictment of crime against peace is concerned, the prosecutor stated that it must be considered as beyond its competence to deal with that. This question must be judged by international fora, like the International Court of Justice in the Hague. He stated further on this specific point: there isn't such a thing as 'crimes against peace' as generally accepted law. The appeal of the complainers on the Nürnberg and Tokio-norms as prevailing standards of international law fails. The establishing of crimes of aggression there was bound on the specific circumstances of German and Japanese aggression in World War II and cannot be generalized.

This last defense clearly not his own idea. The same arguments are putted forwards by the bunch of American legal advisers, surrounding the prosecutor of the so called ICTY, in a reaction on charges for crimes against peace by Canadian international law experts. So this is unmistakably inspired by NATO's juridical advisers.

Nevertheless it can easily be proved that this is a misconception.
In the report dd. 3 May 1993, S/25704 of the Secretary-Genral pursuant to paragraph 2 of Security Council Resolution 808 (1993) with regard to the establishment of the ICTY, is stated under 35:

> "The part of conventional international humanitarian law wich has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of genocide of 9 december 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945."

So it is re-established by that report of the Secretary-General that the complete Charter of Nürnberg is part of international customary law.
The Charter of the International Military Tribunal of 8 Augustus 1945 defines crimes against peace in general terms.

Under 42 the report of the Secretary General goes on like this:

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So it is beyond any doubt that 1) also crimes against peace - "the most serious sort of war crimes", as is stated during the Nürnberg-sessions - are part of the international customary law, 2) individuals, guilty for such crimes, according to the definition in Art. 6 of the Nürnberg Charter, are punishable as a person, 3) they are punishable for that all over the world, not only by the ICTY, wich isn't holding any monopoly (see the ICTY-Charter), but also before domestic courts.
So if the ICTY, as an instrument of American power, doesn't do it, the more reason there is for domestic courts to do deal with that.

The framework for a new indictment is made now.
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Zeist, 20 March 2000

mr. N.M.P. Steijnen

member of the PC

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Individual responsibility and liability

According to the principles of the Charter of Nürnberg all the people involved in the preparation, decision-making and committing of war crimes, crimes against peace and crimes against humanity are also personally liable and individually resposible for these crimes (Art 6). These crimes don't become prescribed.

Thus the decision-making politicians in NATO's countries are equally well liable as the high-ranking military and the bombing-pilots of NATO's aicraft.
They all can be brought before domestic courts in NATO's countries.
So in fact there is a free choice to undertake legal action against the State party of a NATO-coutry only, or to bring certain political decision-makers, high ranking or executive military to the court, or a mix of them.

Experiences in The Netherlands in summary legal proceedings

In The Netherlands we have gained experience with legal proceedings before domestic courts regarding the threat of force and the use of force against the FRY.

Initiated by the Permanent Commission with regard to (Dutch) Warcrimes against Yugoslavia (PC), a Dutch foundation raised for this aim, till now four legal proceedings were undertaken. All of them were processes of a specific character, namely in the form of summary proceedings.
This form was choosen of course because of the time factor. In the Netherlands, and probably in all other countries, - in spite of the benefits of obtaining a quick decision from the court - to this kind of summary proceedings are also attached great disadvantages.

After all for this category of legal proceedings there is a limited judicial review and the legal judgement bears, according to Dutch law, a provisional character. So the verdicts are more a kind of legally inspired measures of order.
So to reach a really full scale legal judgement, it's necessary to undertake a standard procedure.

Nevertheless, as far as it's known to us, it was the first time that domestic courts in NATO-countries were confronted with the legal questions, connected with the blatant violation of international humanitarian law and the ius ad bellum by NATO-aggressors.

As plaintiffs in all legal proceedings were appearing from 10 to 100 persons from mainly Yugoslav origin, living in Serbia, The Netherlands and the USA, completed with some Dutch individuals and Dutch peace organisations, as well a as Dutch organisation of World War II resistants, named the Association of Anti-Fascist World War II Resistance Fighters, an important sponsor of the PC.
The identity of the persons and groups were changing every process. With the PC as an organiser and coordinator, bringing them together.

Except for this legal proceedings on a civil right base the same groups of civilians and organisations did also complain on a criminal law base, lodged with the Dutch prosecutor, obvious for gross violations of humanitarian law, against the complicity of the Dutch State and his responsible politicians and military on war cime behaviour against the FRY.

In all summary proceedings the demands took roughly the form of an injunction, mostly to continue each form of contribution on force or threat of force against the FRY, as being blatant violations of the principles of the ius ad bellum and international humanitarian law.

Provisional conclusions

Several important conclusions are already outstanding.

First conclusion

The first is that neither in the summary proceedings of a civil law character, nor in the complaints of criminal law-style against the Dutch State, politicians en military on violation of international law, lodged with the Dutch prosecutor, the Dutch State and its perpetrators have been appealing on the wide-spread myth of the so-called "humanitarian intervention", seeking legitimacy for NATO's violence in these legal procedures.
So the conclusion is justified that the Dutch State party and its individual war crime-perpetrators simply don't dare to base their defence in wathever kind of legal action - civil law-like of criminal law-like - on this often pronounced "new doctrine" according to international law.
Thus implicitly recognizing that this "new doctrine" is worthless and completely untenable from a legal point of view.

Thus, as far as the State of The Netherlands and further legal proceedings with regard to the Dutch complicity in NATO,s war crimes are concerned, there is no need for a further juridical preparation to counter this seeming argument on the legitimacy of "humanitarian intervention" in courtroom anymore.
It is the PC's estimation that there's a big chance that also in other NATO-countries the state-responsibles likewise wouldn't dare to focus on this fake-doctrine, challenged before their domestic courts in processes with regard to their aggression and his consequences.

Second conclusion

There is also a second important conclusion, that already could be drawn from the experiences with court room-practises in The Netherlands with regard to Dutch complicity to NATO's aggression on the FRY.
That's that the central thesis, applied by the plaintiffs in all these processes, namely that it's a principle of customary international law that all NATO-participants, sharing in the agression and in the war crimes committed against the FRY, are totally responsible for the whole of crimes and the subsequences of each contribution to these actions, neither is overthrown in court room-practices, nor even challenged by the lawyers of the defendants in these proceedings.
So this principle that the State of The Netherlands, according to customary international law, is fully responsible en liable for the whole of NATO's war crimes and its subsequences is substantially established and confirmed in these Dutch courtroom-practices.

This means that there is neither any need to find out what has been each part on NATO's crimes for each individual NATO-country, nor it's necessary to proof each one's specific contribution to these crimes.
It's re-established by this Dutch court-practice that The Netherlands, from a legal point of view is for instance just as responsible and liable for the beastly bombardment on the RTS as the Americans, who did it in fact.
This means an enormous mitigation of evidence problems, because it's unnecessary to proof that what's got contributed to a NATO-country is really directly carried out by this country.

This makes it possible, for instance, to start legal proceedings in The Netherlands for paying damages to the victims of the cowardly terror-bombardment on the RTS, as the PC is intended to do.

Third conclusion
There is also a third important conclusion that could be drawn.
With the exception of the first summary proceedings - when the judge did record in his verdict that "there was no need to summon also the leading members of the Dutch administration, the high ranking military and a number of members of the Dutch parliament on a personal title, next to State of the Netherlands, also summoned and by his very nature responsible for all" - in all other verdicts with regard to the all other summary proceeding wich were undertaken, the Nürnberg Principle that all people involved with the decision-making, preparation and execution of war crimes and crimes against peace and humanity are also personal liable and individual responsible for these crimes, was never again disputed or rejected in these judicial pronouncements.
So the opportunity to direct legal action, even in civil law-proceedings, against NATO-politicians and military personally is confirmed by these court-experiences.
So its possible, for instance, to adress president Clinton personally in court for the damages in the FRY by NATO's crimes.
Like the PC intend to do with regard to minister-president Kok and other members of Dutch government, dutch members of parliament and dutch military.
That will fix all those NATO-persons concerned that nobody can hide for his personal reponsability and liability for war crimes.

The course of the proceedings

All defense of the Dutch State party and its individual persons concerned and also summoned, has been concentrated roughly on two mainstreams:

1) A juridical plea that the Charter of the United nations, more specificly art. 2 par. 4 of the Carter, that forbids aggression, can't be considered by the domestic judge. Because it's not a self-executing article. So the domestic court can't judge about matters of agression.

And this means that eventual crimes against peace are withdrawn from the judgement of the national courts.

Seeking for a legal base for NATO's aggression all governments of NATO's countries have been taken exactly the same position towards their parliaments, and also in reaction of their state-prosecutors towards complaints in NATO's countries by individuals and organisations that their governments were blatantly committing a crime against peace.
Members of parliament and plaintiffs got heard the same story all over the different NATO-countries: "the violation of Security Council Resolution 1199 creates enough legal base to justify NATO's attacks on the FRY".
So the defence is always sought within the existing framework of international law.
This mantra was constantly repeated, without adding or omitting just one word in this phrasing. Without taking notice of whatever argument against it. NATO's political leaders evidently had simply decided, in a short-circuit procedure, under no circumstances to discuss this position.

2) A more factual plea. Holding that there is neither proof that NATO intended to commit war crimes, nor that NATO in fact was committing war crimes.

This two mainstream-pleas got credit of the Dutch domestic judges in their provisional judgements.
Though not unconditionally as far as it concerns the first plea.
In the second summary proceedings another judge of the same court pronounced that "its not unthinkable that nevertheless under certain conditions Art. 2 par. 4 of the Charter of the United Nations could be self-executing". And so it belongs to the discretion of the judge to give his opinion about an appeal on breaching this article.
His conclusion will be discussed here below.

Arguments to found the judgments in the summary proceedings that the plaintiffs had been failed to proof that NATO was committing war crimes were also not given.
This even though then, in the course of NATO's aggression, plaintiffs did produce already quite a lot of evidence of war crime behaviour of NATO !

The Dutch courts and its presidents, approached by the plaintiffs during the awfull period of NATO's overt aggression, apparently did stick fiercefully to the governments position in this period of pathologic war-paranoia, created in the agressor-countries.
Maybe the longer it takes and the greater the distance in time, they will gain some critical sense.
In the light of the from a humanitarian point of view catastrofical developments in Kosovo and the now overwhelming evidence of the war crime behaviour during the period of NATO's aggression, the way could be get opened for another judicial approach.

Further developments

In all summary proceedings is appealed to the higher court. After the the exchange of comprehensive written summons on both sides, the prossesses are frozen by the PC. Till all evidence of NATO-war crimes, gathered by Yugoslav institutions, will be available to be brougt into this proceedings. Then the processes wil be continued with the counsel's speeches.

Meanwhile the PC is preparing new legal proceedings, this time standard procedures, for damages by the victims of the barbarian NATO-aggression in the FRY.
Once again not only directed against the State of The Netherlands, but also directly holding responsible the Dutch prime minister Wik Kok and his collegues, MP's and representatives of the dutch military.
For this purpose the best testcase would be the bombardment of the RTS. In all other cases of attacks on civilian targets, the defendants certainly will come with the argument it was 'collateral damage', so the plaintiffs then have to prove it was not.
This complication doesn't exist with regard to the filthy attack on the RTS. All NATO-representatives said the RTS was clearly the aim and prime minister Kok, as did Blair and Clinton, openly said he stood behind this action. Wich is clearly for all a prima facie war crime.
So the PC hopes to get permission of RTS-victims and their families to persecute Dutch war criminals and to claim the payment of damages for them.
We hope we cam com in touch with them.
All costs of the legal proceedings are for the PC.

The outcome of the four summary proceedings sketched briefly

The first process: Stanojevic c.s vs. The State of The Netherlands c.s.

Undertaken before the war was started.
Claim by 134 plaintiffs (Yugoslav and Dutch) to refrain from the use of force against the FRY directed towards the State of The Netherlands, prime-minister Kok, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, the two highest ranking militaries, admiral Kroon and general Droste, and three F-16 pilots, ready for flying bombardment-missions agaist the FRY.

Verdict by the President of the court in the Hague in summary proceedings d.d. March 18, 1999

Dismissed.
The plaintiffs cannot call upon Article 2, par. 4 Charter of the United Nations, because this Article is not self-executing.

There is no indication that the right on life of the Yugoslav plaintiffs is threatened. No breach on Art. 90 of the Dutch Constitution, stipulating the duty of the State to promote the international legal order. No breach of Article 28 Universal Declaration, saying the same. No violation of Art. 8 of the Dutch Law on criminal codes of war, putting penalties on violating "the laws and customs of war".

Appeal is pending and frozen.

Second process: Danokovic c.s. vs. The State of The Netherlands

Claim immediately after the starting of the war, introduced by 8 Yugoslav conscripts, that the State of The Netherlands should end at once their contribution to NATO-force. Based inter alia upon the right on life. A right, protected absolutely by law, expressed by Art. 2 of the European Treaty on the Protection of Human Rights. The only exception is: a case of dead by lawful acts of war, as is indicated in Art. 15, par. 2. This war isn't lawful at all, so the threatening of the right of live of these Yugoslav soldiers is a breach of the Treaty

Verdict by the President of the court in the Hague in summary prooceedings d.d. April 7, 1999 (another president of the court)

Dismissed.
One cannot exclude that Art 2, par 4 of the Charter of the United nations is self-executing, like maybe in this case. "But the fact that not the Security Council of the United Nations has taken the decision to use force against the FRY, but the NATO-council instead can't be indicated for certain as an unlawful practice, even if that brings the lifes of plaintiffs at risk."
One cannot judge under these circumstances if there are violations of humanitarian law (ius in bello) taking place now. And there is also no sufficient evidence that there is disproportionaly of force, being a war crime per se.

Appeal is pending and frozen.

Third process: Tijsterman-Banicevic c.s. vs. the State of The Netherlands

Undertaken when the war was going on and the evidence of brutalizing the FRY by forbidden means of warfare and by forbidden weapons became outstanding.
Claim by 35 plaintiffs (Yugoslav and Dutch) to refrain from any further participation on NATO's force, because it was clear by now that NATO's illegal war was degenerated also in a war crime-circus.

This was a split process. The same claim was filed at the court of Amsterdam and the court of the Hague, wich was possible by splitting the defendants in two parties: the State of the Netherlands at one hand and the defendant-persons at the other hand.
This as an attempt to split the front of judges, monopolized by the court in the Hague.
This was the the Hague-section.

Verdict by the President of the Court in the Hague in summary proceedings d.d. May 28, 1999 (same president as in the first process)

Dismissed.
Repeated judgement that it's impossible for the judge to sentence about the legitimacy of a war, because Art. 2, par 4 of the Charter of the United Nations lacks self-executing power.
Not only that Article is not self-executing, but "The same is the case on the right of life" (?!)
It's impossible now to determine if there is a matter of attacking civil targets, in breach of Art. 52 Additional Protocol I. Moreover, this Article too isn't self-executing, to the provisional opinion of the president.

Appeal is pending and frozen.

Fourth process; Dedovic c.s. vs. Kok, prime minister, de Grave, minister of defense and Van aartsen, minister of foreign affairs.

This was the Amsterdam-section of the process.
Claim by 29 plaintiffs (Yugoslavs only) before the court in Amsterdam.
Same claim and same arguments as in the former legal proceedings.

Verdict by the President of the court in Amsterdan in summary proceedings d.d. juni 3, 1999

Dismissed.
The judge in Amsterdam delayed his verdict in order to acquire the opportunity the copy the verdict of its collegue in the Hague, even though the the Hague-process took place much more later.
He added, as a decision of its own, that there was no evidence that the defendants as "organs of the State" had committed 'abus de pouvoir' by participating in the like this waged war.

Appeal is pending and frozen.

Complaint lodged with the Dutch public prosecutor against the State of The Netherlands,prime minister Kok, minister of foreign affairs Van Aartsen, minister of defence de Grave, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, admiral Kroon, general Droste, known Dutch F-16 pilots, taking part in the bombardment-agggression against the FRY

Claim: to prosecute these persons on account of committing crimes against peace, war crimes and crimes against humanity. More than 100 persons were involved, a lot of them living in the FRY, others from Dutch nationality.

Dismissed.
Motivation: there is neither sufficiënt evidence that NATO is committing war crimes with its bombardments on the FRY, nor is there sufficiënt proof of using disproportional force.

As far as the indictment of crime against peace is concerned, the prosecutor stated that it must be considered as beyond its competence to deal with that. This question must be judged by international fora, like the International Court of Justice in the Hague. He stated further on this specific point: there isn't such a thing as 'crimes against peace' as generally accepted law. The appeal of the complainers on the Nürnberg and Tokio-norms as prevailing standards of international law fails. The establishing of crimes of aggression there was bound on the specific circumstances of German and Japanese aggression in World War II and cannot be generalized.

This last defense clearly not his own idea. The same arguments are putted forwards by the bunch of American legal advisers, surrounding the prosecutor of the so called ICTY, in a reaction on charges for crimes against peace by Canadian international law experts. So this is unmistakably inspired by NATO's juridical advisers.

Nevertheless it can easily be proved that this is a misconception.
In the report dd. 3 May 1993, S/25704 of the Secretary-Genral pursuant to paragraph 2 of Security Council Resolution 808 (1993) with regard to the establishment of the ICTY, is stated under 35:

> "The part of conventional international humanitarian law wich has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of genocide of 9 december 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945."

So it is re-established by that report of the Secretary-General that the complete Charter of Nürnberg is part of international customary law.
The Charter of the International Military Tribunal of 8 Augustus 1945 defines crimes against peace in general terms.

Under 42 the report of the Secretary General goes on like this:

> "The Nürnberg Tribunal recognized that many of the provisions contained in the Hague Regulations, although innovative at the time of their adoption were, by 1939, recognized by all civilized nations and were regarded as being declaratory of the lwas and customs of war. The Nürnberg Tribunal also recognized that war crimes defined in article 6(b) of the Nürnberg Charter were already recognized as war crimes under international law, and covered in the Hague Regulations, <u>for which guilty individuals were punishable.</u> (emphasis added)

So it is beyond any doubt that 1) also crimes against peace - "the most serious sort of war crimes", as is stated during the Nürnberg-sessions - are part of the international customary law, 2) individuals, guilty for such crimes, according to the definition in Art. 6 of the Nürnberg Charter, are punishable as a person, 3) they are punishable for that all over the world, not only by the ICTY, wich isn't holding any monopoly (see the ICTY-Charter), but also before domestic courts.
So if the ICTY,as an instrument of American power, doesn't do it, the more reason there is for domestic courts to do deal with that.

The framework for a new indictment is made now.
As soon as the full scope of evidence, gathered by Yugoslav and Serbian authorities is available for the PC and victims of bombardments are found prepared to give their consent to that, also a new complaint will be lodged with the Dutch proescutor against Dutch war criminals in politics en the military. And later on, if necessary, brougt before the High Court.

Zeist, 20 March 2000

mr. N.M.P. Steijnen

member of the PC

Permanente Commissie
inzake Nederlandse Oorlogsmisdrijven
in Joegoslavië

DE NEDERLANDSE OORLOGSMISDRIJVEN EN OORLOGSMISDADIGERS

De Nederlandse politiek en militair verantwoordelijken en de militair rechtstreeks uitvoerenden vegen bij hun agressie tegen de Federale Republiek Joegoslavië dagelijks hun - om het maar netjes te zeggen - bebloede handen af aan de volgende verdragsregels en regels en bepalingen van internationaal recht :

ARTIKEL 2 LID 4 HANDVEST VAN DE VERENIGDE NATIES

4. In hun internationale betrekkingen onthouden alle Leden zich van bedreiging met of het gebruik van geweld tegen de territoriale integriteit of de politieke onafhankelijkheid van een staat, en van elke andere handelwijze die onverenigbaar is met de doelstellingen van de Verenigde Naties.

Bekend als het agressieverbod en interventieverbod.

Dat interventieverbod komt ook terug in het Tweede Aanvullende Protocol bij de Verdragen van Genève, dat ook door Nederland is bekrachtigd. Daarin wordt nog eens uitdrukkelijk geboekstaafd:

ARTIKEL 3 LID 2 PROTOCOL II

Non-interventie

2. Geen enkele bepaling van dit Protocol mag worden ingeroepen als rechtvaardiging van een interventie, rechtstreeks of niet rechtstreeks, om welke reden ook, in het gewapend conflict of in de interne of externe aangelegenheden van de Hoge Verdragsuitende Partij op wier grondgebied dat conflict plaatsvindt.

Het agressieverbod en non-interventiebeginsel behoren, daarover is absolute overeenstemming onder de volkenrechtsgeleerden, tot het zgn. ius cogens, d.w.z. tot het overal en altijd absoluut geldende recht, waarvan nimmer kan worden afgeweken.

Zij maken eveneens onmiskenbaar deel uit van : DE WETTEN EN GEBRUIKEN VAN DE OORLOG

Schending van de wetten en gebruiken van de oorlog is een oorlogsmisdrijf, c.q. een in zwaarte van delict daarmee op één lijn gesteld misdrijf tegen de vrede.

In het Handvest van Neurenberg wordt nauwkeurig gedefinieerd wat moet worden beschouwd als een misdrijf tegen de vrede.

ARTIKEL 6 HANDVEST VAN NEURENBERG

"Het maken van plannen voor, het voorbereiden van, het nemen van initiatieven tot, of het voeren van een aanvalsoorlog of een oorlog in strijd met internationale verdragen, overeenkomsten of verzekeringen, of deelneming aan een gemeenschappelijk plan of samenzwering voor het verrichten van de bovengenoemde handelingen",

worden gekwalificeerd als misdrijven tegen de vrede.

Het oorlogsgeweld tegen Joegoslavië is in strijd met de eerder genoemde verdragen, met name dus het Handvest en Protocol II bij de Verdragen van Genève.
Mitsdien is hier sprake van een misdrijf tegen de vrede.

Schending van de wetten en gebruiken van de oorlog wordt niet alleen strafbaar gesteld door het Handvest van Neurenberg, maar ook door onze eigen, daarop gebaseerde, Wet Oorlogsstrafrecht. Daarin wordt bepaald:

ARTIKEL 8 WET OORLOGSSTRAFRECHT

Art. 8. - 1. Hij die zich schuldig maakt aan schending van de wetten en gebruiken van de oorlog, wordt gestraft met gevangenisstraf van ten hoogste tien jaren of geldboete van de vijfde categorie.

- 2. Gevangenisstraf van ten hoogste vijftien jaren of geldboete van de vijfde categorie wordt opgelegd:

1°. indien van het feit de dood of zwaar lichamelijk letsel van een ander te duchten is;

2°. indien het feit een onmenselijke behandeling inhoudt;

3°. indien het feit inhoudt het een ander dwingen iets te doen, niet te doen of te dulden;

4°. indien het feit plundering inhoudt.

- 3. Levenslange gevangenisstraf of tijdelijke van ten hoogste twintig jaren of geldboete van de vijfde categorie wordt opgelegd (*1)

1°. indien het feit de dood of zwaar lichamelijk letsel van een ander tengevolge heeft dan wel verkrachting inhoudt;

2°. indien het feit inhoudt geweldpleging met verenigde krachten tegen een of meer personen dan wel geweldpleging tegen een dode, zieke of gewonde;

3°. indien het feit inhoudt het met verenigde krachten vernielen, beschadigen, onbruikbaar maken of wegmaken van enig goed, dat geheel of ten dele aan een ander toebehoort;

4°. indien het feit, in het voorgaande lid bedoeld onder 3° of 4°, wordt gepleegd met verenigde krachten;

5°. indien het feit uiting is van een politiek van stelselmatige terreur of wederrechtelijk optreden tegen de gehele bevolking of een bepaalde groep daarvan;

6°. indien het feit inhoudt een schending van een gegeven belofte, of een schending van een met de tegenpartij als zodanig gesloten overeenkomst;

7°. indien het feit inhoudt misbruik van een door de wetten en gebruiken van de oorlog beschermde vlag of teken dan wel van de militaire onderscheidingstekenen of de uniform van de tegenpartij.

Hierbij is met name (ook) van toepassing schending van de wetten en gebruiken van de oorlog, waarbij uiting wordt gegeven aan"een politiek van stelselmatige terreur of wederrechtelijk optreden tegen de gehele bevolking of een bepaalde groep daarvan" (lid 2, 6°)

Dit als gevolg van de steldelmatige vernietigingsbombardementen in Joegoslavië, waardoor niet alleen burgers rechtstreeks tot slachtoffer worden gemaakt, maar ook, bij wijze van terreur, de civiele infrastruktuur en de economie doelgericht worden verwoest. Middels deze terreurbombardementen wordt beoogd de civiele weerstand van de Joegoslavische bevolking te breken.

De doelgerichte vernietigingsbombardementen, die tot oogmerk hebben de civiele infrastruktuur, de economie, de bestaansmogelijkheden en de civiele weerbaarheid van de Joegoslavische natie te vernietigen, kunnen niet anders worden beschouwd dan als disproportioneel oorlogsgeweld.

Te allen tijde en onder alle omstandigheden moet bij het toepassen van oorlogsgeweld de proportionaliteit hiervan tot richtsnoer worden genomen. De systematische vernietiging van de economische en infra-strukturele bestaansmogelijkheden van Joegoslavië die thans plaatsvindt, is een absolute schending van het proportionaliteitsbeginsel.
Daarbij dient, los daarvan, ook nog in ogenschouw te worden genomen dat vernietiging van de economie en infrastruktuur van Joegoslavië niet alleen de Servische bevolking treft, maar ook die van Montenegro, van de buurlanden en evenzeer de bestaansvoorwaarden van de Albanese Kosovaren vernietigt.

Schending van het proportionaliteitsbeginsel is onder alle omstandigheden een oorlogsmisdrijf. Het gaat hier om een gewoonterechtelijke volkenrechtelijke regel van ius cogens-karakter. Het gaat hier dus om :

SCHULD AAN HET OORLOGSMISDRIJF VAN DISPROPORTIONEEL OORLOGSGEWELD

De agressie tegen Joegoslavië gaat op grote schaal gepaard met aanvallen op burgerobjecten.
In ieder voorkomend geval is dit ook steeds weer een oorlogsmisdrijf.
Het Eerste Aanvullende Protocol bij de Verdragen van Genève bepaalt:

ARTIKEL 52 PROTOCOL I

Algemene bescherming van burgerobjecten

1. Burgerobjecten mogen niet het doelwit van een aanval worden en tegen die objecten mogen geen represailles worden genomen. Burgerobjecten zijn alle objecten die geen doelen als omschreven in het tweede lid, zijn.

2. Aanvallen dienen strikt tot militaire doelen te worden beperkt.
Voor zover het objecten betreft, zijn militaire doelen uitsluitend die objecten die naar hun aard, ligging, bestemming of gebruik een daadwerkelijke bijdrage tot de krijgsverrichtingen leveren en waarvan de gehele of gedeeltelijke vernietiging, verovering of onbruikbaarmaking onder de omstandigheden van dat moment een duidelijk militair voordeel oplevert.

3. In geval van twijfel of een object dat gewoonlijk dienst doet voor civiele doeleinden, zoals plaatsen van godsdienstige verering, een huis of ander soort woning of een school, wordt gebruikt om een daadwerkelijke bijdrage te leveren aan de krijgsverrichtingen, dient ervan te worden uitgegaan dat het niet voor het laatst genoemd doel wordt gebruikt.

NAVO-terreurbombardementen vinden op grote schaal plaats op scholen, instellingen, gezondheidscentra, bruggen, fabrieken, culturele monumenten, woonblokken, electriciteitscentrales, watertoeleveringsbedrijven, bestuursgebouwen en televisie en radio-instellingen.

Deze in toenemende mate barbaarse vernietigingsaanvallen gaan het kader van louter militaire doelen in de zin van dit artikel ver te buiten.

Ook dergelijke vernietigingsaanvallen vormen, elk voor zich, een oorlogsmisdrijf.

Dan is er nog de volgende kwestie, die de pure misdadigheid en strijdigheid met het volkenrecht, vanaf het eerste begin van de dreigementen met oorlogsgeweld jegens de FRY, glashelder aangeeft.

Een van de doelen van de baaierd van vernietiging die de NAVO aanricht, zou zijn het dwingen van de FRY tot het ondertekenen van de accoorden van Rambouillet.
Daartoe werd eerder al door de NAVO met deze bombardementen gedreigd.
Bedreiging met of gebruik van geweld om een volkenrechtelijke overeenkomst af te dwingen, is echter in het internationaal recht volstrekt verboden. Het volkenrecht is daar volstrekt duidelijk over.
Zo bepaalt :

ARTIKEL 51 WEENS VERDRAGENVERDRAG

Dwang, uitgeoefend op een Staat door bedreiging met of gebruik van geweld

Art. 51[1]. Elk verdrag is nietig, waarvan de totstandkoming is bereikt door bedreiging met of gebruik van geweld in strijd met de beginselen van het volkenrecht, neergelegd in het Handvest van de Verenigde Naties.

[1] In het Arrest IGH van 2 februari 1973, *Fisheries Jurisdiction* (ICJ Report 1973, blz. 3), stelt het Hof dat deze bepaling beschouwd kan worden het internationaal gewoonterecht weer te geven (*ibidem*, blz. 14).

Vanaf het allereerste begin dat de NAVO begon met dreigen jegens de FRY en dit land te dwingen de accoorden van Rambouillet te tekenen, begaven de NAVO-landen zich daarmee dus terstond op het criminele pad.

Er is dus sprake van permanente, grootschalige en veelvoudige oorlogsmisdadigheid van de NAVO.
Deze oorlogsmisdadigheid moet aan de afzonderlijke NAVO-lidstaten worden toegerekend.

Maar bovendien staat, als onbestreden volkenrechtelijk principe, vast dat aangezien Nederland heeft ingestemd met en meewerkt aan de uitvoering van de geïntegreerde aanvallen in NAVO-verband, Nederland ook medeverantwoordelijk is voor <u>alle</u> daden, en mitsdien ook <u>alle</u> oorlogsmisdrijven, die in dit kader worden begaan.
Mitsdien is Nederland hiervoor ook aansprakelijk, en wel <u>hoofdelijk</u>.

Dit betekent dat Nederland niet alleen aansprakelijk kan worden gehouden voor alles wat in dit NAVO-kader gebeurt door daar zijn goedkeuring en medewerking aan te geven, maar tevens, naar volkenrechtelijke maatstaven, ook aansprakelijk is voor alle gevolgen en alle onrechtmatig toegebrachte schade.

Alle oorlogsmisdaden die de NAVO in Joegoslavie begaat, alsmede de civielrechtelijke gevolgen (schadeplichtigheid voor de gevolgen van onrechtmatig geweld), en de strafrechtelijke gevolgen (strafbaarheid voor de gepleegde oorlogsmisdrijven en misdrijven tegen de vrede) krijgt Nederland dus recht voor zijn raap.

Nu is in Neurenberg - terecht - geboekstaafd :

"Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international lwa be enforced". (Annual Digest, 13 (1946), p. 221)

Dit principe van de individuele verantwoordelijkheid en persoonlijke aansprakelijkheid voor oorlogsmisdrijven en misdrijven tegen de vrede wordt in het Charter van Neurenberg als volgt verder uitgewerkt en gestalte gegeven:

ARTIKEL 6 (SLOT) HANDVEST VAN NEURENBERG

"Leiders, organisatoren, zij die hebben uitgelokt en medeplichtigen, die hebben deelgenomen aan het opstellen of uitvoeren van een gemeenschappelijk plan of samenzwering om een van de bovengenoemde misdrijven te begaan, zijn aansprakelijk voor alle daden, die door personen ter uitvoering van dit plan zijn verricht". (Stcrt. 1946, 18)

De oorlogsmisdrijven en misdrijven tegen de vrede die in Joegoslavie worden begaan, alsmede de civielrechtelijke gevolgen daarvan, vallen dus, naar volkenrechtelijke maatstaven, niet alleen toe aan de Staat, maar ook aan alle daarbij betrokkenen persoonlijk.

Kok, Van Nieuwenhoven, alle TK-leden met uitzondering van de leden van de fraktie van de SP, de militaire legertop en de militair uitvoerenden in Joegoslavië scharen zich allen in dezelfde categorie. Die van oorlogsmisdadigers.

De Permanente Commissie inzake Nederlandse Oorlogsmisdrijven in Joegoslavie rekent het tot haar taak met deze oorlogsmisdadigers in strafrechtelijke en civielrechtelijke zin af te rekenen.

Permanente Commissie inzake
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ANNEX : - Definition of Aggression
- Het zgn. leerstuk van "humanitair geweld"

III.9 DEFINITION OF AGGRESSION

Resolutie aangenomen door de Algemene Vergadering op 14 december 1974
A/Res/3314 (XXIX)

Stemuitslag: aangenomen bij consensus.

The General Assembly,

Having considered the report of the Special Committee on the Question of Defining Aggression, established pursuant to its resolution 2330 (XXII) of 18 December 1967, covering the work of its seventh session held from 11 March to 12 April 1974, including the draft Definition of Aggression adopted by the Special Committee by consensus and recommended for adoption by the General Assembly,

Deeply convinced that the adoption of the Definition of Aggression would contribute to the strengthening of international peace and security,

1. *Approves* the Definition of Aggression, the text of which is annexed to the present resolution;

2. *Expresses its appreciation* to the Special Committee on the Question of Defining Aggression for its work which resulted in the elaboration of the Definition of Agression.

3. *Calls upon* all States to refrain from all acts of aggression and other uses of force contrary to the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations;[1]

4. *Calls the attention* of the Security Council to the Definition of Aggression, as set out below, and recommends that it should, as appropriate, take account of the Definition as guidance in determining, in accordance with the Charter, the existence of an act of aggression.

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[1] A/Res/2625 (XXV) annex, 24 oktober 1970. Zie voor de tekst no. III.6.

ANNEX

Definition of Aggression

The General Assembly,

Basing itself on the fact that one of the fundamental purposes of the United Nations is to maintain international peace and security and to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace,

Recalling that the Security Council, in accordance with Article 39 of the Charter of the United Nations, shall determine the existence of any threat to the peace, breach of the peace or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 en 42, to maintain or restore international peace and security,

Recalling also the duty of States under the Charter to settle their international disputes by peaceful means in order not to endanger international peace, security and justice,

Bearing in mind that nothing in this Definition shall be interpreted as in any way affecting the scope of the provisions of the Charter with respect to the functions and powers of the organs of the United Nations,

Considering also that, since aggression is the most serious and dangerous form of the illegal use of force, being fraught, in the conditions created by the existence of all types of weapons of mass destruction, with the possible threat of a world conflict and all its catastrophic consequences, aggression should be defined at the present stage,

Reaffirming the duty of States not to use armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity,

Reaffirming also that the territory of a State shall not be violated by being the object, even temporarily, of military occupation or of other measures of force taken by another State in contravention of the Charter, and that it shall not be the object of acquisition by another State resulting from such measures or the threat thereof,

Reaffirming also the provisions of the Declar-

ation on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations,

Convinced that the adoption of a definition of aggression ought to have the effect of deterring a potential aggressor, would simplify the determination of acts of aggression and the implementation of measures to suppress them and would also facilitate the protection of the rights and lawful interests of, and the rendering of assistance to, the victim,

Believing that, although the question whether an act of aggression has been committed must be considered in the light of all the circumstances of each particular case, it is nevertheless desirable to formulate basic principles as guidance for such determination,

Adopts the following Definition of Aggression:

Art. 1. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Explanatory note: In this Definition the term „State":
a. Is used without prejudice to questions of recognition or to whether a State is a Member of the United Nations;
b. Includes the concept of a „group of States" where appropriate.

Art. 2. The first use of armed force by a State in contravention of the Charter shall constitute *prima facie* evidence of an act of aggression although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

Art. 3. Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:

a. The invasion or attack by the armed forces of a State of the territory of another State, or any

military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

b. Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

c. The blockade of the ports or coasts of a State by the armed forces of another State;

d. An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

e. The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

f. The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

g. The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

Art. 4. The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Art. 5. 1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

Art. 6. Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful.

Art. 7. Nothing in this Definition, and in particular Article 3, could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Art. 8. In their interpretation and application the above provisions are interrelated and each provision should be construed in the context of the other provisions.

In het Arrest IGH van 27 juni 1986, *Military and paramilitary activities in and against Nicaragua* (ICJ Reports 1986, blz. 14) stelt het Hof dat deze bepaling beschouwd kan worden het internationale gewoonterecht weer te geven (*ibidem*, blz. 103).

ANNEX II

HET ZOGENAAMDE LEERSTUK VAN "HUMANITAIR GEWELD"

De Nederlandse Staat beroept zich voor het oorlogsgeweld tegen de FRY niet op zo iets als het zognenaamde leerstuk van "humanitair geweld".

De Staat kijkt wel uit. Hij weet dat dit nergens op zou slaan.

Ter rechtvaardiging van het geweld stelt de Staat dat de legitimatie voor dit geweld binnen het Handvest van de Verenigde Naties moet en kan worden gezocht en gevonden. En niet daarbuiten.

Dat is een keiharde leugen en bovendien een volstrekt manifeste.
Bij het debiteren van deze leugen wordt de Staat voortdurend enthousiast toegeknikt door de paljassen in de Tweede Kamer.

Omdat de leugens van de Staat op dit punt toch een onbehaaglijk gevoel geven wordt er door de emotie-industrie veel gespeculeerd over de mogelijkheid dat een rechtvaardiging van het oorlogsgeweld niet binnen het Handvest van de Verenigde Naties zou moeten worden gezocht, zoals de regering aangeeft, maar daarbuiten. Namelijk in het zogenaamde leerstuk van "humanitair geweld".

Voor de emotie-industrie heeft het spelen met dit begrip nog een extra aantrekkingskracht.
Want wat is nou mooier als het toepassen van grootschalig geweld voor een goed doel ?
Twee oerdriften van de mens worden zo naadloos bij elkaar gebracht: de behoefte aan grootscheepse vernietiging en de behoefte om te helpen. De dieptepsychologische bevrediging van het verenigen van deze twee onverenigbare elementen is enorm.

Daarom koketteert de emotie-industrie voortdurend met de mogelijkheid dat daarin wellicht een rechtvaardiging voor de jegens Joegoslavië uitgeoefende massa-terreur en massa-vernietiging zou liggen.

Die vlieger gaat echter volstrekt niet op. Niet alleen omdat ook de regering daar niets in vermag te zien. Maar ook omdat :

1. Gelet op het ius cogens-karakter van het geweldsverbod en interventieverbod, zijnde ius cogens het hoogste recht, het niet voorstelbaar is dat er normen zouden zijn die daar nog boven zouden gaan.

2. Als er al normen boven de van ius cogens zijnde normen van het geweldsverbod en het interventieverbod zouden kunnen gaan - quod non -, dit althans in casu alleen al daarom niet het geval kan zijn, aangezien hier door de NAVO geweld gebruikt wordt dat uiteindelijk feitelijk ten dienste komt van de gewapende separatistische beweging van één bevolkingsgroep in het betrokken gebied, met voorzienbare catastrofale gevolgen voor (de rechten van) andere bevolkingsgroepen in dat gebied.

3. Als er al normen boven de van ius cogens zijnde normen van het geweldsverbod en interventieverbod zouden gaan - quod non -, kan dit althans in casu alleen al daarom geen opgeld doen, nu de geweldgebruikende en de het interventieverbod schendende NAVO-landen wél tegen de FRY zodanig geweld aanwenden, maar dat niet wensten te doen tegen Kroatië, toen dat in één klap 200.000 Serviërs uit de Krajina verdreef en daarbij duidenden Servische burgers vermoordde, welke aktie zelfs door diezelfde NAVO-landen politiek en militair werd gesteund, alsmede evenmin geweld wensten toe te passen tegen Turkije, toen dit de Koerden te vuur en te zwaard verdreef uit Oost-Turkije, waarbij meer dan 200.000 doden zijn gevallen (zie prods. 12 en 13 in eerste aanleg), zodat de schending van het interventieverbod en het agressieverbod hier, ook in het licht van zogenaamde humanitaire bewogenheid, een volkomen arbitrair karakter krijgt.
Dit arbitraire karakter verdraagt zich niet met de gelijkwaardigheid van staten als basisprincipe van het volkenrecht, op grond waarvan staten ook jegens elkaar aanspraak kunnen maken op een gelijke bejegening in gelijke gevallen.
Dit betekent dat, indien Kroatië en Turkije erop kunnen rekenen in gevallen van grootscheepse etnische schoonmaak verschoond te blijven van beweerdelijk "humanitaire" geweldstoepassing door de NAVO-landen, ook Joegoslavië erop moet kunnen rekenen bij beweerdelijk massaal gewelddadig optreden tegen een separatistische beweging op haar territoir evenzeer van zogenaamd "humanitair" optreden verschoond te blijven.
Het ius cogens-karakter van het agressieverbod en het interventieverbod kan in elk geval niet wijken voor zogenaamd "humanitair" geweld, dat naar volstrekte willekeur alleen bepaalde staten treft.

4. Als het van ius cogens-karakter zijnde agressieverbod en interventieverbod - dat nog eens expliciet wordt bevestigd in artikel 3 van het ook door de Staat geratificeerde Tweede Aanvullende Protocol bij de Verdragen van Genève - al zou kunnen wijken voor zoiets als "humanitair geweld"
- quod non -, dan behoort dit in elk geval zo effectief en doelgericht mogelijk te worden uitgevoerd.
Dit zou dan in casu betekenen het binnentrekken met grondtroepen van het betrokken gebied om dit te bezetten en te pacificeren. Niet het lafhartig vernietigen van een heel land met terreurbombardementen, omdat men de moed niet heeft om daadwerkelijk grondtroepen in te zetten.

Hetgeen dan tot gevolg heeft dat door de verwoestingen op grote schaal de burgerbevolking van het gehele land zwaar wordt getroffen in haar fundamentele rechten op een menswaardig bestaan, terwijl tegelijkertijd de bevolkingsgroep die men beoogt te willen "helpen", daardoor vooralsnog juist extra wordt getroffen. Hun bestaansvoorwaarden worden evenzeer vernietigd, nu de civiele infrastructuur en de economie van de gehele FRY wordt vernietigd door wekenlange barbaarse bombardementen.

5. Naast de eis van effectiviteit dient voor zgn. "humanitair" oorlogsgeweld, voorzover rechtmatig - quod non - , in elk geval ook de eis van proportionaliteit te worden gesteld. Deze eis van proportionaliteit geldt te allen tijde voor elk oorlogsgeweld, zoals ook in de uitspraak van het Internationaal Gerechtshof van 8 juli 1996 over de (on)rechtmatigheid van het gebruik van kernwapens en het dreigen daarmee nog eens uitdrukkelijk wordt bevestigd (prod. 4, ad 41 en 42).
Dit proportionaliteitsbeginsel wordt in elk geval in casu zwaar geschonden, nu Joegoslavië naar de Middeleeuwen wordt terug gebombardeerd, hetgeen de bestaansvoorwaarden van de gehele Joegoslavische bevolking van meer dan 10 miljoen mensen, inclusief de bewoners van Kosovo, voor onafzienbare tijd vernietigt.

6. Een zuiver militair bondgenootschap is per definitie nimmer geschikt voor het uitvoeren van zgn. "humanitair geweld", indien dit al, in afwijking van het handvest, geoorloofd zou zijn - quod non -.
Een militair bondgenootschap kan zich namelijk niet permitteren te "falen", d.w.z. er niet in te slagen militair zijn wil op te leggen. Dit torpedeert een gerichtheid op het tijdig inzetten van diplomatieke middelen. Een dergelijke inzet zou immers uitgelegd worden als "verliezen", en daarmee de geloofwaardigheid van het militair bondgenootschap aantasten.
Een militair bondgenootschap staat daarmee per definitie haaks op het uitvoeren van zgn. "humanitaire operaties", waarvoor, als deze al, in afwijking van het Handvest, juridisch voor mogelijk zouden moeten worden gehouden - quod non -, in elk geval als voorwaarden geformuleerd zouden moeten worden bereidheid tot tijdige diplomatie, flexibiliteit en de bereidheid om op elk moment over te gaan tot niet-militaire oplossingen.
Gelet op de geloofwaardigheid die een militair bondgenootschap koste wat het kost overeind denkt te moeten houden, mist dit uit zijn aard de daarvoor benodigde instelling en eigenschappen. Met andere woorden: uit zijn aard kan de NAVO niet functioneren als een "Leger des Heils".

7. Afwijking van regels van ius cogens, zoals het interventieverbod en het geweldverbod, is slechts mogelijk - zo geeft ook artikel 53 van het Weens Verdragenverdrag aan -, indien er sprake is van het totstandgekomen zijn van:

"een latere norm van algemeen volkenrecht van dezelfde aard."

Daarvoor is nodig dat zich een opinio juris heeft gevestigd. Niet kan zomaar worden aangenomen dat een zodanige opinio juris zich heeft ontwikkeld, als een handvol westers-georiënteerde volkenrecht"deskundigen" roepen dat dit zo langzamerhand wel geacht mag worden het geval te zijn. Een opinio juris kan zich immers alleen vestigen bij een langdurige statenpraktijk.
En kan ook nimmer totstandkomen in een situatie waarin de voorstanders van een dergelijke opinio juris in evenwicht worden gehouden door de tegenstanders daarvan.
Zolang vaste leden van de Veiligheidsraad, zoals China en Rusland, gesteund door een groot aantal andere landen van de niet-westerse wereld, alsmede door een groot aantal volkenrechts-geleerden, zich verzetten tegen de rechtmatigheid van afwijking van het Handvest van de Verenigde Naties, kan nimmer een statenpraktijk groeien, waarin een opinio juris is uitgekristalliseerd die een dergelijke afwijking ten gunste van zgn. "humanitair geweld" toestaat.

Voor het niet totstandkomen van een afwijkende opinio juris, zolang daartegen voortdurend verzet bestaat, wordt verwezen naar het voorbeeld van de rechtmatigheid van kernwapens, zoals behandeld door rechter Shahabuddeen in zijn "opinion" bij de uitspraak van het Internationaal Gerechtshof van 8 juli 1996: als kernwapens vanaf het begin onrechtmatig waren, dan kan daarin geen verandering zijn gekomen middels een latere opinio juris, gelet op de voortdurende tegenstand tegen de rechtmatigheidsthese omtrent kernwapens.
Waren kernwapens echter vanaf het begin rechtmatig, dan hebben de voorstanders van deze rechtmatigheid effectief verhinderd dat er een opinio juris zich heeft uitgekristalliseerd die ze later onrechtmatig heeft gemaakt.

DEEL I. INLEIDENDE UITEENLOPENDE KWESTIES

I. *De hoofdzaak*

De aanvang van het atoomtijdperk vormt een juridisch referentiepunt voor de onderhavige zaak. Eén argument was dat, op dat tijdstip, het gebruik van kernwapens niet verboden was volgens internationaal recht, maar dat later een verbodsregel ontstond, waarbij de noodzakelijke *opinio juris*' zich ontwikkelde onder de gecombineerde invloeden van het algemene verbod van het gebruik van geweld dat is neergelegd in artikel 2, lid 4, van het Handvest, en van het groeiende besef van en gevoeligheid voor de kracht van kernwapens. Met het oog op het standpunt dat in de laatste vijf decennia is ingenomen door de voorstanders van de rechtmatigheid van het gebruik van kernwapens (hierna te noemen "voorstanders van rechtmatigheid"), zal het moeilijk zijn vast te stellen dat de noodzakelijke *opinio juris* later is uitgekristalliseerd, indien deze niet al eer-

der bestond. Die redenering werd niet gevolgd door de meeste voorstanders van de onrechtmatigheid van het gebruik van kernwapens (hierna te noemen "voorstanders van onrechtmatigheid").

Het standpunt dat in het algemeen werd ingenomen door de voorstanders van onrechtmatigheid, was dat bij de aanvang van het atoomtijdperk een verbodsregel bestond, en dat verdere ontwikkelingen alleen maar getuigden van het voortdurende bestaan van die regel. Van hun kant stelden de voorstanders van rechtmatigheid zich op het standpunt dat zo'n verbodsregel nooit bestaan heeft en dat verdere ontwikkelingen alleen getuigden van het voortdurende niet-bestaan van een dergelijke regel en van het bestaan van een ermee corresponderend recht om kernwapens te gebruiken. Geen discussiepunt was of een verbodsregel, aannemende dat deze bij de aanvang van het atoomtijdperk bestond, zou zijn ingetrokken of gewijzigd door de ontwikkeling van een latere tegenovergestelde regel[2]; indien dat was bepleit, zou het standpunt ingenomen door de voorstanders van onrechtmatigheid de ontwikkeling van de *opinio juris* verhinderen die noodzakelijk is voor het vervolgens ontstaan van een regel die gebruik van kernwapens toestaat, en dit zou met name zo zijn indien de vroegere verbodsregel tot het *ius cogens*** behoorde. Dit zou het geval geweest zijn indien enige van de humanitaire beginselen waarop de eerdere verbodsregel was gebaseerd, zelf tot het ius cogens behoorden, een mogelijkheid die door paragraaf 83 van het Advies van het Hof wordt opengelaten.

Statenpraktijk is belangrijk, maar moet worden beschouwd in het kader van de aan de orde gestelde kwesties. In het kader van de kwesties die in deze zaak aan de orde zijn gesteld, is de statenpraktijk na de aanvang van het atoomtijdperk niet van een zodanige beslissende betekenis als gesuggereerd wordt door de aandacht die er gedurende de behandeling aan is besteed: het is niet noodzakelijk deze praktijk in enig detail meer en

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* Kort voor: *opinio juris sive necessitatis*, ook wel aangeduid met opinio necessitatis, een van de vereisten voor het ontstaan van gewoonterecht. De overtuiging van rechtsplicht; de heersende mening dat iets rechtens behoort. In het internationaal recht moet voor het ontstaan van gewoonterecht de statenpraktijk tot een gewoonte geworden zijn waarvan algemeen wordt aangenomen dat er een rechtsplicht uit gegroeid is. *(vert.)*

[2] Voor de mogelijkheid dat een regel van internationaal gewoonterecht wordt gewijzigd door latere onverenigbare statenpraktijk, zie *Military and Paramilitary Activities in and against Nicaragua*, Merits (Militaire en paramilitaire activiteiten in en tegen Nicaragua, Merites), *I.C.J. Reports 1986*, p. 109, § 207.

** De dwingende normen van algemeen internationaal recht. *(vert.)*

verder te bekijken dan wat redelijkerwijs duidelijk is, namelijk, dat de tegenstand geboden door de voorstanders van rechtmatigheid de ontwikkeling van een verbodsregel zou hebben verhinderd, indien er voorheen geen bestond, en dat, indien voorheen wel een verbodsregel bestond, de oppositie geboden door de voorstanders van onrechtmatigheid het tenietgaan van de regel zou hebben voorkomen. In beide gevallen zou de rechtstoestand zijn zoals die was bij de aanvang van het atoomtijdperk. De vraag is wat was die rechtstoestand?

Het essentiële punt is dus of bij de aanvang van het atoomtijdperk een regel van internationaal recht bestond die het een staat verbood gevolgen teweeg te brengen zoals in het vervolg konden worden veroorzaakt door het gebruik van kernwapens. Indien toentertijd niet zo'n regel bestond, is er sindsdien ook geen ontstaan, en is de zaak beslist in het voordeel van de voorstanders van rechtmatigheid. Indien een dergelijke regel toentertijd wel bestond, is die sindsdien ook niet tenietgegaan, en valt de beslissing uit ten voordele van de voorstanders van onrechtmatigheid.

(blz. 167 - 168)

en:

2. *De situatie volgend op de aanvang van het atoomtijdperk*

Een "koppig vasthouden aan gewoonte wekt evenveel beroering als een vernieuwing", zegt Bacon.[17] Aannemend derhalve dat bij de aanvang van het atoomtijdperk een verbodsregel bestond, moet nog onderzocht worden of die regel later werd gewijzigd of tenietgedaan door het ontstaan van een nieuwe regel die in de tegenovergestelde richting werkte: zou het "koppig vasthouden" aan het eerdere verbod van het gebruik van kernwapens als een "beroering wekkend" iets zijn beoordeeld?

Het is noodzakelijk om oog te hebben voor de structuur van het debat. Het argument van sommige staten is dat er geen verbodsregel van het gebruik van kernwapens bestaat of ooit bestaan heeft. Om dit punt te beslissen, is de aanvang van het atoomtijdperk een nuttig referentiepunt. De situatie op dat tijdstip moet worden vastgesteld aan de hand van het recht zoals het toen gold. Latere ontwikkelingen maken geen deel uit van welk proces dan ook dat leidde tot enigerlei regel over het onderwerp zoals toen bestond. Indien de bevinding juist is dat, volgens het recht zoals het bestond bij de aanvang van het atoomtijdperk, toentertijd een verbodsregel bestond, kunnen aanwijzingen voor een latere statenpraktijk niet dienen om die bevinding te weerleggen door aan te tonen dat, in strijd met die bevinding, toentertijd geen verbodsregel bestond. Wat een latere statenpraktijk wel kan doen is een *opinio juris* in het leven roepen dat een nieuwe regel is ontstaan die de oude regel wijzigt of herziet. Maar er is niet naar voren gebracht dat, indien bij de aanvang van het atoomtijdperk een verbodsregel bestond, deze werd gewijzigd of herzien door het ontstaan van een latere regel die in de tegenovergestelde richting werkt. Nu dit zo is, volgt daaruit dat indien er bij de aanvang van het atoomtijdperk een verbodsregel bestond, die regel nog steeds van kracht is.

Indien in feite zou worden beargumenteerd dat een eventuele eerdere verbodsregel werd tenietgedaan door het ontstaan van een latere regel die in tegenovergestelde richting werkt, komt men ook tot dezelfde conclusie. De krachtige en langdurige oppositie binnen de gelederen van de niet-kernwapenstaten tegen de stelling dat er een wettig recht bestaat om kernwapens te gebruiken, zou voldoende zijn geweest om de ontwikkeling van de *opinio juris* te voorkomen die nodig is om een dergelijke nieuwe regel tot stand te laten komen, en met name zou dat het geval zijn indien de eerdere regel de status van *ius cogens* had. Dit zou het geval geweest zijn indien de humanitaire beginselen waarop de eerdere regel gebaseerd was, die status hadden, welke mogelijkheid wordt opengelaten door paragraaf 83 van het Advies.

Een laatste punt. Aangevoerd werd dat de kernwapenstaten "staten [zijn] die speciaal in hun belangen worden getroffen" in de betekenis van het beginsel dat betrekking heeft op het ontstaan van internationaal gewoonterecht, zoals geformuleerd door het Hof in 1969 (*Zaken betreffende het Continentaal Plat in de Noordzee, I.C.J. Reports 1969*, p. 43, §74) en dat in feite "in het huidige geval een statenpraktijk ten aanzien van de bedreiging met of het gebruik van kernwapens, alleen zou kunnen komen van staten die de status van erkende kernwapenstaat bezitten" (C.R. 95/24, p. 3, vertaling). Het argument is interessant, maar niet overtuigend. Waar de rechtmatigheid van het gebruik van een wapen ter discussie staat dat de mensheid zou kunnen uitroeien en op die manier alle staten vernietigen, gaat het bij de test welke staten speciaal worden getroffen, niet om het bezit van

het wapen, maar om de gevolgen van het gebruik ervan. Vanuit dit oogpunt bezien worden alle staten in gelijke mate getroffen, want, net als de volkeren die die staten bewonen, hebben zij allemaal een gelijk recht om te bestaan.

Om deze redenen had het Hof, aannemend dat voorheen een verbodsregel bestond, tot de uitspraak kunnen komen dat het standpunt ingenomen door een aanzienlijk aantal niet-kernwapenstaten, zoniet door de meerderheid, de ontwikkeling van de *opinio juris* zou hebben tegengehouden die nodig is om een nieuwe regel tot stand te laten komen die de oude tenietdoet. De oude verbodsregel zou daarom tot op heden van kracht zijn gebleven.

(blz. 197 - 198)

Ditzelfde geldt, mutatis mutandis, voor de onderhavige kwestie.
Afwijking van de ius cogens-normen van het geweldsverbod en het interventieverbod zou slechts mogelijk zijn bij totstandkoming van een opinio juris die afwijking hiervan toestaat.
De totstandkoming van een zodanige opinio juris wordt echter effectief verhinderd door het voortdurende brede verzet tegen de vorming van een zodanige opinio juris, onder aanvoering van Rusland en China, gesteund door veel staten en een groot aantal volkenrechtdeskundigen.
Zij koesteren daarvoor dezelfde argumentatie, in meer algemene zin, als appellanten in onderhavige kwestie.

Het hek is immers van de dam als allerlei staten, onder humanitaire voorwendsels, elkaar naar believen de oorlog zouden mogen aandoen.
Eigenrichting zou daarmee weer de norm zijn en daarmee zouden we terug zijn bij af.

8. Herhaalde malen treft men met name in de westerse media de voorstelling van zaken aan, als zou het zgn. leerstuk van het "humanitair geweld" in elk geval tenminste moeten gelden als voor de toekomst wenselijk recht.
Ook die opvatting dient bestreden te worden. Naar de mening van een aantal volkenrechtsgeleerden vormt dit zgn. leerstuk juist een regressie in de rechtsontwikkeling, in plaats van progressie.
Deze opvatting wordt ook weergegeven door prof.Victor Conde, hoogleraar internationaal recht der mensenrechten aan de Trinity Law School, in een voordracht voor een internationaal forum op 25 maart jl. in de Verenigde Staten:

In my opinion there is no such "evolving right to humanitarian intervention" in International Law. The doctrine of Humanitarian Intervention which was considered by some as part of customary international law back in the 18th and 19th centuries and perhaps into the first half of this century, was replaced by the UN Charter paradigm. This was largely because recourse to Humanitarian

Intervention as a legal basis for violating sovereignty/territorial integrity was so easily misused and abused, especially by more powerful states going into smaller less powerful ones, where often the goal was not the ending of the acts that allegedly "shocked the conscience of mankind" but were more for changing the political structure or leadership of the state to meet the likes of the intervening state. The UN Charter, especially in articles 2.4 and 2.7 was meant to make this customary law doctrine no longer necessary with the UN structures, especially the UN Security Council and the Commission on Human Rights in place to handle such problems.

en:

Humanitarian Intervention is definitely not lex lata, or even lex ferenda. There may well be some other "humanitarian" types of norms ripening in the field of customary international law but humanitarian intervention is not one. Indeed, the sort of agression threatened by NATO to stop atrociities in KOSOVO now is the very type of conduct the UN meant to resolve within its own house. When states like the US do not feel they can politically win the UN mandate to do what they want to do (and are going to do anyway), they must turn to alternative legal justifications, such as the erroneous soundbyte claim of an "evolving norm" of Humanitarian Intervention. Let us call this for what it really is, a specious claim to a right to use force (jus ad bellum) which has no legal basis in either contemporary conventional or customary international law.

THE PERMANENT COMMISSION WITH REGARD TO (DUTCH) WAR CRIMES IN YUGOSLAVIA (PC)

Founded by the Dutch Society of Anti-Fascist Former Resistance Fighters (AFVN), The Society of Lawyers for Peace in The Netherlands (VJV) and the Balkan Peace Coalition

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1. APPEALS

I. NOVEMBER 1999 APPEAL

NOVEMBER 1999 APPEAL

TO ALL PEOPLE INTERESTED IN LEGAL ACTION AGAINST NATO'S WAR CRIMES IN YUGOSLAVIA

Paper meant for all confirmed believers
for the necessity of legal action in order
to bring justice and to acquire financial
compensation for the victims of NATO-war crimes
in the FRY

Dear Friends,

The crimes against peace and war crimes, committed by NATO against the people of Yugoslavia, must be brought to international Tribunals in the first place.

But that cannot be final !

There must be done also a real working towards the result that the instigators of the devastations get stuck financially as much as possible with the damages they caused to the victims of their crimes.

That means it must be organised that the victims of NATO's agression in Yugoslavia are going tot get the opportunity - with our help - to submit damage claims to the domestic courts of the separate NATO-countries.

In the Netherlands a take off soon will be made.
For that purpose a foundation is set up, named the Permanent Commission with regard to the (Dutch) War Crimes in Yugoslavia, shortly the PC.
This foundation intend to organize a soon opportunity for the victims of NATO-aggression to submit their damage claims tot the competent court in the Netherlands. With the help and mediation of the PC. Funds must be raised for the costs of the proceedings.

In this proceedings not only the State of the Netherlands will be sued for damages, but also the Dutch Ministers responsible, Prime Minister Kok, Minister of Defense de Grave en Minister of Foreigh Affairs Van Aartsen, as well as the highest Dutch military commanders in charge, all personally.

The legal base for this proceedings for domestic courts is tort.

The legal principles with regard to this proceedings are:

1. The damages originating from the crimes against peace and war crimes committed by NATO-forces, are in the sense of civil law torts. So the victims of this crimes have a right for full compensation, feasible before the domestic court of al NATO-countries.

2. The legal systems in all NATO-countries recognize, in one way of another,the principle of liability for actions by tort. Therefore proceedings of Yugoslavian victims for compensation on the base of tort in all NATO-countries are possible.

3. The State of The Netherlands is, like all other NATO-States, directly and per head for the whole, liable for all damage inflicted by NATO in Yugoslavia.
This unrestricted liability of each Nato-State for all damages inflicted by NATO as a whole as an outcome of the principle according international law that, whereas the NATO-States have acted together, the responsibily for this joint actions is fully falling to each separate participating State.

4. According to the principles of Neurenberg, not only the States of NATO are directly and per head liable for all damages inflicted by this crimes against peace and this war crimes, but also it is a matter of personal legal liability and responsibility for each head of state, minister, member of parliament and military commander that has played a role in this crimes and each military executive that has participated directly in the NATO-bombardments.
They all are directly and personal jointly liable and responsible according to criminal law, just because the acts committed are crimes against peace and war crimes.
And accordingly, jointly liable in accordance with civil law because of tort.

So the way to court for all Yugoslavian damage claims is open all over the NATO-countries.
We only have to organise it. For the sake of justice. And to demonstrate that war crimes do not pay, even if they are committed by the most powerfuls on earth.

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II. APRIL 2000 APPEAL

APRIL 2001 APPEAL

BY THE PC, ADRESSED TO ALL PEOPLE LIVING IN NATO-COUNTRIES AND DEDICATED TO THE CAUSE OF JUSTICE

What is the PC all about ?

PC stands for: Permanent Commission with regard to (Dutch) War Crimes against Yugoslavia.

The PC is an organisation of people in The Netherlands from Dutch and Yugoslavian origin, founded to initiate a number of legal proceedings.
Legal proceedings for the civilians in Yugoslavia, and by the civilians, that became a victim of NATO's aggression.

PC-Initiatives

The PC is the first organisation in NATO-countries that undertook lawsuits directed against NATO-aggression. More specific: the Dutch participation on this NATO-aggression.
In the period of the open aggression between March and half June 1999 the PC made possible 4 summary proceedings undertaken by Yugoslav citizens, living in Serbia, including in Kosovo, in Dutch courtrooms. This as an attempt to get a verdict by Dutch courts, that should prohibit a firther participation of The Netherlands on this joint NATO-aggression.

Basic assumption of the PC is that the present state of international law and domestic law systems in NATO's countries offer sufficient tools in order to undertake and complete succesfully legal action against NATO's criminal behaviour.

Reconfirming the Nuremberg-rulings in domestic courtrooms

Contesting the breaches of international law by Dutch participation on NATO's criminal aggression, the Yugoslav plaintiffs in the 4 legal proceedings not only turned against the State of The Netherlands, but also against the decision-making Dutch politicians and Dutch high-ranking military and bombing pilots of NATO-aircraft.

Since according to the principles of Nuremberg all the people involved in the preparation, decision-making and committing of war crimes, the crime of aggression and crimes against humanity are also personally liable and individually responsibles for these crimes.

Despite the dismissal of the claims till now, hopeful signs

In all these lawsuits, the claims of the Yugoslav plaintiffs to stop the Dutch participation were taken seriously by the various Dutch courts. Nevertheless the claims were dismissed. Because in the hysterical anti-Serbian climate in NATO's countries during the period of aggression, simply no judge approached by the plaintiffs let convince himself that there really were blatant violations of international law at stake. All claims were dismissed by alleged lack of evidence that NATO committed crimes against peace and war crimes.

But still in all verdicts there were positive and hopeful elements.

So it was decided to appeal in all these claims.

In appeal both the Courts of Appeal, approached by the plaintiffs, showed that they had to deal with a big problem.
Two cases are still pending and two are brought now before the Dutch Supreme Court. After the Courts of Appeal gave the defendants a narrow escape ! In one case the Court of Appeal needed even more then 30 pages in order to justify this decision, a unique situation for a summary proceeding in The Netherlands.

Our moment is coming !

We have a good expectation that the Dutch Supreme Court will bring even better results.
And that the moment is coming, sooner or later, that the State of The Netherlands and the Dutch pesonally political responsibles for the war crimes, committed by Dutch participation on the aggression, have to face their conviction in court.

So it's our legal experience here in The Netherlands that claims for repairing settlements are, on the long term, absolutely not losing !
Time is on our side.
The more the hysterical anti-Serbian mood is declining, the more the climate in The Netherlands is ripening for a turn in legal judgment.
The culprits now really have to fear this moment !

PC's should originate in alle NATO's countries

But not only in The netherlands the climate is changing, the same is happening in all NATO's countries.

If there ever was a moment to challenge the culprits of war crimes - NATO-State parties and guilty individuals alike - in legal proceedings seeking damages for suffering by individual Yugoslav citizens, then it is now !

And we, people from Yugoslavian origin and other people dedicated to truth and justice, living in NATO-countries, must do the utmost to bring history to a turning point. In order to prevent a further shameless falsification of history. That makes perpetrators out of the Serbian people. Instead of the the victims they really are.
Our duty is to fight for justice for the victims.

We must take trouble to reach our goal

Justice and repair settlements do'nt come as a matter of course.
We should struggle for that, also and specially by long-standing and tough legal fights in the courtrooms of NATO's countries !

We appeal to everyone, dedicated to the sake of justice, to follow the example of the PC in The Netherlands. And to built up an organisation in every NATO-country, especially in the United States, that will make contact with the victims of NATO's aggression in Yugoslavia and that will create the opportunity for them to file claims for damages on domestic courts in the respective NATO-countries.

Then also legal aid is a condition.

In The Netherlands there exist a lucky situation that PC-lawyers are cooperating on a solidarity base. Nevertheless the Dutch PC is desperately in the need of funds !

Legal proceedings on a no cure no pay-base

Especially in the United States it should be also possible to attract sollicitors on a base of no cure no pay.
After all, by seeking damages there are millions at stake.
Then only people are needed, in order to organise that.

A new lawsuit, initiated by the Dutch PC: seeking damages for the RTS-victims and the Nis clusterbomb-victims

The PC in The Neterlands has started to create the opportunity for requirement of payments for compensation for the victims of the RTS-bombardment and for the victims of the Nis cluster-bomb-terror act.

The starting signal for this legal proceedings has been given.

But there are thousands of other war crimes left uncovered. And the victims in Yugoslavia are waiting for help.

So there is enough room for tens of PC's.

Seeking damages is the key for entrance to domestic courtrooms

The PC realizes quite well that all the money of the world cannot take away the suffering, but financial compensation possibly could bring some redress and make life more bearable for the victims.

And an important side-effect of this kind of legal action, namely seeking damages, is that it's the only way to get through to domestic courtrooms in NATO's countries and to force the judges in NATO's countries to pronounce sentences about the legitimacy of NATO's warfare against the people of Yugoslavia.

Pack in one's feelings of disappointment !

We have noticed in many contacts with sympathizers in other countries that people are disappointed in the results till now from legal action against NATO's war crimes.

But they make an error of reasoning.

In most NATO-countries there have been groups or individuals that lodged complaints on a criminal law base with domestic prosecutors. Or even with the prosecutor of the Kangaroo Court in the Hague !

But that's too easy ! Prosecutors aren't independent in whatever coutry, even not by name. So they can block effectively the way to the judge and so they simply did in all NATO-countries. Taking orders from their respective administrations.

The key is legal proceeding on a civil law base

The only way to get a direct entrance to court and to the judge in the way of legal proceedings on a civil law base.

That's a long, complicated and mostly costly route.

The only case, so far as we know, also following the long, long way of the civil law proceedings like the PC does, is the lwasuit against the Government of Canada, undertaken by Aleksic and 56 co-plaintiffs, living in Canada and Yugoslavia.

And also in this case the Yugoslav plaintiffs till now absolutely didn't turn out prospectless at all !
On the contrary, the plea of the Canadian Government that this must be considered als a "political question" and that the Canadian law was "unknown" with a legal action seeking damages for war crimes has been rejected by the Ontario Superior Court of Justice. And January 2001 the court has given the plain

tiffs a respite of 60 days in order to amend their claim with "material facts how the individual plaintiffs were affected by the actions of the Canadian ministers and officials".

Till now it is, unfortunately, unknown to the PC whether the plaintiffs did succeed in amending their claims in time. And whether they succeeded in raising enough funds to continue this important lawsuit !

It really isn't ethical to be disappointed about the outcomes of legal proceedings, as long as it even hasn't been tried systematically and at length to get an entrance to the domestic courtrooms in NATO's countries.

The only examples till now are the PC-lawsuits in The Netherlands and the Canadian lawsuit. And they turned out really threatening for NATO's culprits !

We must redouble our efforts

So it is our duty to intensify our efforts and to bring about such lawsuits seeking for damages in as much NATO-countries as possible !

When we can realize a breakthrough in one or another NATO-country, then it should have a domino effect !

And this is the moment that all culprits of NATO-aggression fear like hell !!

SO FOLLOW THE PC-EXAMPLE - MAKE CONTACT WITH THE VICTIMS IN YUGOSLAVIA AND BRING THEIR CLAIMS FOR DAMAGES INTO DOMESTIC COURTS IN THE NATO-COUNTRY YOU LIVE IN - START IT RIGHT NOW, TIME IS RIPE FOR IT !

the PC

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2. LAWSUITS, VERDICTS, COMMENTS AND EXAMPLES OF PRESS RELEASES

PROVISIONAL RESULTS WITH REGARD TO LAWSUITS FOR SEEKING DAMAGES FOR THE YUGOSLAV VICTIMS OF NATO-AGGRESION BEFORE DOMESTIC COURTS in NATO'S COUNTRIES

A. IN THE NETHERLANDS

I. MAART 2000

THE FIRST EXPERIENCES WITH LEGAL ACTION AGAINST NATO-WAR CRIMES BEFORE DOMESTIC COURTS IN THE NETHERLANDS

Paper written for the International Conference "The effects of NATO Aggresion against FR Yugoslavia"
Belgrade, 24-27 March 2000

Introduction

International humanitarian law and customary international law - the ius ad bellum and the ius in bello - are strong enough to offer tools for contesting breaches, even if the violaters are the mightiest powers in the world. Like is the case with NATO-agressors on the Fed. Republic of Yugoslavia and Serbia.

Important parts of this international law are ius cogens, that means they are directly applicable in the domestic law systems of the NATO-countries. Other parts of treaty law are incorporated in the domestic law systems by self-executing treaty-regulations or by specific national rulings.

So it is clearly possible to undertake steps on infringements of international humanitarian law caused by NATO-agressors, not only before international fora, like the International-Court of Justice of the United Nations, but also before domestic courts of NATO-countries themselves.

As jurists and as people standing for peace and justice and for the integrety of the international legal order, we are bound to make also this opportunity operational.
The International Court of Justice is only open for State parties, but the domestic courts are giving access to everybody.
So civilians can use these courts as well.

Individual responsibility and liability

According to the principles of the Charter of Nürnberg all the people involved in the preparation, decision-making and committing of war crimes, crimes against peace and crimes against humanity are also personally liable and individually resposible for these crimes (Art 6). These crimes don't become prescribed.

Thus the decision-making politicians in NATO's countries are equally well liable as the high-ranking military and the bombing-pilots of NATO's aicraft.
They all can be brought before domestic courts in NATO's countries.
So in fact there is a free choice to undertake legal action against the State party of a NATO-coutry only, or to bring certain political decision-makers, high ranking or executive military to the court, or a mix of them.

Experiences in The Netherlands in summary legal proceedings

In The Netherlands we have gained experience with legal proceedings before domestic courts regarding the threat of force and the use of force against the FRY.

Initiated by the Permanent Commission with regard to (Dutch) Warcrimes against Yugoslavia (PC), a Dutch foundation raised for this aim, till now four legal proceedings were undertaken.
All of them were processes of a specific character, namely in the form of summary proceedings.
This form was choosen of course because of the time factor.
In the Netherlands, and probably in all other countries, - in spite of the benefits of obtaining a quick decision from the court - to this kind of summary proceedings are also attached great disadvantages.

After all for this category of legal proceedings there is a limited judicial review and the legal judgement bears, according to Dutch law, a provisional character. So the verdicts are more a kind of legally inspired measures of order.
So to reach a really full scale legal judgement, it's necessary to undertake a standard procedure.

Nevertheless, as far as it's known to us, it was the first time that domestic courts in NATO-countries were confronted with the legal questions, connected with the blatant violation of international humanitarian law and the ius ad bellum by NATO-aggressors.

As plaintiffs in all legal proceedings were appearing from 10 to 100 persons from mainly Yugoslav origin, living in Serbia, The Netherlands and the USA, completed with some Dutch individuals and Dutch peace organisations, as well a as Dutch organisation of World War II resistants, named the Association of Anti-Fascist World War II Resistance Fighters, an important sponsor of the PC.
The identity of the persons and groups were changing every process. With the PC as an organiser and coordinator, bringing them together.

Except for this legal proceedings on a civil right base the

same groups of civilians and organisations did also complain on a criminal law base, lodged with the Dutch prosecutor, obvious for gross violations of humanitarian law, against the complicity of the Dutch State and his responsible politicians and military on war cime behaviour against the FRY.

In all summary proceedings the demands took roughly the form of an injunction, mostly to continue each form of contribution on force or threat of force against the FRY, as being blatant violations of the principles of the ius ad bellum and international humanitarian law.

Provisional conclusions

Several important conclusions are already outstanding.

First conclusion
The first is that neither in the summary proceedings of a civil law character, nor in the complaints of criminal law-style against the Dutch State, politicians en military on violation of international law, lodged with the Dutch prosecutor, the Dutch State and its perpetrators have been appealing on the wide-spread myth of the so-called "humanitarian intervention", seeking legitimacy for NATO's violence in these legal procedures.
So the conclusion is justified that the Dutch State party and its individual war crime-perpetrators simply don't dare to base their defence in wathever kind of legal action - civil law-like of criminal law-like - on this often pronounced "new doctrine" according to international law.
Thus implicitly recognizing that this "new doctrine" is worthless and completely untenable from a legal point of view.
Thus, as far as the State of The Netherlands and further legal proceedings with regard to the Dutch complicity in NATO,s war crimes are concerned, there is no need for a further juridical preparation to counter this seeming argument on the legitimacy of "humanitarian intervention" in courtroom anymore.
It is the PC's estimation that there's a big chance that also in other NATO-countries the state-responsibles likewise wouldn't dare to focus on this fake-doctrine, challenged before their domestic courts in processes with regard to their aggression and his consequences.

Second conclusion
There is also a second important conclusion, that already could be drawn from the experiences with court room-practises in The Netherlands with regard to Dutch complicity to NATO's aggression on the FRY.
That's that the central thesis, applied by the plaintiffs in all these processes, namely that it's a principle of customary international law that all NATO-participants, sharing in the agression and in the war crimes committed against the FRY, are totally responsible for the whole of crimes and the subsequen

ces of each contribution to these actions, neither is overthrown in court room-practices, nor even challenged by the lawyers of the defendants in these proceedings.
So this principle that the State of The Netherlands, according to customary international law, is fully responsible en liable for the whole of NATO's war crimes and its subsequences is substantially established and confirmed in these Dutch courtroom-practices.

This means that there is neither any need to find out what has been each part on NATO's crimes for each individual NATO-country, nor it's necessary to proof each one's specific contribution to these crimes.
It's re-established by this Dutch court-practice that The Netherlands, from a legal point of view is for instance just as responsible and liable for the beastly bombardment on the RTS as the Americans, who did it in fact.
This means an enormous mitigation of evidence problems, because it's unnecessary to proof that what's got contributed to a NATO-country is really directly carried out by this country.

This makes it possible, for instance, to start legal proceedings in The Netherlands for paying damages to the victims of the cowardly terror-bombardment on the RTS, as the PC is intended to do.

<u>Third conclusion</u>
There is also a third important conclusion that could be drawn.
With the exception of the first summary proceedings - when the judge did record in his verdict that "there was no need to summon also the leading members of the Dutch administration, the high ranking military and a number of members of the Dutch parliament on a personal title, next to State of the Netherlands, also summoned and by his very nature responsible for all" - in all other verdicts with regard to the all other summary proceeding wich were undertaken, the Nürnberg Principle that all people involved with the decision-making, preparation and execution of war crimes and crimes against peace and humanity are also personal liable and individual responsible for these crimes, was never again disputed or rejected in these judicial pronouncements.
So the opportunity to direct legal action, even in civil law-proceedings, against NATO-politicians and military <u>personally</u> is confirmed by these court-experiences.
So its possible, for instance, to adress president Clinton personally in court for the damages in the FRY by NATO's crimes.
Like the PC intend to do with regard to minister-president Kok and other members of Dutch government, dutch members of parliament and dutch military.
That will fix all those NATO-persons concerned that nobody can hide for his personal reponsability and liability for war

crimes.

The course of the proceedings

All defense of the Dutch State party and its individual persons concerned and also summoned, has been concentrated roughly on two mainstreams:

1) A juridical plea that the Charter of the United nations, more specificly art. 2 par. 4 of the Carter, that forbids aggression, can't be considered by the domestic judge. Because it's not a self-executing article. So the domestic court can't judge about matters of agression.

And this means that eventual crimes against peace are withdrawn from the judgement of the national courts.

Seeking for a legal base for NATO's aggression all governments of NATO's countries have been taken exactly the same position towards their parliaments, and also in reaction of their state-prosecutors towards complaints in NATO's countries by individuals and organisations that their governments were blatantly committing a crime against peace.
Members of parliament and plaintiffs got heard the same story all over the different NATO-countries: "the violation of Security Council Resolution 1199 creates enough legal base to justify NATO's attacks on the FRY".
So the defence is always sought within the existing framework of international law.
This mantra was constantly repeated, without adding or omitting just one word in this phrasing. Without taking notice of whatever argument against it. NATO's political leaders evidently had simply decided, in a short-circuit procedure, under no circumstances to discuss this position.

2) A more factual plea. Holding that there is neither proof that NATO intended to commit war crimes, nor that NATO in fact was committing war crimes.

This two mainstream-pleas got credit of the Dutch domestic judges in their provisional judgements.
Though not unconditionally as far as it concerns the first plea.
In the second summary proceedings another judge of the same court pronounced that "its not unthinkable that nevertheless under certain conditions Art. 2 par. 4 of the Charter of the United Nations could be self-executing". And so it belongs to the discretion of the judge to give his opinion about an appeal on breaching this article.
His conclusion will be discussed here below.

Arguments to found the judgments in the summary proceedings

that the plaintiffs had been failed to proof that NATO was committing war crimes were also not given.
This even though then, in the course of NATO's aggression, plaintiffs did produce already quite a lot of evidence of war crime behaviour of NATO !

The Dutch courts and its presidents, approached by the plaintiffs during the awfull period of NATO's overt aggression, apparently did stick fiercefully to the governments position in this period of pathologic war-paranoia, created in the agressor-countries.
Maybe the longer it takes and the greater the distance in time, they will gain some critical sense.
In the light of the from a humanitarian point of view catastrofical developments in Kosovo and the now overwhelming evidence of the war crime behaviour during the period of NATO's aggression, the way could be get opened for another judicial approach.

Further developments

In all summary proceedings is appealed to the higher court. After the the exchange of comprehensive written summons on both sides, the prossesses are frozen by the PC. Till all evidence of NATO-war crimes, gathered by Yugoslav institutions, will be available to be brougt into this proceedings.
Then the processes wil be continued with the counsel's speeches.

Meanwhile the PC is preparing new legal proceedings, this time standard procedures, for damages by the victims of the barbarian NATO-aggression in the FRY.
Once again not only directed against the State of The Netherlands, but also directly holding responsible the Dutch prime minister Wik Kok and his collegues, MP's and representatives of the dutch military.
For this purpose the best testcase would be the bombardment of the RTS. In all other cases of attacks on civilian targets, the defendants certainly will come with the argument it was 'collateral damage', so the plaintiffs then have to prove it was not.
This complication doesn't exist with regard to the filthy attack on the RTS. All NATO-representatives said the RTS was clearly the aim and prime minister Kok, as did Blair and Clinton, openly said he stood behind this action. Wich is clearly for all a prima facie war crime.
So the PC hopes to get permission of RTS-victims and their families to persecute Dutch war criminals and to claim the payment of damages for them.
We hope we cam com in touch with them.
All costs of the legal proceedings are for the PC.

The outcome of the four summary proceedings sketched briefly

The first process: Stanojevic c.s vs. The State of The Netherlands c.s.

Undertaken before the war was started.
Claim by 134 plaintiffs (Yugoslav and Dutch) to refrain from the use of force against the FRY directed towards the State of The Netherlands, prime-minister Kok, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, the two highest ranking militaries, admiral Kroon and general Droste, and three F-16 pilots, ready for flying bombardment-missions agaist the FRY.

Verdict by the President of the court in the Hague in summary proceedings d.d. March 18, 1999

Dismissed.
The plaintiffs cannot call upon Article 2, par. 4 Charter of the United Nations, because this Article is not self-executing.

There is no indication that the right on life of the Yugoslav plaintiffs is threatened. No breach on Art. 90 of the Dutch Constitution, stipulating the duty of the State to promote the international legal order. No breach of Article 28 Universal Declaration, saying the same. No violation of Art. 8 of the Dutch Law on criminal codes of war, putting penalties on violating "the laws and customs of war".

Appeal is pending and frozen.

Second process: Danokovic c.s. vs. The State of The Netherlands

Claim immediately after the starting of the war, introduced by 8 Yugoslav conscripts, that the State of The Netherlands should end at once their contribution to NATO-force. Based inter alia upon the right on life. A right, protected absolutely by law, expressed by Art. 2 of the European Treaty on the Protection of Human Rights. The only exception is: a case of dead by lawful acts of war, as is indicated in Art. 15, par. 2. This war isn't lawful at all, so the threatening of the right of live of these Yugoslav soldiers is a breach of the Treaty

Verdict by the President of the court in the Hague in summary prooceedings d.d. April 7, 1999 (another president of the court)

Dismissed.
One cannot exclude that Art 2, par 4 of the Charter of the United nations is self-executing, like maybe in this case.
"But the fact that not the Security Council of the United

Nations has taken the decision to use force against the FRY, but the NATO-council instead can't be indicated for certain as an unlawful practice, even if that brings the lifes of plaintiffs at risk."
One cannot judge under these circumstances if there are violations of humanitarian law (ius in bello) taking place now.
And there is also no sufficient evidence that there is disproportionaly of force, being a war crime per se.

Appeal is pending and frozen.

Third process: Tijsterman-Banicevic c.s. vs. the State of The Netherlands

Undertaken when the war was going on and the evidence of brutalizing the FRY by forbidden means of warfare and by forbidden weapons became outstanding.
Claim by 35 plaintiffs (Yugoslav and Dutch) to refrain from any further participation on NATO's force, because it was clear by now that NATO's illegal war was degenerated also in a war crime-circus.

This was a split process. The same claim was filed at the court of Amsterdam and the court of the Hague, wich was possible by splitting the defendants in two parties: the State of the Netherlands at one hand and the defendant-persons at the other hand.
This as an attempt to split the front of judges, monopolized by the court in the Hague.
This was the the Hague-section.

Verdict by the President of the Court in the Hague in summary proceedings d.d. May 28, 1999 (same president as in the first process)

Dismissed.
Repeated judgement that it's impossible for the judge to sentence about the legitimacy of a war, because Art. 2, par 4 of the Charter of the United Nations lacks self-executing power.
Not only that Article is not self-executing, but "The same is the case on the right of life" (?!)
It's impossible now to determine if there is a matter of attacking civil targets, in breach of Art. 52 Additional Protocol I. Moreover, this Article too isn't self-executing, to the provisional opinion of the president.

Appeal is pending and frozen.

Fourth process; Dedovic c.s. vs. Kok, prime minister, de Grave, minister of defense and Van aartsen, minister of foreign affairs.

This was the Amsterdam-section of the process.
Claim by 29 plaintiffs (Yugoslavs only) before the court in Amsterdam.
Same claim and same arguments as in the former legal proceedings.

Verdict by the President of the court in Amsterdan in summary proceedings d.d. juni 3, 1999

Dismissed.
The judge in Amsterdam delayed his verdict in order to acquire the opportunity the copy the verdict of its collegue in the Hague, even though the the Hague-process took place much more later.
He added, as a decision of its own, that there was no evidence that the defendants as "organs of the State" had committed 'abus de pouvoir' by participating in the like this waged war.

Appeal is pending and frozen.

Complaint lodged with the Dutch public prosecutor against the State of The Netherlands,prime minister Kok, minister of foreign affairs Van Aartsen, minister of defence de Grave, the chair of the Dutch Parliament Jeltje van Nieuwenhoven, admiral Kroon, general Droste, known Dutch F-16 pilots, taking part in the bombardment-agggression against the FRY

Claim: to prosecute these persons on account of committing crimes against peace, war crimes and crimes against humanity.
More than 100 persons were involved, a lot of them living in the FRY, others from Dutch nationality.

Dismissed.
Motivation: there is neither sufficiënt evidence that NATO is committing war crimes with its bombardments on the FRY, nor is there sufficiënt proof of using disproportional force.

As far as the indictment of crime against peace is concerned, the prosecutor stated that it must be considered as beyond its competence to deal with that. This question must be judged by international fora, like the International Court of Justice in the Hague. He stated further on this specific point: there isn't such a thing as 'crimes against peace' as generally accepted law. The appeal of the complainers on the Nürnberg and Tokio-norms as prevailing standards of international law fails. The establishing of crimes of aggression there was bound on the specific circumstances of German and Japanese aggression in World War II and cannot be generalized.

This last defense clearly not his own idea. The same arguments

are putted forwards by the bunch of American legal advisers, surrounding the prosecutor of the so called ICTY, in a reaction on charges for crimes against peace by Canadian international law experts. So this is unmistakably inspired by NATO's juridical advisers.

Nevertheless it can easily be proved that this is a misconception.
In the report dd. 3 May 1993, S/25704 of the Secretary-Genral pursuant to paragraph 2 of Security Council Resolution 808 (1993) with regard to the establishment of the ICTY, is stated under 35:

> "The part of conventional international humanitarian law wich has beyond doubt become part of international customary law is the law applicable in armed conflict as embodied in: the Geneva Conventions of 12 August 1949 for the Protection of War victims; 3/ the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of 18 October 1907; 4/ the Convention on the Prevention and Punishment of the Crime of genocide of 9 december 1948; 5/ and the Charter of the International Military Tribunal of 8 August 1945."

So it is re-established by that report of the Secretary-General that the complete Charter of Nürnberg is part of international customary law.

The Charter of the International Military Tribunal of 8 Augustus 1945 defines crimes against peace in general terms.
Under 42 the report of the Secretary General goes on like this:

> "The Nürnberg Tribunal recognized that many of the provisions contained in the Hague Regulations, although innovative at the time of their adoption were, by 1939, recognized by all civilized nations and were regarded as being declaratory of the laws and customs of war. The Nürnberg Tribunal also recognized that war crimes defined in article 6(b) of the Nürnberg Charter were already recognized as war crimes under international law, and covered in the Hague Regulations, <u>for which guilty individuals were punishable.</u> (emphasis added)

So it is beyond any doubt that 1) also crimes against peace - "the most serious sort of war crimes", as is stated during the Nürnberg-sessions - are part of the international customary law, 2) individuals, guilty for such crimes, according to the definition in Art. 6 of the Nürnberg Charter, are punisha

ble as a person, 3) they are punishable for that all over the world, not only by the ICTY, wich isn't holding any monopoly (see the ICTY-Charter), but also before domestic courts.
So if the ICTY,as an instrument of American power, doesn't do it, the more reason there is for domestic courts to do deal with that.

The framework for a new indictment is made now.
As soon as the full scope of evidence, gathered by Yugoslav and Serbian authorities is available for the PC also a new complaint will be lodged with the Dutch proescutor against Dutch war criminals in politics en the military. And later on, if necessary, brougt before the High Court.

Zeist, 20 March 2000

mr. N.M.P. Steijnen

PC-lawyer

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II. JUNE 10 2000

PRESS RELEASE IN 'HET PAROOL' (Dutch daily newspaper)

"THE SCOURGE OF WARFARE IS THE SAME FOR EVERYBODY: INHABITANTS OF ROTTERDAM AND YUGOSLAVS

(From a correspondent)

In future The Netherlands should keep aloof from NATO actions against Yugoslavia. Also Prime Minister Kok, the Minister of Defence De Grave and the Minister of Foreign Affairs Van Aartsen should personally be held responsible for damage caused by bombardments on Yugoslavia. It should lead to damages still to be decided upon.
This was the issue of a summary proceeding launched by the 'Permanent Commission with regard to (Dutch) War Crimes in Yugoslavia'. Yesterday it was dealt with before the Court in Amsterdam. The 'Permanent Commission' represents 29 victims of the bombardments. Four of them live in Holland. They claim that the Government acted unlawfully. NATO wasn't authorised by the UN Security Council, and The Netherlands are said to have broken the Charter of the United Nations and the Human Rights Treaty.
According to their lawyer, N. Steijnen, all rules of warfare were broken since 'civilian targers were attacked structurally and systematically'.

In 35.000 airraids the country was hit by 10.000 cruise missiles and 15.000 bombs, the lawyer claims. 30 hospitals, 50 churches and convents, 300 schools, 66 bridges and 70 public buildings were hit. Chemical industry was destroyed, wich resulted in an environmental disaster. 'The whole country was destroyed, whereas only 14 tanks, 18 armoured vehicles and 40 pieces of artillery were destroyed'.
Steijnen referred to the shelling of Rotterdam in 1940: 'The scourge of warfare is the same for everybody: inhabitants of Rotterdam and Yugoslavs'. According to him, NATO should have warned beforehand at attacks on civilian targets. 'From chipping comes chips' won't hold water with 2.000 killed and 6.000 wounded of especially the civilian population.

According to the lawyer, the shelling NATO launched from a height of 12 kilometres in order to be out of reach of anti aircraft weaponry was 'riskless terror'. 'Bombarding from such altitudes, you can't be sure that you don't hit civilian targets'.
That is was meant to hit civilian targets, was obvious - among other things - from the missiles fired at the TV station RTS. They killed 16 civilians. 'A disaster comparable with the one in Enschede'.

Lawyer of State G, Houtzagers was of the opinion that The Netherlands waged a legitimate war. 'As early as October 1998, when it became evident that resolution 1199 was the maximum to be achieved, the allies had drawn the conclusion that wich such gross violation of human rights, they could not allow themselves to be stopped by a stalemate in the Security Council'. Moreover, the Netherlands were of opinion that resolutions 1199 was a suffucient basis for military action. In it, Yugoslavia was warned against 'new measures' if it wouldn't stop violating human rights in Kosovo and would continue to refuse re-opening negotiations.
Houtzagers dismissed personal liability of Ministers on the ground of the Charter of Nuremberg. 'In performing their duties, they act as organ of the State. If there is liability, it applies to the State of The Netherlands, wich hasn't been summoned'.
By the way, the State of Yugoslavia did set down a case for trial at the International Court of Justice.

During the Nuremberg Tribunal after the second World War, the big shots of the Third Reich were personally held responsible for the conduct of the Nazi-regime, Steijnen said. 'For persons commit war-crimes, not abstract entities'. Sentence: 6 July."

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III. JANUARY 2001

Commentary on the verdict, in appeal, of the Court in Amsterdam in the case DEDOVIC c.s. versus KOK, Prime Minister, VAN AARTSEN, Minister of Foreign Affairs, and DE GRAVE, Minister of Defense by Prof. Paul F. van der Heijden in a

SPEECH

on the occasion of the 369th Dies Natalis of the University of Amsterdam on January 8, 20001

under the title:

'It takes three to tango - about the judge and politics'

On July 6, 2000 the Court in Amsterdam, in appeal, issued a verdict in the case LURA DEDOVIC and 28 other inhabitants of Belgrade against WIM KOK, FRANK DE GRAVE and JOZIAS VAN AARTSEN, respectively Prime Minister, Minister of Defense and Minister of Foreign Affairs of The State of The Netherlands.
The court had tackled the demand of Dedovic c.s. in order to sentence Wim Kok and both other ministers to pay a compensation of f 1000,- (dutch guilders) to each of the plaintiffs as a provisional and immaterial compensation. This compensation, according to the plaintiffs, was called for because of the great tensions they had suffered as a result of the continuous threat of their lifes and that of their relatives, the threat and damage to their means of existence, conditions of existence, properties and financial interests. This damage was happened as a result of illegal war violence.
As you remember without any doubt, the North Atlantic Treaty Organisation (NATO) has made air attacks on the Federal Republic Yugoslavia from March 24 till June 10, 1999 under the code name Operaration Allied Force. Aimed bombardments took place on various goals in Serbia, including Belgrade, in Kosovo and Montenegro. Immediate cause was.. **(follows the normal lies and pretextes, stated in the Western countries in order to justify the aggression, the PC would like to spare you).**
The action of NATO was not covered by a United Nations Security Counsel Resolution. On September 23, 1998 the Security Counsel adopted a Resolution 1199, that called upon the Milosevic administration to end the actions in Kosovo, but that didn't give a mandate for military action by NATO. In a report of Amnesty International about Nato's conduct in Serbia, titled 'Violations of the Laws of War by NATO during Operation Allied Force', is stated as follows: 'NATO did not always meet its legal obligations in selecting targets and in choosing means and methods of attack. In one instance, the attack on the headquarters of Serbian state radio and television, NATO launched a direct attack on a civilian object, killing 16

civilians. Such an attack breached Art. 52 of Protocol I additional tot the Geneva Conventions of 1949 (..). Therefore this attack constitutes a war crime'.
It is hold by Dedovic c.s. that Kok, Van Artsen and De Grave are personally liable for the crime against peace, committed by the State of The Netherlands against the Republic of Yugoslavia, wich crime is constituted by participation in NATO-context on the air actions against the republic without a mandate of the Security Council. And further are these members of government, according to Dedovic, personally liable for the breaches of humanitarian law, committed by the State of the Netherlands on the territory of Yugoslavia.

An interesting case, not only by the political load, but also given by the fact that there is a legal procedure going on before the International Court of Justice in the Hague against the member states of NATO. By lack of a clear mandate of the Security Counsel the legal base NATO was acting upon at the time against the Milosevic administration in Yugoslavia was at least disputable. It may sound strange to some of the people present here, but there are rules concerning and during a war. Now what was the ruling of the Court in Amsterdam in this case ? It will not surprise you the the claim of Dedovic c.s. was dismissed. That will not amaze you if only by the fact that you can't remember that Kok has been sentenced to pay in total f 29.000,- to these 29 plaintiffs. But maybe it's also not surprising you that the claim is dismissed, because you already held the opinion that Kok and his fellow ministers simply couldn't have handled illegally. For acting against the draconic Milosevic regime simply could not be illegal. Those who are thinking like that, I must call to order: it's not that simple ! In his, in my view, carefully argued verdict the Court expounds that there certainly circumstances are conceivable, among what Kok, Van Aartsen and De Grave definitely could have been responsible. The mere fact that in the framework of the air actions humanitarian law with regard to war and peace is violated, still isn't sufficient in order to be able to blame the concerned members of governement personally. But liability is positively conceivable and depends on circumstances as the given instructions relevant to the case, the knowledge that they possess at the decisive moment and the present awareness of the action, and the measure of say about the performance from it. About these and other questions nothing was argued by Dedovic c.s. But if Kok, Van Aartsen and De Grave really could be reproached personally that as a result of their acting or failing a specific violation of humanitarian law with regard to war and peace took place, then liability comes in sight.

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IV. APRIL 2001

Further commentary on the Dedovic verdict, published in the April 2001 edition of the NCJM-Bulletin (Dutch scientific periodic on human righst issues) by prof. A. Nollkaemper and W. Ferdinandusse, from the Amsterdam Center for International Law of the University of Amsterdam, under the title

NATO Bombardments on Yugoslavia Tortuous ?

A fragment:

On the basis of the doctrine of 'command responsibility' also members of government could be kept responsible for war crimes (7). Besides there is not much distinction between the grounds for liability according to criminal law and the criterions for guilt in civil law. This paralellism has potential implications for liability on a civil law base. When an individual could be hold liable according to criminal law in accordance with the verdict of the Court in Amsterdam, he also could be kept liable on a civil law base. After all is not really conceivable that a suspect should be found guilty on the basis of a concious and effective participation on an international crime, without being personally blameable for that. Good legal arguments could be given for that paralellism of criterions for liability according to civil and according to criminal law: it should be undesirable if damage coming up from such a wrongful act would not be (at least) recoverable on this individual, for the lack of correspondence between the various legal ambiances.
Nevertheless the opposite will be quite conceivable. It is thinkable that the measure of personal guilt is sufficient in order to justify individual liability according to civil law, without meeting the often high standards for fulfilling the criminal offence conditions according to international law.
(...)
All in all we must conclude that within the framework of the Kosovo intervention there has been played a trick on international law (...).

(7) See for a critical view on the conceivable forms of individual liability according to criminal law for NATO acts for instance Eric David, 'The principle of distinction in the Kosovo war', to publish in **Yearbook of International Humanitarian Law, 2001.**

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B. IN CANADA

I. JANUARY 2001

Evidence that seeking damages for the Yugoslav victims of NATO-aggression in legal proceedings before domestic courts in NATO's countries is also not propectless at all in other NATO-countries than The Netherlands is given by the Aleksic Case in Canada by the Court in Ontario.

As from a legal point of view very important rulings of the Ontario Court the legal arguments set forward by the Canadian Crown that a) this was only a case about politics and b) Canadian tort law do not recognize a tortuous liability for damages forthcoming from war acts were both dismissed.
Against the clear wishes of the Canadian Crown as a defendant the Yugoslav plaintiffs was given by the Ontario Court a 60 days term to supplement their complaint with further facts.
This happened on january 10, 2001.
It's unknown to the PC whether the Yugoslav plaintiffs have carried out this court instructions.

SUPERIOR COURT OF JUSTICE - ONTARIO, DECISION

COURT FILE NO.: 99-CV-1 1304 DATE: 20010110

STEVAN ALEKSIC ET AL v. THE ATTORNEY GENERAL OF CANADA

BEFORE:

COUNSEL: SEDOWICK J.

Edward R. Sojonky, Q.C. and Elizabeth Richards, for the defendant (moving party) and Emilio S. Binavince, for the plaintiffs (respondents)

ENDORSEMENT

Seduwick, J.:

(1)The defendant moves to strike out the plaintiff's statement of
claim in this action with costs.

(2)The statement of claim was issued
on September 15, 1999. There are 57 plaintiffs. The ~0 plaintiffs identified as
"Part A Plaintiffs" are citizens or permanent residents/landed immigrants
resident in Canada of Yugoslav heritage, 5 of them having dual Canadian/Yugoslav
citizenship's. The 7 remaining plaintiff identified as "Part B Plaintiffs" are
Yugoslav citizens resident in Kosovo/Serbia/Federal Republic of Yugoslavia
('Yugoslavia").

(3)The statement of claim alleges that from March 24 to June 1, 1999, Canada participated in missile and aerial bombardments and the military occupation of parts of Yugoslavia by armed forces of the members of the North Atlantic Treaty Organization ('NATO') in relation to internal civil strife in Kosovo. These actions were allegedly carried out by the Ministers and officials of the Department of Foreign Affairs and International Trade and of the Department of National Defense. Their actions are alleged to be contrary to customary and Conventional international law including the United Nations Charter and the Kellogg-Briand Pact, 1928. Their "illegal acts" are common law torts and infringements of rights under the Charter of Canadian Rights and Freedoms (the "Charter').

(4)The Part A Plaintiffs seek general damages of $50,000,000 together with special damages and exemplary or punitive damages of $10,000,000 for tort under S. 3(a) of the Crown Liability and Proceedings Act "CLPA") and as a remedy under S. 24(1) of the Charter. Specific infringements of Charter rights are alleged in paragraph 15 of the statement of claim as to 5. 7 of the Charter and in paragraph 16, as to 5.15 of the Charter It is alleged that at all material times during the bombardment period these plaintiffs "sojourned in Yugoslavia or had family or relatives living there or had contractual relations with persons living or doing business there.

(5)The Part B Plaintiffs, all residents of Yugoslavia, seek general damages of $15,000,000 together with special damages and exemplary or punitive damages of $1,000,000 for ton under S. 3(a) of the CLPA.

(6) All plaintiffs seek interest in accordance with the CLPA and their costs on a solicitor/client scale. In the statement of claim, the plaintiffs also seek an injunction to restrain the Government of Canada from using public funds to participate in NATO military actions directed to aggressive war or the occupation

of any part of
Yugoslavia other than for humanitarian purposes. The claim for injunctive relief
is probably moot and, in event, was not canvassed to any degree before me. The
gist of this action is the plaintiffs' claims for damages.

(7) As to the
tort claims of all plaintiffs under S. 3(a) of the CILPA based on the alleged
"illegal acts" of Ministers and officials of the Government of Canada (see para.
[3] above), damages are claimed for the common law tons of assault and battery,
intimidation, intentional infliction of nervous shock, negligence and
interference with contractual arid business interests and relations with others.
(8) Separate Charter and tort claims are pleaded for:

(a) unlawful expenditure of public funds for other than lawful or constitutionally
valid purposes;

(b) unlawful use by NATO armed forces of weapons with
toxic radioactive components including depleted uranium contrary to
international law;

(c) unlawful use by NATO armed forces of area weapons
including cluster bombs contrary to international law; and

(d) unlawful
destruction or damage to factories, warehouses and other storage facilities and
refineries used to store or process chemically dangerous toxic or carcinogenic
substances.

[9]The defendant moves to strike out the statement of claim
under Rule 21.01(1)(b) of the Rules of Civil Procedure on the ground that it
discloses no reasonable cause of action. The defendant also moves to have this
action dismissed under Rule 21 .01(3)(a) and (d) on grounds that the court has
no jurisdiction over, the subject matter of the action and that the action is
frivolous and vexatious or otherwise an abuse of the process of the court,

(10)The test to be applied to determine whether the statement

of claim
in this action ought to be struck out may be stated in these terms. Taking the
material facts pleaded as proven, do they disclose a reasonable cause of action,
do they disclose a reasonable cause of action, that is, one "with some chance of
success"; or is it "plain and obvious that the action cannot succeed"? Operation
Dismantle Inc. teat V. The Queen (1985] 1 S.C.R. 441 at 486-7 (per Wilson J.),
Citing Drummond-Jackyon v. British Medical Association f1970] I All E.R. 1084
and Dawson v. Government of Canada (1981) 37 N.R. 127, 138 (Fed. C.A.) per
LeDain 3. A "plain and obvious" case has been described as one where the court
is satisfied that "the case is beyond doubt'. Canada (A. C) V. mutt Tapirisar of
Canada [1980] 2 S.C.R. 735, 740 (per Estey 3.) citing RQSS ~ Scottish Union. and
National Insurance Co. (1920), 47 O.L.R. 308 (Ont.)

App Div.). Novelty or
complexity of a cause of action pleaded in a statement of claim ought not to
weigh against the plaintiff on a motion to strike a statement of claim. Nor
ought such a motion be allowed on a question of law which has not been hilly
settled in the decided cases.

[1] In applying the test, the court is
"obliged to read the statement of claim as generously as possible and to
accommodate any inadequacies in the form of the allegations which are merely the
result of drafting deficiencies". (Operation Dismantle case, op. cit, 451, per
Dickson J.] as he then was. however, what are to be taken as proven in the
statement of claim are the material facts, not conclusions of law or allegations
of possible consequences of alleged wrongful acts that are based only on
assumptions or speculations which by their very nature cannot be proven as true
by adducing evidence. (Operation Dismantle case, op. cit., 455, per Dickson J.).

[12] In the Operation Dismantle case, the Supreme Court of Canada
considered whether the appellants'' statement of claim should

be struck out as disclosing no reasonable cause of action. The appellants alleged that a decision made by the Canadian government to allow the United States to test cruise missiles in Canada violated or threatened to violate 5.7 of the Charter. Declamatory relief, an injunction and damages were sought in the statement of claim. A judge of the Federal Court, Trial Division dismissed the motion to strike. The Federal Court of Appeal reversed his decision, struck the statement of claim and dismissed the action. A flintier appeal to the Supreme Court of Canada was dismissed. In dismissing the appeal, however, the Court affirmed that decisions of the executive branch of the Canadian government are reviewable by the courts under 5. 32(1)(a) of the Charter even though they raise what may be characterized as "political questions" and are exercises of the royal prerogative.

[13] The defendant moving party submits that the statement of claim in this action does not meet the test outlined in paragraphs [10] and [Ii] above, First, the defendant says that the issues raised in this action are not justifiable in a Canadian court because they include issues of international law which are political in nature involving the exercise of the royal prerogative in the realms of foreign affairs and participation in international military actions. It is submitted that these are issues which are inherently incapable of adjudication or review by a court of law, or if not incapable, at least unsuitable for such adjudication or review. As a matter of law, this submission is, in my view, inconsistent with the Operation Dismantle case; and as a matter of discretion, I would not strike the statement of claim on this ground.

[14] Second, the defendant says that the actions of the Canadian ministers and civilian and military officials of which the plaintiffs complain were taken in the exercise of royal prerogative powers in foreign

affairs and the disposition and control of Canada's armed forces. It is submitted that the exercise of prerogative powers in these particular matters is not subject to review in a Canadian court although the exercise of some prerogative powers may be subject to judicial review under the Charter. As a matter of law, the submission that any exercise of prerogative powers is not subject to judicial review is, in my view, too sweeping and inconsistent with the Operation Dismantle case; and as a matter of discretion, I would not strike the statement of claim on this ground. See also Hogg v. Monahan: liability of the Crown (3~ Ed), 19.

[15] Third, the defendant says that this court does not have jurisdiction to determine the legality of actions of Canadian ministers and civilian and military officials according to international law. Obligations by a state under international law are only owed to and enforceable by other states, not individuals. In its application to the statement of claim in this action, this submission is, in my view, entirely too broad. In their action, the plaintiffs are not seeking a remedy against another state. "'They are not seeking to enforce an international obligation of Canada. They are asking this court to determine whether the allegedly "illegal" actions of Canadian ministers and civilian and military officials in participating in the NATO bombardments of Yugoslavia and the subsequent deployment of NATO forces in Kosovo may be characterized as wrongful acts which are actionable in damages or as violations of the Charter. At this early stage of the action, I am not persuaded that they are prohibited by law from doing so. I would not strike the statement of claim on this ground.

[16] As to the Charter, the defendant further submits that the Charter does not apply to the alleged "illegal' acts of the Canadian ministers and civilian and military officials in relation to the decisions and military action of NATO and tat there are no infringements of

Charter fights in any event. Allegations of infringements of rights under ss. 7
and is of the Charter are made in the statement of claim on behalf of the Part A
Plaintiffs only. It is not alleged that the Part B Plaintiffs have any rights
under the Charter. As to the cause of action alleged on behalf of all the
plaintiffs in tort, the defendant submits that it is speculative, remote and
related "to alleged causes of action not known in tort law on these facts", a
conclusion which is also drawn in the defendant's factum in relation to alleged
Charter infringements. In view of the decision of the Supreme Court of Canada in
the Operation Dismantle case para. [12] above) and the considerations of novelty, complexity and unsettled law in applying the "plain and obvious rest
(para. [10] above) it would, in my view be premature to strike the statement of
claim on these grounds at this stage of the action.

[17) Rule 25,06(1)
requires that "Every pleading shall contain a concise statement of the material
facts upon which the party relies for the claim or defense, ..." (emphasis
added). The statement of claim in this acti6n is only marginally compliant with
this provision. This is not a class action. Each of the plaintiffs has a
separate and distinct cause of action. As previously stated, the gist of this
action is the plaintiffs' damages claim. No material facts are pleaded as to how
the individual plaintiffs were affected by the actions of the Canadian ministers
and officials. The plaintiffs must plead the material facts relating to each
cause of action, linking the alleged damages suffered to the alleged wrongful
acts. (Rule 25.06(9)). This is not a deficiency which, in my view, may be cured
by particulars. This pleading is now 15 months old and I would anticipate that
the alleged losses suffered by the plaintiffs as a result of the alleged
wrongful acts are now identifiable. There are other deficiencies in the
statement of claim which I need not particularize. The statement bf1clairri
requires amendment before this action proceeds further. The plaintiffs are given

leave to amend their statement of claim 'within 60 days.

[18] The motion
by the defendant to strike the plaintiffs' claim and dismiss their action is
dismissed with cost. If the parties are unable to agree as to costs the court is
prepared to fix them on a party/party scale upon receiving the written
submissions of counsel within 30 days.

January 10, 2001

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3. MANIFESTO'S

I. OCTOBER 2000 MANIFESTO

COMING LEGAL ACTION OF THE PC

in order to undertake legal proceedings and to claim damages for the victims and their surviving relatives of the bombardment of the RTS-studio's in Belgrade.

In this lawsuit before the domestic court in The Hague not only the State of The Netherlands will be summoned, but also Prime Minister Kok, Minister of Defense de Grave and Minister of Foreigh Affairs Van Aartsen of The Netherlands , the leaders of the most political parties in the Dutch Parliament, the highest Dutch commanding officers and the Dutch military executives directly involved wih the criminal actions against the FRY, they all directly as a person.

The victims of this war crime in Belgrade against the RTS-studio's will be invited to submit their claims.

MOTIVATION FOR THIS CHOICE

The intentional character of this beastly and cowardly act of

aggression is an established fact.
Nobody could argue that is was a mistake or a "bad shot", or only "collateral damage".
Moreover, this blatant act of terrorism is openly cheered by the Dutch Prime Minister Kok and the Minister of Foreigh Affairs Van Aartsen.
This strenghens their personal joint liability.
Therefore it is from a legal point of view the strongest case conceivable.

Furthermore it is exactly this case that offers side advantages.

First it is just this NATO killing party that is most controversial, even under the supporters of this NATO-aggression.
By no way it is tenable that the RTS-studio's were a military target in the sense of international law.

Besides this attack is not enjoyed by the international press.
Maybe reason for them to cover this specific process more then any other similar process.

But also important is the opportunity that this specific lawsuit will present in order to expose the anti-Serbian lies.
The **official** argument for demolishing the RTS-buildings always has been that the Serbian Television wich hunted the Albanians and called up for ethnic cleansing in Kosovo.

But we can easely proof that this was absolutely out of the question. Because members of the PC-board have recorded all RTS-broadcastings during the whole period of NATO-aggression as far as possible. And there is not a crap of evidence of rousing any anti-Albanian popular feelings by RTS-broadcastings.
On the contrary, all the time during this NATO-agression RTS continued broadcastings also in Albanian language.

Because Prime Minister Kok and Minister of Foreigh Affairs Van Aartsen always did try to justify this NATO-act of terrorism against the RTS-studio's with an appeal on this so called evoking for ethnic cleansing by RTS, this evidence we have got give us the opportunity to summon this two war criminals to appear also personal in court in a kind of pre-proceedings to testify about their - untenable - claims about witch hunting by RTS for ethnic cleansing in Kosovo.
This also would give good publicity to this case.

The PC

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II. FIRST MARCH 27 2001 MANIFESTO

RTS-MANIFESTO FOR THE DUTCH MP'S WITH REGARD TO THE SECOND ANNIVERSARY OF NATO-WAR AGAINST THE FRY

PC-action in front of the Dutch House of Parliament in The Hague on March 27, 2001 at 10.00 a.m.

The accompanying manifesto is distributed today, March 27, 2001 in front of the House of parliament among the public, MP's and press.
The first two MP's appearing on the scene got a provisional writ of summons. The RTS-victims and their relatives are about to sue them before the Dutch court of justice.

MANIFESTO

October 1998 already you did give your approval on Dutch participation on NATO-aggression against the Federal Republic of Yugoslavia.
Only the MP's of the Socialist Party (SP) abstained from such an agreement, but you are not a SP-MP.

Your reasons for your instigation of this aggression

It is unknown what exactly were your motives for your choice to put in motion Dutch participation on a full scale agression against a nation and a people that didn't do any harm to you and the people you represent.

Maybe you were convinced that it was in the interests of the West to break open this part of the former Yugoslavia for western influence, the last part that was reluctant to serve those western interests. And that this disclosure was justifiable even when this could only be done with the utmost violence, at the cost of thousands of innocents.

Maybe it was pure arrogance of power. The FRY didn't obey your orders, orders of the mightiest countries on earth, and should be punished.

Maybe it was purely murderousness and bloodthirstiness. After all, behind every human being there is a beast and your specific position as an MP gave you a unique chance to unleash it ! Of course for the better of the world, like all war violence through human history always has been proclaimed for the salvation of the world.

Maybe you decided to give your approval on this war violence of the Netherlands because you thougt it should be the right step for your political career.
Maybe it was because your administration and your political leaders expected you to suit. And better an obedient MP party representative than no more a MP party representative for the next four years !

Maybe you thought that "the people" and "the media" required this of you. And that you as an MP has to act as "the people" demands, isn't it ?

Maybe you simply thought nothing at all and, as normal, followed the others.

The wrong decision

In fact it doesn't matter what reasons you had for the choice you have made.
Because it was the wrong decision and you are aware of that.

It was a decision against the law and it makes you responsible for crimes against peace and for war crimes.
It made you responsible for thousands of deaths, wounded and disabled people for the rest of their lives in a country without any hostility to you.

You know that it was the the wrong decision, because you are aware that these victims of this aggression stare at you.
And that they keep staring at you for the rest of your life.

The Nüremberg rulings

Maybe you are not sensitive to this fact and you and consider yourself yourself a though 'real politiker'. That does not feel any compassion for your victims.

But that should be a vital miscalculation.
Even if you can easily forget the victims, they will never forget you. They know perfectly well how to find you as a perpetrator and in fact they are close upon your heels, very close.
The PC is there to give them assistance.

And the international law is there to ascertain your personel liability as an instigator for this crime against peace and for all war crimes resulting from this crime of aggression.
So are the the <u>inexorable</u> rulings of Nüremberg, customary law since the end of World War II.

Your war crimes victims are behind you

These victims are coming upon you right now.
They sue you for damages that you have inflicted upon them. Before Dutch law-courts. The legal proceedings are about to begin right now.

In this first round it is the victims of the terror-attack on the RTS Belgrade, together with the victims of the Nis market place clusterbomb attacks, that gonna tackle you.
Dutch war planes have been dropping clusterbombs themselves, as you probably know.



Selection of the Dutch MP's who have to face trial

Today, in the name of the Yugoslav plaintiffs of this first round, we will reveal the names of the Dutch MP's selected to stand in trial in this first shift.
First of all of course the most obsessive preachers of this war of aggression against Yugoslavia in Dutch parliament: Blaauw, Valk, Harrewijn, Vos, Hoekema, de Hoop Scheffer, Middelkoop.

In order to demonstrate that leaving the parliament not implies leaving behind legal responsibility for instigation of this war of aggression and for the present war crimes, also van Zuylen is selected.
She left Parliament a few months ago.

Two more Dutch MP's purely assigned by lot

In order to underline definitely that, from a legal point of view, it doesn't matter at all in relation to their legal liability if MP's took a pronounced stand or not, we are here today in front of the Dutch House of Parliament at the request of the plaintiffs, in order to select <u>two more</u> Dutch MP's, <u>assigned purely by lot</u>.
So the <u>two MP's</u> showing first their face here, at the entrance of House of Parliament, will be summoned as well in this first round.

Your turn is coming as well

If you as a member of parliament are not selected for this first shift, don't be disappointed!
Your turn to stand in trial will certainly come in the future, when other Yugoslav victims of the agression that you instigated, would bring there claims for damages in Dutch courtrooms. So have patience!

Once initiated, its clear the legal proceedings that are

undertaken gonna take maybe thens of years.
So they will pursue you, a long, long time after you political career is finished.
The PC, that is already coordinating for years four legal proceedings from Yugoslav victims of Dutch aggression going on before Dutch courts of justice, guarantees this continuity.

the PC

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III. SECOND MARCH 27 2001 MANIFESTO

27 March 2001 - The register of political defendants is made up definitively right now - official announcement to all Dutch MP-members

MANIFESTO

On the occasion of **the second anniversary** of the beginning of NATO-aggression against Yugoslavia, at Tuesday March 27 the starting signal was given, by means of a PC-action, for the lawsuit undertaken by Belgrade RTS-victims of NATO bombardment and Nis victims of clusterbomb market place attack versus political and military responsibles in The Netherlands regarding this NATO terror acts.
Preparations for this legal proceedings are finished now.

The Yugoslav victims and their relatives will file claims for damages against the State of The Netherlands and against selected and specified Dutch politicians and military as a private person.

The list of political defendants is completed during the PC-action in front of the Dutch House of Parliament in The Hague. Two more MP's were assigned purely by lot: mrs. Dankers(CDA) and mrs. Halsema (Green Left).
They were the first MP's appearing on the scene, when the PC-picked line lined up there on the 27th of March 2001 with the slogan: **"Belgrade RTS-victims of NATO bombardment sue Dutch MP war crimes responsibles"**.

They join the already assigned most obsessive preachers of NATO-aggression against Yugoslavia in the Dutch Parliament and, of course, the most directly responsible Dutch Ministers: Kok (Prime Minister), van Aartsen (Foreign Affairs) and de Grave (Defense).

This procedure will be followed because it's necessary to re-confirm the Nüremberg principles, that "war crimes are committed by men, not by abstract entities" and there exist a

personal liability for all instigators of crimes against peace and all war crimes resulting from the crime of aggression. Regardless they took more or less a pronounced stand.
So are the inexorable rulings of Nüremberg, customary law since the end of World War II.

Final List of selected Dutch politicians

So the final register of defendants of Dutch political signature, who must stand in trial in the coming decade in Dutch courtrooms, has made up now in the name of the victims as follows:

KOK, VAN AARTSEN, DE GRAVE, BLAAUW, VALK, HARREWIJN, VOS, HOEKEMA, DE HOOP SCHEFFER, MIDDELKOOP, VAN ZUYLEN, DANKERS, HALSEMA.

Next step now in the preparations of the legal proceedings is to lay down the register of Dutch military, who should have to face trial equally.
Wait and see the further PC-steps on behalf of the victims.

The PC

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IV. MARCH 2001 FUND RAISING MANIFESTO

SUPPORT THE RTS-LAWSUIT

Relatives of victims RTS-bombardments approach Dutch judge for damages and smart money.

During the night from April 22 to April 23, a few seconds after 2.15 h. local time, during broadcasting, the studio of the Serbian Broadcasting Corporation (RTS) was instantly transformed into an inferno.
A maverick missile launched by Nato, forced its way in through the entrance of the main building and crushed the interior.
Every floor of the building collapsed, only the walls remained intact.
All over the world - within reach of the broadcasting station - it was to be seen how the picture of the announcer vanished in a fatal moment in the middle of a sentence.

Those who were in the main building and werent't immediately killed in the inferno, were buried under the rubble.

In the entire RTS building, about 150 persons were at work during that night.

The victims.

Near the RTS building there are now 2 simple monuments. One for the victims that have been found, and a small separate memorial for 2 workers no trace has been found of. The persons killed were:
Ksenia Bankovic, videomixer, Jelica Munitlak, makeup artist, Milovan Jankovic, technician, Dragan Tasic, technician, Tomaslav Mitrovic, program director, Ivan Stukalo, executive realisation, Slavisa Stevanovic, executive realisation, Aleksandar Deletic, cameraman, Darko Stoimenovski, technician in international exchange, Nebojsa Stojanovic, technician, Slobodan Jontic, studio staff, Dejan Markovic, security worker, Milan Joksimovic, security worker, Branislav Jonanovic, technician.
No remains were found of: Sinisa Medic, program worker, and Dragorad Dragojevic, security worker.
19 RTS workers were wounded, a number of which will be disabled for life.

The perpetrators and their motives.

Nato alleged to have committed this outrage in order to put an end to the hatred campaign the RTS should wage against the Albanian part of the population in Yugoslavia.
This was undoubtedly a lie, as will be proved in the next lawsuit.
All broadcastings of the RTS during Nato agression have been recorded on tape from day to day and from hour to hour.
Up to the last day there were broadcastings in the Albanian language and a hatred campaign against the Albanian population was altogether out of the question.
The RTS strongly objected against Albanian terrorism under supervision of the UCK - it is true - but that's quite a different story.

The Yugoslav version is, that Nato wanted to achieve supervision of the provision of information about the war.
This in order to force Yugoslavia to surrender by means of constant attacks. Without being hampered by an incessant flow of "negative" pictures of civilian victims and devastated civil targets.
As long as the RTS was broadcasting, such a complete Nato monopoly of news about the war, was impossible.
In the war of news provision, where the battle for public opinion was fought, the RTS broadcastings were an unbearable obstacle for Nato.

It does not matter which version is true, the one of Nato or the one of Yugoslavia.

The attack on the RTS studio was at any rate a gross violation of the freedom of supplying information.
In its arrogance of power Nato overstepped a fundamental line that should have been drawn.
If journalists are pronounced war targets because of news unwelcome to one of the struggling parties, freedom of information is also lost. And with it, freedom of expression of opinion.

War crime

That's why it is certain that this terrorist attack was a war crime.
It is also certain that Nato in its inhuman cynicism, did not give a sufficient warning beforehand. As required by humanitarian law regarding war and peace .
According to Article 57 of Protocol I additional to the Geneva Conventions, it is required that at attacks, every effort should be made to prevent civilian casualties.
Part of it is, that there should be an effective warning beforehand, if civilian casualties are to be expected at an attack.
Because of all this, the terror attack of Nato can be described as a double war crime.

A Calling to Account.

War crimes don't pay and are not allowed to pay.
The perpetrators should be brought to justice sooner or later.
This is also true for the perpetrators of this war crime.
According to international law, leading politicians of Nato countries are the first to be held responsible.
Together with military leaders and the military men involved in actual execution.

The RTS lawsuit.

The relatives of the RTS victims now apply to the Dutch judge.
And demand damages and smart money in a lawsuit against the Dutch Crown and the Dutch political leaders. For that's another principle of the right of warfare: those who commit war crimes collectively within the framework of an integrated military command, can be held responsible seperately en personally.
Moreover, Kok, van Aartsen, and de Grave were fervent supporters of the Nato terror attack.
As a result, their complicity is once more given proof of.

The PC.

The Permanent Commission on (Dutch) war crimes in Yugoslavia (PC)
Marskant 71
7551 BT Hengelo
The Netherlands
tel/fax: 0031 74 24 32 887

e-mail: hans.hupkes@planet.nl

Experience gained by lawsuits in Holland.

Co-ordinated by the Permanent Commission on (Dutch) War Crimes in Yugoslavia (PC), from the very first moment of the Nato war against Yugoslavia, lawsuits are being held by civilians from Yugoslavia, victims of these attacks.
Extended to a wide range of Dutch Courts of Justice, these lawsuits have by now taken place in several Courts and even in the Supreme Court of Justice.
As a result, here in Holland, a great deal of experience in lawsuits in the sphere of humanitarian law regarding war and paece, and a unique jurisprudence has been obtained.
For several reasons, Holland is the right Nato country to call the question of guilt to justice and to bear the brunt of lawsuits for damages for this act of terror.
Expecting that this example will be followed in other Nato countries .
The PC is a concerted action at the initiative of the Society of Anti Fascist Former Resistance Fighters, the Society of Lawyers for the Peace, and the Balkan Peace Coalition.

Funds Required.

For the execution of the lawsuit for damages, a lot of money is required. Money, the relatives of the RTS workers, killed by the Nato leaders, don't have at their disposal.
That's why the PC appeals to the solidarity of everybody all over the world at news agencies, to support this RTS lawsuit financially.
It should be perfectly clear that the bombardments of the news agencies and their workers is not permissible for whatever reason.
But also, everybody who disapproves of this Nato attack on civilians, is requested to support this lawsuit financially.
To number 972992 transfer account of the "Stichting Steunfonds Juridische Hulp" in Zeist.

The PC

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PROVISIONAL RESULTS WITH REGARD TO LAWSUITS FOR SEEKING DAMAGES FOR THE YUGOSLAV VICTIMS OF NATO-AGGRESION BEFORE DOMESTIC COURTS in NATO'S COUNTRIES

IN THE NETHERLANDS

Commentary on the verdict, in appeal, of the Court in Amsterdam in the case DEDOVIC c.s. versus KOK, Prime Minister, VAN AARTSEN, Minister of Foreign Affairs, and DE GRAVE, Minister of Defense by Prof. Paul F. van der Heijden in a

SPEECH

on the occasion of the 369th Dies Natalis of the University of Amsterdam on January 8, 20001

under the title:

'It takes three to tango - about the judge and politics'

On July 6, 2000 the Court in Amsterdam, in appeal, issued a verdict in the case LURA DEDOVIC and 28 other inhabitants of Belgrade against WIM KOK, FRANK DE GRAVE and JOZIAS VAN AARTSEN, respectively Prime Minister, Minister of Defense and Minister of Foreign Affairs of The State of The Netherlands.
The court had tackled the demand of Dedovic c.s. in order to sentence Wim Kok and both other ministers to pay a compensation of f 1000,- (dutch guilders) to each of the plaintiffs as a provisional and immaterial compensation. This compensation, according to the plaintiffs, was called for because of the great tensions they had suffered as a result of the continuous threat of their lifes and that of their relatives, the threat and damage to their means of existence, conditions of existence, properties and financial interests. This damage was happened as a result of illegal war violence.
As you remember without any doubt, the North Atlantic Treaty Organisation (NATO) has made air attacks on the Federal Republic Yugoslavia from March 24 till June 10, 1999 under the code name Operaration Allied Force. Aimed bombardments took place on various goals in Serbia, including Belgrade, in Kosovo and Montenegro. Immediate cause was.. **(follows the normal lies and pretextes, stated in the Western countries in order to justify the aggression, the PC would like to spare you).**
The action of NATO was not covered by a United Nations Security Counsel Resolution. On September 23, 1998 the Security Counsel adopted a Resolution 1199, that called upon the Milosevic administration to end the actions in Kosovo, but that didn't give a mandate for military action by NATO. In a report of Amnesty International about Nato's conduct in Serbia, titled 'Violations of the Laws of War by NATO during Operation Allied Force', is stated as follows: 'NATO did not always meet its legal obligations in selecting targets and in choosing

ing means and methods of attack. In one instance, the attack on the headquarters of Serbian state radio and television, NATO launched a direct attack on a civilian object, killing 16 civilians. Such an attack breached Art. 52 of Protocol I additional tot the Geneva Conventions of 1949 (..). Therefore this attack constitutes a war crime'.
It is hold by Dedovic c.s. that Kok, Van Artsen and De Grave are personally liable for the crime against peace, committed by the State of The Netherlands against the Republic of Yugoslavia, wich crime is constituted by participation in NATO-context on the air actions against the republic without a mandate of the Security Council. And further are these members of government, according to Dedovic, personally liable for the breaches of humanitarian law, committed by the State of the Netherlands on the territory of Yugoslavia.

An interesting case, not only by the political load, but also given by the fact that there is a legal procedure going on before the International Court of Justice in the Hague against the member states of NATO. By lack of a clear mandate of the Security Counsel the legal base NATO was acting upon at the time against the Milosevic administration in Yugoslavia was at least disputable. It may sound strange to some of the people present here, but there are rules concerning and during a war.
Now what was the ruling of the Court in Amsterdam in this case ? It will not surprise you the the claim of Dedovic c.s. is dismissed. That will not amaze you if only by the fact that you can't remember that Kok is sentenced to pay in total f 29.000,- to these 29 plaintiffs. But maybe it's also not surprising you that the claim is dismissed, because you already hold the opinion that Kok and his fellow ministers simply couldn't have handled illegally. For acting against the draconic Milosevic regime simply could not be illegal. Those who are thinking like that, I must call to order: it's not that simple ! In his, in my view, carefully argued verdict the Court expounds that there certainly circumstances are conceivable, among what Kok, Van Aartsen and De Grave definitely could have been responsible. The mere fact that in the framework of the air actions humanitarian law with regard to war and peace is violated, still isn't sufficient in order to be able to blame the concerned members of governement personally. But liability is positively conceivable and depends on circumstances as the given instructions relevant to the case, the knowledge that they possess at the decisive moment and the present awareness of the action, and the measure of say about the performance from it. About these and other questions nothing was argued by Dedovic c.s. But if Kok, Van Aartsen and De Grave really could be reproached personally that as a result of their acting or failing a specific violation of humanitarian law with regard to war and peace took place, then liability comes in sight.

Further commentary on the Dedovic verdict, published in the April 2001 edition of the NCJM-Bulletin (Dutch scientific periodic on human righst issues) by prof. A. Nollkaemper and

W. Ferdinandusse, from the Amsterdam Center for International Law of the University of Amsterdam, under the title

NATO Bombardments on Yugoslavia Tortuous ?

A fragment:

On the basis of the doctrine of 'command responsibility' also members of government could be kept responsible for war crimes (7). Besides there is not much distinction between the grounds for liability according to criminal law and the criterions for guilt in civil law. This paralellism has potential implications for liability on a civil law base. When an individual could be hold liable according to criminal law in accordance with the verdict of the Court in Amsterdam, he also could be kept liable on a civil law base. After all is not really conceivable that a suspect should be found guilty on the basis of a concious and effective participation on an international crime, without being personally blameable for that. Good legal arguments could be given for that paralellism of criterions for liability according to civil and according to criminal law: it should be undesirable if damage coming up from such a wrongful act would not be (at least) recoverable on this individual, for the lack of correspondence between the various legal ambiances.
Nevertheless the opposite will be quite conceivable. It is thinkable that the measure of personal guilt is sufficient in order to justify individual liability according to civil law, without meeting the often high standards for fulfilling the criminal offece conditions according to international law.
(...)
All in all we must conclude that within the framework of the Kosovo intervention there has been played a trick on international law (...).

(7) See for a critical view on the conceivable forms of individual liability according to criminal law for NATO acts for instance Eric David, 'The principle of distinction in the Kosovo war', to publish in **Yearbook of International Humanitarian Law, 2001.**

IN CANADA

Evidence that seeking damages for the Yugoslav victims of NATO-aggression in legal proceedings before domestic courts in NATO's countries is also not propectless at all in other NATO-countries then the Netherlands is given by the Aleksic Case in Canada by the Court in Ontario.

As from a legal point of view very important rulings of the Ontario Court the legal arguments from the Canadian Crown that

a) this was only a case about politics and b) Canadian tort law do not recognize a tortuous liability for damages forthcoming from war acts were both dismissed.
Against the clear wishes of the Canadian Crown as a defendant the Yugoslav plaintiffs was given by the Ontario Court a 60 days term to supplement their complaint with further facts.
This happened on january 10, 2001.
It's unknown to the PC whether the Yugoslav plaintiffs have carried out this court instructions.

SUPERIOR COURT OF JUSTICE - ONTARIO, DECISION

COURT FILE NO.: 99-CV-1 1304 DATE: 20010110

STEVAN ALEKSIC ET AL v. THE ATTORNEY GENERAL OF CANADA

BEFORE:

COUNSEL: SEDOWICK J.

Edward R. Sojonky, Q.C. and Elizabeth Richards, for the defendant (moving party) and Emilio S. Binavince, for the plaintiffs (respondents)

ENDORSEMENT

Seduwick, J.:

(1)The defendant moves to strike out the plaintiff's statement of
claim in this action with costs.

(2)The statement of claim was issued
on September 15, 1999. There are 57 plaintiffs. The ~0 plaintiffs identified as
"Part A Plaintiffs" are citizens or permanent residents/landed immigrants
resident in Canada of Yugoslav heritage, 5 of them having dual Canadian/Yugoslav
citizenship's. The 7 remaining plaintiff identified as "Part B Plaintiffs" are
Yugoslav citizens resident in Kosovo/Serbia/Federal Republic of Yugoslavia
('Yugoslavia").

(3)The statement of claim alleges that from March 24 to
June 1, 1999, Canada participated in missile and aerial bombardments and the
military occupation of parts of Yugoslavia by armed forces of the members of the
North Atlantic Treaty Organization ('NATO') in relation to internal civil strife

in Kosovo. These actions were allegedly carried out by the Ministers and officials of the Department of Foreign Affairs and International Trade and of the Department of National Defense. Their actions are alleged to be contrary to customary and Conventional international law including the United Nations Charter and the Kellogg-Briand Pact, 1928. Their "illegal acts" are common law torts and infringements of rights under the Charter of Canadian Rights and Freedoms (the "Charter').

(4)The Part A Plaintiffs seek general damages of $50,000,000 together with special damages and exemplary or punitive damages of $10,000,000 for tort under S. 3(a) of the Crown Liability and Proceedings Act "CLPA") and as a remedy under S. 24(1) of the Charter. Specific infringements of Charter rights are alleged in paragraph 15 of the statement of claim as to 5. 7 of the Charter and in paragraph 16, as to 5.15 of the Charter It is alleged that at all material times during the bombardment period these plaintiffs "sojourned in Yugoslavia or had family or relatives living there or had contractual relations with persons living or doing business there.

(5)The Part B Plaintiffs, all residents of Yugoslavia, seek general damages of $15,000,000 together with special damages and exemplary or punitive damages of $1,000,000 for ton under S. 3(a) of the CLPA.

(6) All plaintiffs seek interest in accordance with the CLPA and their costs on a solicitor/client scale. In the statement of claim, the plaintiffs also seek an injunction to restrain the Government of Canada from using public funds to participate in NATO military actions directed to aggressive war or the occupation of any part of Yugoslavia other than for humanitarian purposes. The claim for injunctive relief is probably moot and, in event, was not canvassed to any degree before me. The gist of this action is the plaintiffs' claims for damages.

(7) As to the tort claims of all plaintiffs under S. 3(a) of the CILPA based on the alleged

"illegal acts" of Ministers and officials of the Government of Canada (see para.
[3] above), damages are claimed for the common law tons of assault and battery,
intimidation, intentional infliction of nervous shock, negligence and
interference with contractual arid business interests and relations with others.

(8) Separate Charter and tort claims are pleaded for:

(a) unlawful expenditure of public funds for other than lawful or constitutionally
valid purposes;

(b) unlawful use by NATO armed forces of weapons with
toxic radioactive components including depleted uranium contrary to
international law;

(c) unlawful use by NATO armed forces of area weapons
including cluster bombs contrary to international law; and

(d) unlawful
destruction or damage to factories, warehouses and other storage facilities and
refineries used to store or process chemically dangerous toxic or carcinogenic
substances.

[9]The defendant moves to strike out the statement of claim
under Rule 21.01(1)(b) of the Rules of Civil Procedure on the ground that it
discloses no reasonable cause of action. The defendant also moves to have this
action dismissed under Rule 21 .01(3)(a) and (d) on grounds that the court has
no jurisdiction over, the subject matter of the action and that the action is
frivolous and vexatious or otherwise an abuse of the process of the court,

(10)The test to be applied to determine whether the statement of claim
in this action ought to be struck out may be stated in these terms. Taking the
material facts pleaded as proven, do they disclose a reasonable cause of action,
do they disclose a reasonable cause of action, that is, one "with some chance of
success"; or is it "plain and obvious that the action cannot succeed"? Operation
Dismantle Inc. teat V. The Queen (1985] 1 S.C.R. 441 at 486-7 (per Wilson J.),
Citing Drummond-Jackyon v. British Medical Association f1970] I All E.R. 1084

and Dawson v. Government of Canada (1981) 37 N.R. 127, 138 (Fed. C.A.) per
LeDain 3. A "plain and obvious" case has been described as one where the court
is satisfied that "the case is beyond doubt'. Canada (A. C) V. mutt Tapirisar of
Canada [1980] 2 S.C.R. 735, 740 (per Estey 3.) citing RQSS ~ Scottish Union. and
National Insurance Co. (1920), 47 O.L.R. 308 (Ont.)

App Div.). Novelty or
complexity of a cause of action pleaded in a statement of claim ought not to
weigh against the plaintiff on a motion to strike a statement of claim. Nor
ought such a motion be allowed on a question of law which has not been hilly
settled in the decided cases.

[1] In applying the test, the court is
"obliged to read the statement of claim as generously as possible and to
accommodate any inadequacies in the form of the allegations which are merely the
result of drafting deficiencies". (Operation Dismantle case, op. cit, 451, per
Dickson J.] as he then was. however, what are to be taken as proven in the
statement of claim are the material facts, not conclusions of law or allegations
of possible consequences of alleged wrongful acts that are based only on
assumptions or speculations which by their very nature cannot be proven as true
by adducing evidence. (Operation Dismantle case, op. cit., 455, per Dickson J.).

[12] In the Operation Dismantle case, the Supreme Court of Canada
considered whether the appellants'' statement of claim should be struck out as
disclosing no reasonable cause of action. The appellants alleged that a decision
made by the Canadian government to allow the United States to test cruise
missiles in Canada violated or threatened to violate 5.7 of the Charter.
Declamatory relief, an injunction and damages were sought in the statement of
claim. A judge of the Federal Court, Trial Division dismissed the motion to
strike. The Federal Court of Appeal reversed his decision, struck the statement
of claim and dismissed the action. A flintier appeal to the Supreme Court of

Canada was dismissed. In dismissing the appeal, however, the Court affirmed that decisions of the executive branch of the Canadian government are reviewable by the courts under 5. 32(1)(a) of the Charter even though they raise what may be characterized as "political questions" and are exercises of the royal prerogative.

[13] The defendant moving party submits that the statement of claim in this action does not meet the test outlined in paragraphs [10] and [Ii] above, First, the defendant says that the issues raised in this action are not justifiable in a Canadian court because they include issues of international law which are political in nature involving the exercise of the royal prerogative in the realms of foreign affairs and participation in international military actions. It is submitted that these are issues which are inherently incapable of adjudication or review by a court of law, or if not incapable, at least unsuitable for such adjudication or review. As a matter of law, this submission is, in my view, inconsistent with the Operation Dismantle case; and as a matter of discretion, I would not strike the statement of claim on this ground.

[14] Second, the defendant says that the actions of the Canadian ministers and civilian and military officials of which the plaintiffs complain were taken in the exercise of royal prerogative powers in foreign affairs and the disposition and control of Canada's armed forces. It is submitted that the exercise of prerogative powers in these particular matters is not subject to review in a Canadian court although the exercise of some prerogative powers may be subject to judicial review under the Charter. As a matter of law, the submission that any exercise of prerogative powers is not subject to judicial review is, in my view, too sweeping and inconsistent with the Operation Dismantle case; and as a matter of discretion, I would not strike the statement of claim on this ground. See also Hogg v. Monahan: liability of the Crown (3~ Ed), 19.

[15] Third, the defendant says that this court does not have jurisdiction to determine the legality of actions of Canadian ministers and civilian and military officials according to international law. Obligations by a state under international law are only owed to and enforceable by other states, not individuals. In its application to the statement of claim in this action, this submission is, in my view, entirely too broad. In their action, the plaintiffs are not seeking a remedy against another state. "'They are not seeking to enforce an international obligation of Canada. They are asking this court to determine whether the allegedly "illegal" actions of Canadian ministers and civilian and military officials in participating in the NATO bombardments of Yugoslavia and the subsequent deployment of NATO forces in Kosovo may be characterized as wrongful acts which are actionable in damages or as violations of the Charter. At this early stage of the action, I am not persuaded that they are prohibited by law from doing so. I would not strike the statement of claim on this ground.

[16] As to the Charter, the defendant further submits that the Charter does not apply to the alleged "illegal' acts of the Canadian ministers and civilian and military officials in relation to the decisions and military action of NATO and tat there are no infringements of Charter fights in any event. Allegations of infringements of rights under ss. 7 and is of the Charter are made in the statement of claim on behalf of the Part A Plaintiffs only. It is not alleged that the Part B Plaintiffs have any rights under the Charter. As to the cause of action alleged on behalf of all the plaintiffs in tort, the defendant submits that it is speculative, remote and related "to alleged causes of action not known in tort law on these facts", a conclusion which is also drawn in the defendant's factum in relation to alleged Charter infringements. In view of the decision of the Supreme Court of Canada in the Operation Dismantle case para. [12] above) and the considerations of novelty, complexity and unsettled law in applying the "plain and obvious rest

(para. [10] above) it would, in my view be premature to strike the statement of claim on these grounds at this stage of the action.

[17) Rule 25,06(1) requires that "Every pleading shall contain a concise statement of the material facts upon which the party relies for the claim or defense, ..." (emphasis added). The statement of claim in this acti6n is only marginally compliant with this provision. This is not a class action. Each of the plaintiffs has a separate and distinct cause of action. As previously stated, the gist of this action is the plaintiffs' damages claim. No material facts are pleaded as to how the individual plaintiffs were affected by the actions of the Canadian ministers and officials. The plaintiffs must plead the material facts relating to each cause of action, linking the alleged damages suffered to the alleged wrongful acts. (Rule 25.06(9)). This is not a deficiency which, in my view, may be cured by particulars. This pleading is now 15 months old and I would anticipate that the alleged losses suffered by the plaintiffs as a result of the alleged wrongful acts are now identifiable. There are other deficiencies in the statement of claim which I need not particularize. The statement bf1clairri requires amendment before this action proceeds further. The plaintiffs are given leave to amend their statement of claim 'within 60 days.

[18] The motion by the defendant to strike the plaintiffs' claim and dismiss their action is dismissed with cost. If the parties are unable to agree as to costs the court is prepared to fix them on a party/party scale upon receiving the written submissions of counsel within 30 days.

January 10, 2001

jan 2000

DE PC EN DE HAAGSE BLUF INZAKE DANIKOVIC

Hele bibliotheken zijn inmiddels volgeschreven over de vraag hoe uitzonderlijk de omstandigheden wel niet moeten zijn, wil een oorlog tussen staten nog gevoerd mogen worden. En over de kwestie aan welke regels de strijdende partijen, als het desondanks tot een oorlog is gekomen, zich zouden hebben te houden.
Het gaat dan om begrippen als "agressie-oorlog", "militaire doelen", "verboden wapens", "verboden methoden van oorlogvoering" en "proportionaliteit van wapengeweld".
We hebben het dan, van de boekenwijsheid vertaald naar de rauwe werkelijkheid, het laatste decennium over de vanuit het Westen gevoerde oorlog tegen Irak. En die tegen Joegoslavië, een land dat nog nimmer in de historie enig westers land ook maar een haar heeft gekrenkt. We zien dan maandenlange bommenterreur, ten koste van duizenden dode en gewonde burgers, de vernietiging op grote schaal van de civiele infrastructuur, met een directe schade van naar schatting 100 miljard gulden en het gebruik van o.a. clusterbummen en van munitie met verarmd uranium.

De landen die **zo** hun voeten afvegen aan datgene wat zij **zelf** als gevestigd internationaal recht inzake oorlog en vrede zeggen te beschouwen, zijn de NAVO-"democratieën", die zichzelf als "rechtsstaten" beschouwen.
En zo werd het, met de oorlogsverwoesting van twee landen, Irak en Joegoslavië binnen één decennium als ervaringsgegeven, hoog tijd om de schending van deze rechtsregels nadrukkelijk aan de orde te stellen.

Met de arrogantie van de macht beweren de NAVO-"democratieën" dat deze rechtsregels niet zijn geschonden. In de oorlog tegen Irak noch in de oorlog tegen Joegoslavië. Met een brutale grijns naar iedereen die op de evidentie van het tegendeel wijst.
De enige instantie die hierover dan uiteindelijk, met gezag, kan oordelen, is de rechter. Die **zou** in wat zich als een een "rechtsstaat" beschouwt een onafhankelijke positie moeten kiezen. Maar daarvan komt helaas in de praktijk weinig terecht, zeker niet als grote belangen op het spel staan.
Iedereen met een beetje gevoel voor een realistische, en dus linkse werkelijkheids-analyse, is daar al lang achter.

Maar dat is geen reden om niet het juridische gevecht voor de rechter aan te gaan. Over de gruwelijke schendingen van het recht inzake oorlog en vrede, waaraan de westerse "democratieën" zich in hoog tempo schuldig maken, sinds het tegenwicht van de socialistische landen is verdwenen.
Natuurlijk laat het nu ontketende kapitalisme, dat zijn bijna volkomen alleenheerschappij zo bloedig viert, zich niet aan banden leggen door de rechter. Maar **wel** is het zo dat daartegen **alle** voorhanden zijnde aktiemiddelen dienen te worden ingezet. En dus ook de middelen van het recht.
Als het maar gebeurt zonder de valse verwachting dat recht hebben en recht halen identiek zouden zijn.

zich immers in een kontekst waarop de machthebbers geen volkomen greep hebben en waarin voor hen dus altijd een marge van onberekenbaarheid en onzekerheid blijft bestaan.

In een reeks van NAVO-landen zijn tribunalen gehouden waarin de oorlogsmisdrijven en andere schendingen van het internationale recht van de westerse "rechtsstaten" in Irak en Joegoslavië zorgvuldig zijn geinventariseerd, aan de kaak gesteld en veroordeeld. Het ging hierbij om opinie-tribunalen in de traditie van het eertijdse Bertrand Russell-Tribunaal inzake Vietnam.
Hoe degelijk onderbouwd ook in hun uitspraken en hoe onthullend en mobiliserend ook van karakter, de burgerlijke publieke opinie blijft ze zien als substituten voor echte rechtspraak. En daaraan zou dan maar weinig moreel gezag behoeven te worden toegeklend, zo luidt dan de verdere boodschap.

Nederland is het enige NAVO-land, waarin de NAVO-terreur en rechtsschendingen tegen Joegoslavië vanaf het begin van de oorlog ook voor de echte rechter worden bestreden. Ons land neemt daarmee een unieke positie in temidden van de andere NAVO-landen. Pogingen van de linkse oppositie om ook elders tot soortgelijke aktie te komen, zijn vooralsnog gestrand op de hoge kosten van rechtsprocedures en juridische complicaties met betrekking tot de eigen nationale rechtssystemen.

Om de juridische strijd te kunnen voeren, is opgericht de Permanente Commissie inzake (Nederlandse) Oorlogsmisdrijven tegen Joegoslavië, afgekort tot de PC. Een gezamenlijk initiatief van de Vereniging van Anti-Fascistische Oud-Verzetsstrijders;Bond van Anti-Fascisten (AFVN), tevens de belangrijkste sponsor, de Vereniging van Juristen voor de Vrede (VJV), de leverancier van de noodzakelijke juridische kennis en vaardigheden, en de Balkan Vredescoalitie, de politieke achterban.
Niet voor niets voert de PC het predikaat "permanent". Hiermee wordt tot uitdrukking gebracht dat het niet om een gelegenheids-verband gaat, dat spoedig weer zal overwaaien, maar om een initiatief dat zich heeft voorbereid op een juridische strijd van jaren om de NAVO-misdaden aan de kaak te blijven stellen. De bedoeling is de Nederlandse Staat tussen nu en de komende jaren geen moment rust te gunnen en te blijven belagen met processen inzake de gepleegde oorlogsmisdaden. Zoals dat ook in feite al sinds het eerste moment van de NAVO-agressie gebeurt.

Het is daarbij de uitdrukkelijke bedoeling dat de PC niet alleen de Nederlandse Staat voortdurend ter verantwoording blijft roepen voor de rechter, maar ook de verantwoordelijke Nederlandse politici en de uitvoerende Nederlandse militairen. Want daarin verschillen oorlogsmisdrijven en misdrijven tegen de menselijkheid van alle andere categorieën misdrijven: zij zijn zo ernstig dat hiervoor aparte regels gelden. Namelijk dat zij nimmer verjaren en dat degene die daarbij op enigerlei wijze waren betrokken ook persoonlijk aansprakelijk en individueel daarvoor verantwoordelijk blijven.

Die specifieke kwalificatie van oorlogsmisdrijven en misdrijven tegen de menselijkheid is een verworvenheid van de anti-fascistische strijd, in gang gezet in en na de Tweede Wereldoorlog.

En de PC zal die verworvenheid van de anti-fascistische strijd hoog houden. Juist tegenover de eigen - Nederlandse - schenners van de wetten van oorlog en vrede, hoezeer ook de burgerlijke politiek en publieke opinie een aureool van respectabiliteit, gematigdheid en onomstredenheid rondom hen blijven spinnen. Precies ook om, steeds opnieuw, helder voor het voetlicht te brengen dat niet alleen de **verliezers**, zoals de nazi's na de Tweede Wereldoorlog, object behoren te zijn van onderzoek en beoordeling van hun oorlogsmisdaden, maar ook zij die zich de respectabele **overwinnaars** wanen, maar daarbij niettemin het oorlogsrecht zwaar hebben geschonden.

Ten tijde van de oorlog zijn **vier** korte gedingen gevoerd. Joegoslavische en Nederlandse burgers, in groepen van steeds wisselende samenstelling, eisten daarin voor de rechter, steeds opnieuw, een verbod op verdere Nederlandse deelname.
Het **eerste**, nog vóór de NAVO-barbarij begon, omdat zonder toestemming van de Veiligheidsraad er sprake zou zijn van puur een agressie-oorlog. En een agressie-oorlog naar internationaal recht een misdrijf tegen vrede vormt, het zwaarste misdrijf dat denkbaar is.
Het **tweede** korte geding, op het moment dat de NAVO-barbarij een feit was. Een aantal Joegoslavische dienstplichtigen eisten toen, op bemiddeling van de PC, voor de Nederlandse rechter dat deze een eind zou bevelen aan de pogingen van Nederland om hen, in NAVO-verband, van het leven te beroven in een volstrekt onrechtmatige oorlog.
Het **derde** en **vierde**, toen steeds duidelijker werd dat de NAVO ook bij het voeren van de oorlog opnieuw, net als tegen Irak, alle verboden van internationaal recht aan zijn laars lapte en er wederom op grote schaal burgerdoelen werden gebombardeerd, veboden wapens werden ingezet en gebruik werd gemaakt van verboden methoden van oorlogvoering.

Deze korte gedingen werden niet alleen tegen de Nederlandse Staat gevoerd, maar een aantal daarvan werden ook gericht tegen Kok en collega-politici, en tevens tegen een aantal militairen **persoonlijk**. Dit om uitdrukking te geven aan het principe van Neurenberg dat de beramers, plegers en anderszins verantwoordelijken voor oorlogsmisdaden en misdaden tegen de menselijkheid hiervoor ook **persoonlijk** verantwoordelijk en **individueel** aansprakelijk zijn, en niet alleen de **Nederlandse Staat**. Ook werden, gebruik makend van de mogelijkheden van het procesrecht, verschillende rechtbanken benaderd. Niet alleen de rechtbank in Den Haag, de "thuis-basis" van de Nederlandse Staat, maar ook die van Amsterdam, een rechtbank meer op afstand van het regeringscentrum.

Temidden van alle oorlogshysterie met deze juridische eisen geconfronteerd, leverden de rechters het schouwspel van een stel verschrikte kippen, die alle kanten op fladderden om zich

voor hun verantwoordelijkheid om - ook hier - het recht te handhaven uit de voeten te maken. Alle argumenten, denkbare en ondenkbare, tot de meest doldwaze toe, werden gebezigd om de vorderingen maar te kunnen afwijzen.
Met de hete adem van de oorlog in de nek waren de vier Presidenten in vier kort gedingen het daarbij over één ding roerend eens: de oorlog was prima in orde en ook de manier waarop die gevoerd werd, daar was niks op aan te merken.
Zo blijkt opnieuw dat, in tijden van oorlog, de rangen van de gevestigde machten zich volledig sluiten. Ook de rechterlijke macht daarbij niet uitgezonderd.

Het verst bereikbare doel, Nederland uit de oorlog trekken, werd dus op geen stukken na gehaald.
Maar wel werd het centrum van de macht, keer op keer en de hele oorlog door, gedwongen om voor de rechter in het openbaar rekenschap af te leggen. Steeds opnieuw lag de legitimiteitsvraag daarmee, onontkoombaar, op tafel.
Ook dit heeft ertoe bijgedragen dat de crisissfeer rond de legitimiteit permanent aan deze oorlog is blijven kleven.

En althans **één** belangrijk juridisch resultaat werd daarbij intussen in elk geval **wél** binnengehaald: geen enkele rechter gaf te kennen dat hij **niet** oordeelsbevoegd zou zijn over de oorlog. Vele juristen in binnen- en buitenland hadden, voordat de PC met deze korte gedingen begon, er grote twijfels bij of de nationale rechters in de NAVO-landen zich op zichzelf wel in zoiets als deze oorlog bevoegd zouden achten.
Die angst van juridische experts is in elk geval ongegrond gebleken. Door het optreden van de PC is aangetoond dat zij althans op dat pad ten onrechte beren meenden te zien.

Vast staat dus voortaan dat de nationale rechters van NAVO-staat zich in een door die staat gevoerde oorlog mogen mengen.
Dat is een belangrijke les voor de toekomst.
Tesamen met het Neurenberg-beginsel van **persoonlijke verantwoordelijkheid** voor schendingen van de oorlogswetten, moet dat bij de machthebbers in de NAVO-landen het gevoel van onbehaaglijkheid versterken.

Alle reden dus om de juridische strijd, ook nu de hete oorlog is afgelopen, onverkort voort te zetten. Al gaat het nu niet langer om de oorlog zelf, maar uitsluitend nog om het principe van schadevergoeding.
En ook hier zal de PC schadeclaims niet alleen op de Nederlandse Staat richten, maar ze, gebruik makend van het Neurenberg-principe van **persoonlijke aansprakelijkheid**, als een zwaard van Damocles ook rechtstreeks boven de hoofden van Kok en consorten laten hangen.

Alle vier de rechtszaken zijn dan ook in hoger beroep gebracht.
In de eerste twee hoger beroepen, die inmiddels voor de gerechtshoven van Amsterdam en Den Haag werden behandeld, is dat element van schadevergoeding inmiddels als nieuw element ingevoerd.

Het feit dat de oorlogshysterie inmiddels wat is weggeëbt, blijkt onmiddellijk zijn weerslag gehad op rechterlijke behandeling in hoger beroep te hebben gehad.
Zowel het Hof in Amsterdam in de **zaak-Dedovic c.s.** als het Hof in Den Haag in de **zaak-Danikovic c.s.** namen urenlang de tijd om de pleidooien aan te horen, hetgeen zeer ongebruikelijk is. Geen van de beide gerechtshoven durfde nog de triomfantelijke oordelen van Presidenten in de korte gedingen tijdens de NAVO-agressie te onderschrijven, dat bij die oorlog, juridische gesproken, alles koek en ei was.

Integendeel, in hoger beroep bleken de beide gerechtshoven zwaar te worstelen met hun oordeel over de rechtsvragen inzake deze oorlog.
Het Hof in Amsterdam in de **zaak-Dedovic c.s.** bleek er nog het meeste moeite mee te hebben. In een vonnis van bijna 30 pagina's - een voor een kort geding-vonnis ongekende omvang - werkte het Hof Amsterdam naar de conclusie toe dat het over de twee belangrijkste kernpunten geen definitief oordeel kon geven: de vraag of **het beginnen** van de oorlog rechtmatig was geweest en de vraag of **tijdens** de oorlog niet allerlei wetten en regels van oorlogsrecht waren geschonden.
Het Hof Amsterdam zei hierover geen uitsluitsel te kunnen geven. Daarvoor zou een dieper gaande procedure dan een kort geding-rechtszaak nodig zijn, aldus het Hof Amsterdam.
Dat is dus heel andere koek dan de blinde onderschrijving door de kort geding-rechters in eerste aanleg !

Ook het Haagse Gerechtshof nam in de **zaak-Danikovic c.s.** uitvoerig de tijd om zich bij de pleidooien te laten voorlichten en trok daarvoor maar liefst een hele dag uit. Ook dat is ongekend voor een kort geding ! Alleen bleek het Hof Den Haag met deze zeer uitgebreide behandeling een duidelijk andere bedoeling te hebben dan het Hof Amsterdam in de **zaak-Dedovic c.s.**.
Uit het vonnis dat half november verscheen in de **zaak-Danikovic c.s.** wordt duidelijk dat het Haagse Hof vooral uitgebreid heeft willen luisteren om alle aangevoerde argumenten zo volledig mogelijk te kunnen absorberen. Maar dat dan met het uitsluitende oogmerk om ze vervolgens, stuk voor stuk, zo definitief mogelijk te kunnen afdoen. Om zo het juridische hok, dat door de uitspraak van het Hof Amsterdam in de **zaak-Dedovic c.s.** op een kier was komen te staan, weer zo grondig mogelijk dicht te kunnen timmeren.

En aldus bevestigt het Hof Den Haag zijn reputatie van trouwe viervoeter van de Nederlandse Staat en de Nederlandse regering, als het puntje echt bij paaltje komt.
Maar ook bij die hondentrouw aan de vermeende staatsbelangen durft het Hof Den Haag er niet langer **echt** vanuit te gaan dat de oorlog op een **rechtmatige** grondslag berustte. Zoals de Presidenten in de korte gedingen nog onverkort als hun oordeel hadden verkondigd. Voor de zekerheid gaat ook het Hof Den Haag er in het vonnis maar vanuit dat het op zijn minst twijfelachtig is of de NAVO - en dus ook Nederland - op zichzelf genomen wel het recht hadden om de oorlog te beginnen. Vervolgens

komt het Hof Den Haag dan met redeneringen die duidelijk moeten maken dat, zelfs al deugde de oorlog niet, werkelijk geen enkel potentieel slachtoffer tegen dat onrechtmatige oorlogsgeweld juridische bescherming zou kunnen inroepen.

Redeneringen die zo evident onjuist zijn dat alleen rechters, verblind door een openlijke intentie om de Staat zoveel mogelijk rugdekking te verschaffen bij het oorlogskwaad, daartoe kunnen komen.
In vervolg-processen en voor de Hoge Raad zijn hier zeker levensgrote gaten in te schieten !
En dat is ook precies wat de PC van plan is te doen.
De **zaak-Danikovic** zal voor de Hoge Raad worden gebracht en daarna eventueel voor de Europese Commissie voor de rechten van de Mens als vervolgtraject.

En nieuwe processen zijn, zoals al eerder gemeld, in voorbereiding.
Het gaat hier om procedures tot schadevergoeding voor de slachtoffers van de laffe aanval op de RTS-studio in Belgrado. Waartoe de PC inmiddels vanuit Joegoslavië opdracht heeft gehad.
En zo wordt ook het Hof Amsterdam, gelet op diens uitspraak in de **zaak-Dedovic c.s.**, op zijn wenken bediend: nieuwe processen, niet langer korte gedingen maar uitgebreide bodemprocedures waarin alle rechtsvragen die het Hof Amsterdam onbeantwoord stelde te moeten laten nog diepgaander aan de orde kunnen komen, zijn in aantocht.

Inmiddels heeft de Staat al zijn juridische munitie om de komende claims tot schadevergoeding af te weren bloot gegeven. Het is nuttig om **die** staalkaart van argumenten, die geenszins indrukwekkend oogt, alvast in handen te hebben.
Daarop kan dan in de komende processen worden geanticipeerd.
In vaktermen heet dat: er is al volop jurisprudentie gevormd inzake het humanitaire oorlogsrecht.
Hier in Nederland, als enige land in de wereld sinds Wereldoorlog II.
De PC gaat hier onverdroten mee door, maar financiële steun op **giro 972992** van **de Stichting Steunfonds Juridische Hulp** te **Zeist** is daarbij in toenemende mate onmisbaar !

N.M.P. Steijnen

UNIEK PROCES TEGEN KOK, VAN AARTSEN EN DE GRAVE WORDT VOORTGEZET

Op vrijdag 9 juni wordt een uniek proces voortgezet. Dan zullen de pleidooien worden gehouden in de rechtszaak tegen premier Kok, de minister van defensie de Grave en de minister van buitenlandse zaken Van Aartsen voor het Gerechtshof in Amsterdam. Het gaat hier om het hoger beroep van de rechtszaak, die 29 **Joegoslavische** burgers, hoofdzakelijk wonend in **Servië**, tegen deze **Nederlandse ministers** hebben aangespannen. Dit op basis van de normen van het Tribunaal van Neurenberg, dat iedereen die zich schuldig maakt aan medewerking aan oorlogsmisdrijven, daarvoor ook **persoonlijk** in rechte kan worden aangesproken.

Sinds de normen van Neurenberg tot stand zijn gebracht, moet geen mens meer de illusie koesteren dat hij bij oorlogsmisdrijven vrijuit kan gaan. Dat is de boodschap die deze **Joegoslavische** burgers ook voor de westerse machthebbers in petto hebben.

Het proces dat op 9 juni a.s. aan de orde zal komen, vormt een voortzetting van het kort geding dat vorig jaar in mei werd gehouden. De NAVO-oorlog tegen Joegoslavië, waar dit trio Nederlandse ministers koploper bij was, bereikte toen in grofheid een hoogtepunt. Iedere dag werden de verwoestingen die dagelijks door de NAVO-terreur in Joegoslavië werden aangericht een slag verder opgevoerd. In een poging om het moreel van de Joegoslavië met bommen-terreur, gericht tegen de burgerbevolking en tegen diens bestaansvoorzieningen, te breken.

De eis van deze mensen vanuit Joegoslavië was toen dat dit kern-trio van Nederlandse ministers **persoonlijk** onmiddellijk zou ophouden met iedere vorm van steunverlening aan de agressie-oorlog tegen Joegoslavië. In het kort geding werd dus gevorderd dat de rechter zou bevelen dat zij hun medeplichtigheid aan het Nederlandse oorlogsgeweld tegen Joegoslavië onmiddellijk zouden moeten staken. Omdat voor dit NAVO-geweld elke rechtsgrond ontbrak. Zodat iedere aanval op zichzelf al agressie betekende en in strijd was met het internationale recht. Omdat bovendien dagelijks alle normen die bij het voeren van een oorlog in acht moeten worden genomen door de NAVO in toenemende mate naar de vuilnisbelt werden verwezen. Steeds meer en steeds openlijker werden burgerdoelen aangevallen en werd bij het bombarderen elke proportionaliteit uit het oog verloren.

Dit proces werd georganiseerd en mogelijk gemaakt door **de Permanente Commissie inzake(Nederlandse) Oorlogsmisdrijven in Joegoslavië (PC)**, die ook voor dit hoger beroep de voorwaarden schiep.

Toen, eind mei 1999, temidden van de pro-NAVO oorlogshysterie in de westerse wereld, kon de rechter zich niet aan het geven van een oordeel onttrekken, hoe graag hij dat misschien ook wilde. Hij **moest** toen wel op de kwestie ingaan, ook inhoudelijk.

Dat deze 29 Joegoslaven, vanuit Servië, de **Nederlandse** rechter wisten te dwingen tot een uitspraak over het optreden van drie **Nederlandse** ministers bij hun agressie tegen Joegoslavië, was een unieke zaak. Nergens anders in enig ander NAVO-land hebben tot op heden zulke processen plaatsgevonden.
Op vrijdag 9 juni a.s. zien we nu het vervolg daarvan, wederom georganiseerd door de **Permanente Commissie**.

Toen, in mei 1999, meende de rechter nog zich er vanaf te kunnen maken door onder meer in zijn vonnis te stellen:

"dat thans niet kan worden uitgemaakt of, zoals eisers stellen, burgerobjecten het doelwit vormen van de NAVO-aanvallen, dan wel dat, zoals gedaagden stellen, het telkenmale gaat om objecten die een bijdrage leveren aan de krijgsverrichtingen en derhalve militaire doelen vormen. Er bestaat geen reden om te twijfelen aan de stelling van gedaagden dat enkele civiele objecten per ongeluk zijn geraakt en dat het incidenten betreft".

Dit durfde de rechter **toen** in zijn vonnis te stellen. Ondanks al het bewijsmateriaal dat er ook toen al was. Maar nu, een jaar later, is het bewijsmateriaal dat de NAVO opzettelijk en hoofdzakelijk oorlog voerde tegen de burgerbevolking helemaal overstelpend. En nu heeft de rechter ook geen oorlogs-hysterie meer als ruggesteun voor een dergelijk oordeel.
Dus kijken hoe de vlag er nu voor staat.

NU, in hoger beroep, luidt de eis van de 29 Joegoslaven uit Servië, dat het **Nederlandse** Gerechtshof in Amsterdam zal bepalen dat Kok, Van Aartsen en de Grave zich ervoor zullen moeten inzetten dat Nederland zich afzijdig houdt als het NAVO-oorlogsvuur tegen Joegoslavië weer wordt opgestookt.
Daarbij zal het Hof ook een **nieuw** oordeel over de vraag of de bombardementen rechtmatig waren niet kunnen ontlopen.

In processen als deze, georganiseerd onder auspiciën van de PC, wordt tevens ervaring opgedaan voor de processen tot vergoeding van de schade die in Joegoslavië is aangericht.
Dergelijke processen staan inmiddels op stapel.
Binnenkort zijn hier nadere mededelingen over te verwachten.

Wij roepen belangstellenden op om met vrienden en bekenden de pleidooien in de zaak-Dedovic en 28 andere Joegoslaven uit Servië tegen de Nederlandse ministers Kok, de Grave en van Aartsen bij te wonen. <u>Tijd</u>: vrijdag 9 juni a.s. om 11.00 uur.
<u>Plaats</u>: Paleis van Justitie, Prinsengracht 434 te Amsterdam.
Na afloop van de rechtzaak, die ongeveer anderhalf uur zal duren, zal een persconferentie worden gehouden, waarin nadere mededelingen zullen worden gedaan over de komende processen tot vergoeding van de oorlogsschade.
Nogmaals: komt allen ! En maak er desnoods een leuk dagje uit van in Amsterdam !

de PC

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Sinds de normen van Neurenberg tot stand zijn gebracht, moet geen mens meer de illusie koesteren dat hij bij oorlogsmisdrijven vrijuit kan gaan. Dat is de boodschap die deze **Joegoslavische** burgers ook voor de westerse machthebbers in petto hebben.

Het proces dat op 9 juni a.s. aan de orde zal komen, vormt een voortzetting van het kort geding dat vorig jaar in mei werd gehouden. De NAVO-oorlog tegen Joegoslavië, waar dit trio Nederlandse ministers koploper bij was, bereikte toen in grofheid een hoogtepunt. Iedere dag werden de verwoestingen die dagelijks door de NAVO-terreur in Joegoslavië werden aangericht een slag verder opgevoerd. In een poging om het moreel van dé Joegoslavië met bommen-terreur, gericht tegen de burgerbevolking en tegen diens bestaansvoorzieningen, te breken.

De eis van deze mensen vanuit Joegoslavië was toen dat dit kern-trio van Nederlandse ministers **persoonlijk** onmiddellijk zou ophouden met iedere vorm van steunverlening aan de agressie-oorlog tegen Joegoslavië. In het kort geding werd dus gevorderd dat de rechter zou bevelen dat zij hun medeplichtigheid aan het Nederlandse oorlogsgeweld tegen Joegoslavië onmiddellijk zouden moeten staken. Omdat voor dit NAVO-geweld elke rechtsgrond ontbrak. Zodat iedere aanval op zichzelf al agressie betekende en in strijd was met het internationale recht. Omdat bovendien dagelijks alle normen die bij het voeren van een oorlog in acht moeten worden genomen door de NAVO in toenemende mate naar de vuilnisbelt werden verwezen. Steeds meer en steeds openlijker werden burgerdoelen aangevallen en werd bij het bombarderen elke proportionaliteit uit het oog verloren.

Dit proces werd georganiseerd en mogelijk gemaakt door **de Permanente Commissie inzake(Nederlandse) Oorlogsmisdrijven in Joegoslavië (PC)**, die ook voor dit hoger beroep de voorwaarden schiep.

Toen, eind mei 1999, temidden van de pro-NAVO oorlogshysterie in de westerse wereld, kon de rechter zich niet aan het geven van een oordeel onttrekken, hoe graag hij dat misschien ook wilde. Hij **moest** toen wel op de kwestie ingaan, ook inhoudelijk.

Dat deze 29 Joegoslaven, vanuit Servië, de **Nederlandse** rechter wisten te dwingen tot een uitspraak over het optreden van drie **Nederlandse** ministers bij hun agressie tegen Joegoslavië, was een unieke zaak. Nergens anders in enig ander NAVO-land hebben tot op heden zulke processen plaatsgevonden.
Op vrijdag 9 juni a.s. zien we nu het vervolg daarvan, wederom georganiseerd door de **Permanente Commissie.**

Toen, in mei 1999, meende de rechter nog zich er vanaf te kunnen maken door onder meer in zijn vonnis te stellen:

"dat thans niet kan worden uitgemaakt of, zoals eisers stellen, burgerobjecten het doelwit vormen van de NAVO-aanvallen, dan wel dat, zoals gedaagden stellen, het telkenmale gaat om objecten die een bijdrage leveren aan de krijgsverrichtingen en derhalve militaire doelen vormen. Er bestaat geen reden om te twijfelen aan de stelling van gedaagden dat enkele civiele objecten per ongeluk zijn geraakt en dat het incidenten betreft".

Dit durfde de rechter **toen** in zijn vonnis te stellen. Ondanks al het bewijsmateriaal dat er ook toen al was. Maar nu, een jaar later, is het bewijsmateriaal dat de NAVO opzettelijk en hoofdzakelijk oorlog voerde tegen de burgerbevolking helemaal overstelpend. En nu heeft de rechter ook geen oorlogs-hysterie meer als ruggesteun voor een dergelijk oordeel.
Dus kijken hoe de vlag er nu voor staat.

NU, in hoger beroep, luidt de eis van de 29 Joegoslaven uit Servië, dat het **Nederlandse** Gerechtshof in Amsterdam zal bepalen dat Kok, Van Aartsen en de Grave zich ervoor zullen moeten inzetten dat Nederland zich afzijdig houdt als het NAVO-oorlogsvuur tegen Joegoslavië weer wordt opgestookt.
Daarbij zal het Hof ook een **nieuw** oordeel over de vraag of de bombardementen rechtmatig waren niet kunnen ontlopen.

In processen als deze, georganiseerd onder auspiciën van de PC, wordt tevens ervaring opgedaan voor de processen tot vergoeding van de schade die in Joegoslavië is aangericht.
Dergelijke processen staan inmiddels op stapel.
Binnenkort zijn hier nadere mededelingen over te verwachten.

Wij roepen belangstellenden op om met vrienden en bekenden de pleidooien in de zaak-Dedovic en 28 andere Joegoslaven uit Servië tegen de Nederlandse ministers Kok, de Grave en van Aartsen bij te wonen. Tijd: vrijdag 9 juni a.s. om 11.00 uur.
Plaats: Paleis van Justitie, Prinsengracht 434 te Amsterdam.
Na afloop van de rechtzaak, die ongeveer anderhalf uur zal duren, zal een persconferentie worden gehouden, waarin nadere mededelingen zullen worden gedaan over de komende processen tot vergoeding van de oorlogsschade.
Nogmaals: komt allen ! En maak er desnoods een leuk dagje uit van in Amsterdam !

de PC

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Unique lawsuit against Kok, van Aartsen and De Grave is being continued.

On Friday, June 9th, a unique lawsuit is being continued.
Then the counsels' speeches will be delivered in the lawsuit against Premier Kok, the Minister of Defence de Grave and the Minister for Foreign Affairs Van Aartsen in the court of justice in Amsterdam.
It is about the appeal against the decision of the Court made by 29 Yugoslav citizens, mainly living in Serbia, against these Dutch Ministers.
This consequent on the standards of the Tribunal of Nuremberg, that anybody quilty of collaboration in war-crimes, can be prosecuted in person.
Ever since the standards of Nuremberg have been concluded, no one should have illusions that he can go scot-free when participating in war-crimes. This is the message that these Yugoslav citizens have in mind, also for the western authorities.

The lawsuit that will take place on June 9 th. next, is a continuation of the short cause dealt with in May last year.
The Nato-war against Yugoslavia, headed by these three Dutch Ministers, then reached its pinnacle if brutality.
Every day the devastations daily caused by Nato terror, were being intensified. This in an attempt to break the morale of Yugoslavia with bombing-terror against the civilian population and its means of subsistence.

Then these people from Yugoslavia demanded that these three Dutch Ministers should immediately and personally stop giving any support to this war of agression against Yugoslavia.
So in the short cause, the judge was demanded to order them to stop being complicated in the Dutch acts of war against Yugoslavia immediately.
Because there was no legal ground at all for this Nato violence. As a result, each attack meant agression and was in defiance of international law.
Because, moreover, all standards that have to be observed when waging a war, were increasingly thrown into the dustbin.
More and more openly, civilian targets were attacked and all proportion was lost sight of.

This lawsuit was organised and made possible by the Permanent Commission on (Dutch) War Crimes in Yugoslavia (PC), which also made this appeal possible.

Then, at the end of May 1999, amidst Nato war-hysteria in the western world, the judge couldn't withdraw from giving a sentence, although he may have wanted to. He was forced to enter into the matter, also concerning the contents.

It was a unique case that these 29 Yugoslavs, from Serbia, were able to force the Dutch judge into a verdict about the conduct of three Dutch Ministers at their agression against Yugoslavia. Up to now, not in any other Nato-country such lawsuits have taken place.
On Friday, June 9th, we'll see the continuation, again organised by the Permanent Commission.

Then, in May 1999, the judge still thought getting away with it by - among other things - stating in his sentence:
"... that now it isn't possible to ascertain if - as prosecutors claim - civilian objects are the targets of Nato attacks or, -as defendants claim - it always concerns objects contributing to the operations of war and - as a result of this - form military targets. There is no reason to doubt the proposition of defendants that some civilian objects have been hit by accident and that it concerns incidents".

Then the judge dared to maintain this in his sentence, in spite of all evidence that was available even then.
But now, a year later, the evidence that Nato deliberately and mainly waged war against the civilian population, is overwhelming. And now there is no war-hysteria to support the judge for a sentence like that. So let's have a look what the situation is like now.

Now, in appeal, the 29 Yugoslavs from Serbia demand the Dutch Court in Amsterdam to sentence that Kok, Van Aartsen and de Grave will have to do their utmost that the Netherlands keep aloof, if the Nato warfire against Yugoslavia is lit again.
At the same time the Court won't be able to evade a new judgement about the question if the bombardments were legitimate.

In lawsuits like these, organised under the auspices of the PC, experience is also gained for the lawsuits for compensation of the damage caused in Yugoslavia.
Such lawsuits are being prepared by now. More details are to be expected soon.

We invite those interested to attend the counsels'speeches in de Dedovic-case and 28 other Yugoslavs from Serbia against the Dutch Ministers Kok, de Grave and van Aartsen.
Time: next Friday, June 9th, at 11.00 h.
Place: Palace of Justice, Prinsengracht 434, Amsterdam.
At the end of the lawsuit, which will take about one hour and a half, a press conference will be held, when further details will be given about future lawsuits for compensation of war damage.
Again: Please come, all of you! You can always have a pleasant day in Amsterdam!

L.P.H. Stibru

The PC

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VIA RUŽA ONTVANGEN EXEMPLAAR

INTERNATIONAAL PERSBERICHT

HET NEDERLANDSE GERECHTSHOF TE AMSTERDAM: OORLOGSMISDRIJVEN NIET UITGESLOTEN - NIET UITGESLOTEN DAT DE OORLOG TEGEN JOEGOSLAVIE IN STRIJD WAS MET HET INTERNATIONALE RECHT

Eerste uitspraak in hoger beroep

Op 6 juli 2000 deed het Gerechtshof in Amsterdam uitspraak in de rechtzaak die Dedovic en 28 andere hoofdzakelijk in Servie wonende Joegoslavische burgers hadden aangespannen. Deze rechtszaak is **rechtstreeks** gericht tegen de Nederlandse premier **Kok**, de Ministers van Buitenlandse Zaken **Van Aartsen** en de Minister van Defensie **de Grave**.
Dit was de eerste uitspraak in hoger beroep van een reeks van rechtszaken, georganiseerd door De Permanente Commissie in zake (Nederlandse) Oorlogsmisdrijven in Joegoslavië (PC).
De PC is opgericht als een initiatief van de Vereniging van Anti-fascistische Oud-Verzetsstrijders, de Vereniging van Juristen voor de Vrede en de Balkan Vredescoalitie.

De processen van de PC

De PC heeft tot nu toe 4 processen voor de Nederlandse rechter georganiseerd in de vorm van korte gedingen (dat wil zeggen: een verkorte procedure, 'summary proceedings' in het Engels).
In al deze processen traden verschillende groepen van Joegoslavische personen, hoofdzakelijk wonend in Joegoslavië, op als eisers.

Het **eerste proces** werd georganiseerd in februari 1999, toen de NAVO-agressie alleen nog maar dreigde.
De eis die aan de Nederlandse rechter werd voorgelegd was toen dat Nederland niet langer de NAVO zou steunen bij deze dreigementen, die een schending betekenden van artikel 2 lid 4 van het Handvest van de Verenigde Naties.

Het **tweede kort geding** vond plaats in april 1999, toen de NAVO-agressie tegen Joegoslavië was losgebarsten. Dit keer traden een tiental Joegoslaven op als eisers, die opgeroepen waren voor het leger. Zij eisten voor de Nederlandse rechter dat Nederland, als lid van de NAVO, zou stoppen met deelname

aan de oorlog en dus zou ophouden met hen als schietschijf te misbruiken in deze onrechtmatige oorlog.

Het derde en vierde proces werden kort na elkaar gehouden begin mei 1999, toen duidelijk werd dat de NAVO-agressie steeds meer tegen burgers en burgerdoelen werd gericht en ook verder volstrekt disproportioneel was. Het derde korte geding werd gevoerd voor de rechtbank in Den Haag, het vierde korte geding voor de rechtbank in Amsterdam.

Ook in deze laatste twee korte gedingen traden weer verschillende groepen van Joegoslavische personen op als eisers.
De eis voor de rechtbank in Den Haag was gericht tegen de Nederlandse Staat als tegenpartij en voor de rechtbank in Amsterdam tegen de Nederlandse ministers Kok, Van Aartsen en de Grave persoonlijk. Dit laatste op basis van de normen van Neurenberg, die bepalen dat iedereen die betrokken is bij oorlogsmisdaden, daarvoor ook persoonlijk verantwoordelijk en individueel aansprakelijk is, ook al gaat het om regeringsfunctionarissen. In deze laatste 2 processen was de eis dat de gedaagden - de Nederlandse Staat dus en de drie ministers persoonlijk - alles in het werk zouden stellen om Nederland uit deze smerige oorlog te halen.

Gang van zaken met deze rechtszaken

In alle gevallen werd de eis afgewezen.
Maar in alle zaken werd ook hoger beroep ingesteld. Bij het Gerechtshof in Den Haag en het gerechtshof in Amsterdam.
Dat gebeurde dus toen de bombardementen al waren afgelopen.

Uiteraard moest toen in al deze processen de eis worden aangepast, omdat nu natuurlijk niet langer kon worden geëist dat de rechter de Nederlandse Staat/ c.q. de nederlandse ministers zou dwingen om een einde zou maken aan de Nederlandse deelname aan de oorlog. Die oorlog <u>was</u> immers al afgelopen.

De <u>nieuwe</u> eis in hoger beroep werd dan ook dat de de rechter de Nederlandse Staat/c.q. de verantwoordelijke ministers zou verplichten om niet opnieuw oorlog tegen Joegoslavië te beginnen, zonder dat er sprake zou zijn van een uitdrukkelijke toestemming van de Veiligheidsraad van de Verenigde Naties.
En voorts dat de rechter alsnog zou uitspreken dat de oorlog in strijd was geweest met internationale recht, en aldus de belangen van de Joegoslavische eisers had geschaad.

De PC heeft het daarbij zo georganiseerd dat de behandeling van het hoger beroep van het vierde kort geding het eerst plaatsvond.
En wel voor het Gerechtshof in Amsterdam, dat als meer 'liberaal' bekend staat dan het Gerechtshof in Den Haag.
Waar het hoger beroep in de andere drie rechtszaken zal moeten plaatsvinden.

De uitspraak van het Gerechtshof in Amsterdam

In de zaak Dedovic c.s. versus Kok, Van Aartsen en de Grave heeft het Amsterdamse Gerechtshof dus op 6 juli 2000 uitspraak gedaan.
Het Hof heeft zich er niet zomaar vanaf gemaakt. In een maar liefst 26 pagina's omvattend vonnis gaat het Gereechtshof te Amsterdam uitgebreid op de zaak in.
Zo'n omvangrijk vonnis in een kort geding is bepaald uniek.

Dat is op zich al een belangrijk gegeven en een opvallend winstpunt: de Nederlandse rechter is dus van mening dat hij het recht heeft om over de deelname van de Nederlandse Staat aan de NAVO-bombardementen te oordelen. En zelfs over de persoonlijke rol daarbij van de Nederlandse ministers.
En dat hij ze daarvoor ter verantwoording kan roepen.
De Nederlandse Staat en de ministers hadden in alle processen als hun eerste verweer gesteld dat de Nederlandse rechter zich met al deze zaken niet mocht bemoeien.
Dat waren zaken van 'de politiek'.
Dit verweer werd echter in alle gevoerde rechtszaken afgewezen, nu ook weer opnieuw door het Gerechtshof in Amsterdam.

De kwesties die aan de orde waren in de zaak Dedovic versus Kok

In deze zaak waren in hoofdzaak vier kwesties aan de orde.
De drie belangrijkste waren:

1) de vraag van de Joegoslavische eisers aan het Gerechtshof om Kok c.s. bevel te geven om alles in het werk te stellen dat Nederland niet opnieuw betrokken zal raken bij een een eventuele nieuwe NAVO-agressie tegen Joegoslavië, zonder dat daarvoor uitdrukkelijk toestemming is gegeven door de Veiligheidsraad van de Verenigde Naties.

2) de vraag of de oorlog waaraan Nederland meedeed in NAVO-verband en die gevoerd werd zonder uitdrukkelijke instemming van de Veiligheidsraad al of niet in strijd was met het internationale recht.

3) de vraag of, toen die oorlog in maart 1999 eenmaal was begonnen, daarbij al of niet oorlogsmisdrijven zijn gepleegd, zoals aanvallen op burgerdoelen en het gebruik van disproportioneel geweld.

De vierde kwestie was dan de vraag of de Nederlandse ministers al of niet ook persoonlijk aansprakelijk konden worden gesteld voor oorlogsmisdrijven.

In het omvangrijke vonnis ging het Gerechtshof te Amsterdam op al deze kwesties uitgebreid in.

Het oordeel van het Gerechtshof over een tweetal van deze kwesties

In de **vierde** kwestie kwam het Gerechtshof tot het oordeel dat de Nerderlandse ministers niet persoonlijk voor deze orlog konden worden aangesproken.
Volgens het Gerechtshof moesten de 29 Joegoslaven die dit proces hadden aangespannen niet bij de ministers persoonlijk wezen, maar bij de Nederlandse Staat.
Het Gerechtshof wees hier dus de **persoonlijke** aansprakelijkheid van de Nederlandse ministers van de hand.

In de **drie** andere kwesties lag dat anders.

In de **eerste** kwestie - de vraag dus aan het Gerechtshof om te verbieden dat Nederland ooit weer mee zou doen aan een eventuele nieuwe NAVO-agressie tegen Joegoslavië, zonder uitdrukkelijke instemming van de Veiligheidsraad - oordeelde het Gerechtshof dat daarover nu geen uitspraak kon worden gedaan. Omdat het nog niet zo ver is dat nieuwe agressie nu al echt concreet dreigt. Komt het tot een acute dreiging van nieuwe NAVO-agressie, dan moet de Staat eerst de kans hebben om daarover te besluiten. Pas dan mag de rechter oordelen, aldus het Hof.
Het Gerechtshof wijst de eis hier dus niet definitief af. Het Hof zegt hier eigenlijk: de eisers zijn op dit punt **te vroeg** met hun eis. Laat ze maar terugkomen met hun eis als het echt weer tot besluitvorming van de Nederlandse Staat komt over nieuwe agressie tegen Joegoslavië.

Het oordeel van het Gerechtshof over de kwesties 2 en 3

In de **twee** nog overblijvende kwesties - de vraag dus of het voeren van een oorlog tegen Joegoslavië zonder uitdrukkelijke toestemming van de Veiligheidsraad al of niet in strijd was met het internationale recht en de vraag of, toen de oorlog eenmaal was begonnen, daarbij al of niet oorlogsmisdaden zijn gepleegd, zoals aanvallen op burgerdoelen en het gebruik van disproportioneel oorlogsgeweld - was het oordeel van **de lagere rechters** altijd geweest, in alle vier de processen, dat er geen sprake van was dat het recht hierbij zou zijn geschonden. En dat Nederland en de NAVO natuurlijk volledig in hun recht stonden bij hun aanvallen op Joegoslavië.

Maar het Gerechtshof blijkt daar heel anders over te denken. In beide kwesties komt het Gerechtshof tot het oordeel dat het niet in staat is om een uitspraak **pro of contra** te geven.

Het Gerechtshof geeft dus aan dat het zo kan zijn dat de Joegoslavische eisers hier gelijk hebben. En dat deze oorlog in strijd was met het internationale recht, alsmede dat bij deze oorlog bovendien oorlogsmisdrijven zijn gepleegd. Het kan ook zijn dat de NAVO en Nederland gelijk hebben en dat deze oorlog wél mocht en dat er geen oorlogsmisdrijven zijn geweest.

Het Hof zegt dan verder: om uit te maken wie er hier gelijk heeft, de Joegoslavische eisers of de Nederlandse Staat en de ministers, is eigenlijk veel meer onderzoek nodig.
Maar daarvoor leent zich zo'n verkorte rechtsprocedure als een kort geding nu eenmaal niet.

Omdat het Gerechthof niet weet wie het op deze belangrijkste punten van het proces gelijk moet geven, de Joegoslavische eisers of de Nederlandse ministers, worden dan tenslotte toch alle eisen afgewezen.
Want als de rechter niet kan uitmaken wie gelijk heeft, verliest de eisende partij. Zo gaat dat nou eenmaal in juridische procedures.

Anders dan de lagere rechters nog deden, kiest deze hogere rechtbank op de twee meest cruciale punten die de inzet vormen van het proces dus niet langer de zijde van de Nederlandse Staat en de NAVO.
Het Gerechtshof zegt hier: ik weet het niet, voor het standpunt van beide partijen valt wat te zeggen. Nader onderzoek in andere, meer uitgebreide juridische procedures is nodig.

Verdere perspectieven

De Nederlandse Staat en de Nederlandse ministers zullen hier bepaald niet blij mee zijn ! Het is voor hen een grote tegenvaller. Want de steun van de rechter voor hun misdadige oorlogspolitiek is daarmee duidelijk aan het afbrokkelen.

Wat betreft de kwestie dat het Gerechtshof nieuwe, meer uitgebreide procedures nodig vindt om tot een een beoordeling van de kernvragen te komen, is belangrijk nieuws te melden.

Het Hof zal hier op zijn wenken worden bediend.
De PC zal op korte termijn beginnen met processen tot schadevergoeding voor de slachtoffers van de bombardementen op de RTS-studio in Belgrado.
Nu gesteund door deze uitspraak van het Gerechtshof te Amsterdam, dat de oorlog wellicht in strijd was met in het internationale recht en dat bij deze oorlog wellicht oorlogsmisdrijven zijn gepleegd !

Maar ook de zaak Dedovic versus Kok zal worden voortgezet bij de hoogste Nederlandse rechtbank, de Hoge Raad (de Nederlandse 'Supreme Court'). Evenals de 3 andere procedures die nu nog aan de gang zijn.

Historische plicht

In ieder NAVO-land zou de strijd gevoerd moeten worden voor nationale rechtbanken over de vraag of zomaar oorlog gevoerd mag worden tegen kleine landen als Joegoslavië.
Terwijl we internationale wetten hebben die dat uitdrukkelijk verbieden.

Na de Tweede Wereldoorlog hebben immers alle naties en volkeren zich verplicht om de 'gesel van de oorlog' uit te bannen. In het Handvest van de Verenigde naties.

De PC in Nederland bijt de spits af.
Voor het eerst sinds de processen in Neurenberg en Tokio tegen de Duitse en Japanse oorlogsmisdadigers moeten regeringsleiders zich verantwoorden voor de rechter voor mogelijke oorlogsmisdaden en misdrijven tegen de vrede.

Het is een historische opdracht van de juristen en van iedereen die de 'rule of law' in het vaandel voert om in de overige NAVO-landen ook daar de regeringsleiders voor de nationale rechtscolleges ter verantwoording te roepen.
Dit kan bij processen tot schadevergoeding voor de slachtoffers van de bombardementen in Joegoslavië.

De PC in Nederland dring erop aan om het front tegen de NAVO-leiders zo spoedig mogelijk te verbreden !

de PC

---------- OVERENI PREVOD SA HOLANDSKOG NA SRPSKI ------

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NIET BEËDIGDE EXEMPLAAR

INTERNACIONALNO SAOPŠTENJE ZA ŠTAMPU

HOLANDSKI DRUGOSTEPENI SUD U AMSTERDAMU: RATNI LOČINI NISU ISKLJUČENI - NIJE ISKLJUČENO DA JE RAT PROTIV JUGOSLAVIJE BIO U SUPROTNOSTI SA MEDJUNARODNIM PRAVOM

Prva presuda u višem postupku

Na dan 6. Jula 2000. g., drugostepeni sud u Amsterdamu je izrekao presudu u pravnoj stvari koju je pokrenuo Dedović sa ostalih 28 uglavnom u Srbiji nastanjenih gradjana. Ova pravna stvar je pokrenuta **direktno** protiv holandskog premijera **Kok-a,** ministra spoljnih poslova **Van Aartsen-a** i ministra odbrane **de Grave-a**.
Bila je to prva presuda u višoj instanci u nizu pravnih postupaka, organizovanoj od strane Stalne Komisije u pravnoj stvari (holandskih) ratnih zločina u Jugoslaviji (PC = Permanente Commissie Stalna Komisija).
Stalna komisija je osnovana kao inicijativa Anti-fašističkog udruženja Starih antifašističkih boraca, Udruženja pravnika za Mir i Balkanske koalicije za mir.

Pravni procesi Stalne Komisije

Stalna Komisija je do sada pokrenula 4 pravna postupka pred holandskim sudom organizovana u obliku kratkog postupka (što znači: skraćenom procedurom, 'summary proceedings' na Engleskom).
U svim ovim pravnim procesima kao tužioci su nastupale različite grupe jugoslovenskih lica, uglavnom nastanjenih u Jugoslaviji.

Prvi **pravni postupak** organizovan je u februaru 1999.g., dok je NATO-agresija još samo pretila.
Zahtev koji je tada postavljen pred holandskim sudijom je bio da Holandija ne podržava više NATO u tim njegovim pretnjama, koje su značile kršenje člana 2 stava 4 Povelje Ujedinjenih Nacija.

Drugi kratki postupak bio je u aprilu 1999.g., kada je otpočeta NATO agresija protiv Jugoslavije. Ovaj put su kao tužioci nastupila desetak Jugoslovena koji su bili pozvani u vojsku. Oni su od holandskog sudije zahtevali da Holandija,

kao članica NATO-a prestane sa učešćem u ratu što znači da prestane da njih zloupotrebljava kao živi štit u ovom nepravednom ratu.

Treći i četvrti sudski proces su održani kratko jedan za drugim početkom maja 1999.g., kada je bilo jasno da je NATO agresija sve više bila uperena protiv gradjana i gradjanskih ciljeva. Treći kratak sudski postupak je vodjen na sudu u Hagu, četvrti kratak sudski postupak vodjen je pred sudom u Amsterdamu.

U ova dva poslednja kratka sudska postupka nastupala su takodje različita jugoslovenska lica kao podnosioci tužbi. Tužba pred sudom u Hagu je bila usmerena protiv holandske države kao protivničke strane a pred sudom u Amsterdamu protiv holandskih ministara Kok-a, Van Aartsen-a i De Grave-a **lično**. Ova zadnja tužba zasnivana je na pravilima Ninberga, koja odredjuju da je svako ko je umešan
u ratne zločine, za to **lično i individualno odgovoran**, takodje ako se radi o funkcionerima u vladi. U ova zadnja 2 sudska procesa zahtev je bio da optuženi - znači holandska država i tri ministra **lično** - sve učine da Holandiju izvuku iz ovog prljavog rata.

Procedura u ovim pravnim postupcima.

U svim slučajevima zahtev je odbijen.
Ali je u svim slučajevima takodje pokrenut postupak u višoj instanci. Kod suda u Hagu i kod suda u Amsterdamu. To se dakle dogodilo onda kada je bombardovanje već bilo prestalo.

Svakako da je onda u svim slučajevima zahtev morao da se prilagodi, pošto naravno nije moglo dalje da se zahteva od sudije da se holandska država / kao i odgovorni holandski ministri primoraju da prekinu učešće u ratu. Taj rat je u medjuvremenu prestao.

Novi zahtev na višem sudu je bio da sudija holandsku državu / odnosno holandske odgovorne ministre obaveže da nepočinju ponovo rat protiv Jugoslavije, bez izričite i naglašene dozvole Saveta Bezbednosti Ujedinjenih Nacija.
Osim toga i da sudija **dodatno** izjavi da je rat bio u suprotnosti sa medjunarodnim pravom, te da je znači oštetio interese jugoslovenskih tužilaca.

Stalna Komisija je to tako organizovala da se prvenstveno obavi pretres **četvrtog** predmeta na višem sudu.
I to na višem sudu u Amsterdamu, koji je poznat kao više "liberalan" nego sud u Hagu gde će se morati obaviti pretres druge **tri** pravne stvari u višem postupku.

Presuda drugostepenog suda u Amsterdamu

U postupku Dedović i ostali a protiv Kok-a, Van Aartsen-a i de Grave-a viši sud u Amsterdamu je doneo presudu 6. Jula 2000. g.
Ovaj drugostepeni sud se nije tek tako rešio ovog slučaja nego je čak na 26 stranica obradio predmet.
Tako obimna presuda u jednom kratkom postupku je **jedinstvena.**

To je **samo po sebi** važan podatak i značajna pobeda: holandski sudija je, dakle, mišljenja da on ima pravo da presudi povodom učešća halandske države u NATO bombardovanju i čak o **ličnoj ulozi** hoalndskih ministara u tome, kao i da ih zbog toga može proglasiti odgovornima. Holandska država i ministri su u svim procesima **kao svoju prvenstvenu odbranu** isticali da se holandski sudija ne može baviti ovim slučajevima jer su oni "političke" prirode. Ovakav stav je odbijen u svim ranije vodjenim procesima, a sada je ponovo odbijen i od višeg suda u Amsterdamu.

Pravna pitanja koja su bila predmet u slučaju Dedović protiv Kok-a.

U ovom slučaju su četiri pitanja bila predmet glavne rasprave.
Tri najvažnija su bila:

1) zahtev jugoslovenskih podnosilaca tužbe da sud Kok-u i ostalima dâ nalog da preduzmu sve da Holandija ne bude ponovo uvučena u eventualnu **novu** NATO agresiju protiv Jugoslavije, a bez izričite dozvole Saveta bezbednosti Ujedinjenih nacija.

2) pitanje da li je rat u kome je Holandija učestvovala u okviru NATO pakta a koji je vodjen bez izričite saglasnosti Saveta bezbednosti bio ili ne u suprotnosti sa medjunarodnim pravom.

3) pitanje da li su tada, u martu 1999.g., kada je rat već otpočet, počinjeni ratni zločini, kao što su napadi na civilne ciljeve i upotreba pri tome neproporcionalne sile.

Cetvrto pravno pitanje bilo je pitanje da li holandski ministri i **lično** mogu biti proglašeni odgovornim za ratne zločine.

U ogromnoj presudi viši sud u Amsterdamu se opsežno izjasnio o svim ovim pravnim pitanjima.

Presuda drugostepenog suda o dva od navedenih pravnih pitanja

U četvrtom pravnom pitanju drugostepeni sud je presudio da holandski ministri nisu lično mogli biti proglašeni krivima za ovaj rat.
Po mišljenju suda, 29 Jugoslovena nije moglo pokrenuti ovaj proces protiv ministara lično, nego je trebalo to učiniti protiv holandske države.
Sud je, dakle, odbacio **ličnu** odgovornost holandskih ministara.

Sa ostala **tri** pravna pitanja je naime stajalo drugačije.

U prvom pitanju - dakle u zahtevu sudu da Holandiji zabrani da ikad više učestvuje u eventualnoj novoj NATO-agresiji protiv Jugoslavije, bez izričite saglasnosti Saveta bezbednosti - sud je presudio da **sada** ne preti stvarno nova konkretna agresija. Nastupi li akutna pretnja od nove NATO-agresije, tada država mora najpre imati šansu da o tome odluči. Prema mišljenju suda tek tada sudija može o tome presuditi.
Drugostepeni sud, dakle, ne odbacuje tužbu definitivno. U stvari, sud o tome kaže sledeće: tužioci su u ovoj tački **preuranili** sa zahtevom. Moguće je, medjutim, obnavljanje ove tužbe u slučaju donošenja odluke holandske države o onovoj agresiji protiv Jugoslavije.

Presuda drugostepenog suda o pravnim pitanjima 2 i 3

U **dva** preostala pravna pitanja - dakle u pravnom pitanju da li je rat protiv Jugoslavije bez izričite dozvole Saveta bezbednosti bio ili ne u suprotnosti sa madjunarodnim pravom, kao i u pravnom pitanju da li su, kad je rat jedanput već otpočet, počinjeni ratni zločini, kao što su napadi na civilne ciljeve i upotreba nesrazmerne sile - presuda svih **nižih sudija**, u sva četiri procesa, bila je da nije bilo govora o povredi prava, te da su NATO i Holandija imali puno pravo pri njihovim napadima na Jugoslaviju.

Ali, viši sud, ispostavlja se, očigledno ima o tome sasvim drugačije mišljenje.
U oba pravna pitanja drugostepeni sud je došao do zaključka da nije u stanju da donese presudu **za** ili **protiv.**

Viši sud dakle priznaje da je moguće da su jugoslovenski podnosioci tužbe u pravu, te da je ovaj rat bio u suprotnosti sa medjunarodnim pravom, kao i da su u njemu, pored svega, počinjeni ratni zločini.
Takodje je moguće da su NATO i Holandija u pravu i da je ovaj rat smeo da se vodi i da nisu počinjeni ratni zločini.

Drugostepeni sud dalje kaže: da bi se utvrdilo **ko** je u ovom slučaju u pravu, jugoslovenski podnosioci tužbe ili holandska država i njeni ministri, potrebno je naime ustvari mnogo više **istraživanja**. Ali, jedna skraćena pravna procedura kakvu predstavlja kratki pravni postupak to ne omogućava.

Pošto drugostepeni sud nezna kome u ovim **važnim tačkama** pravnih pitanja u procesu mora dati za pravo, **jugoslovenskim podnosiocima tužbe** ili **holandskim ministrima**, ipak su konačno odbijeni svi zahtevi. Jer, ako sudija ne može da utvrdi ko je u pravu, gubi tužilačka strana. Takva je zakonska procedura.

Drugačije nego što su postupili **niži** sudovi, ovaj **viši sud** ne bira dakle stranu holandske države i NATO-a .
Viši sud o ovome kaže: ja ne znam, o gledištima obe strane ima se šta reći. Potrebno je naknadno istraživanje u drugim, daleko opširnijim pravnim procedurama.

Buduće perspektive

Holandska država i holandski ministri neće biti naročito zadovoljni ovakvom presudom. Za njih je ovo veliki neuspeh, jer je podrška suda njihovoj zločinačkoj ratnoj politici ovim jasno prekinuta.

Što se tiče činjenice da viši sud nove, **više proširene** procedure smatra potrebnim da bi se došlo do presude u ključnim pitanjima, to je novost važna naglašenog pomena.

Viši sud će u ovome biti ugodno uslužen.
Stalna komisija će u kratkom roku otpočeti procese za naknadu štete žrtvama bombardovanja studija RTS u Beogradu, **podržana** sada ovom pravnom izrekom višeg suda u Amsterdamu da je rat možda bio u suprotnosti sa medjunarodnim pravom i da su u ovom ratu možda počinjeni ratni zločini!

Ali će takodje i postupak Dedović protiv Kok-a biti nastavljen pred najvišim holandskim sudom, Visokim većem (=holandski vrhovni sud). Isto će se učiniti i sa tri ostale procedure koje su još aktuelne.

Istorijska obaveza

U svakoj NATO državi morali bi se pokrenuti procesi pred nacionalnim sudovima o pravnom pitanju da li se tek tako sme voditi rat protiv malih zemalja kakva je Jugoslavija, dok istovremeno imamo medjunarodne zakone koji to **izričito** zabranjuju.

U krajnjoj liniji, nakon Drugod Svetskog Rata sve nacije i narodi su se u Povelji Ujedinjenih nacija, obavezali da će da unište "bič rata".

Stalna komisija u Holandiji je to otpočela.
Prvi put od procesa u Ninbergu i Tokiju protiv nemačkih i japanskih ratnih zločinaca moraju državni lideri odgovarati pred sudom za moguće ratne zločine i zločin protiv mira.

Istorijski je zadatak pravnika svih koji nose zastave "pravnih načela" da i u drugim NATO zemljama pozovu na odgovornost državne lidere pred nacionalnim sudovima.
To je moguće u procesima za **naknadu štete** žrtvama bombardovanja u Jugoslaviji.

Stalna Komisija u Holandiji insistira da se što brže proširi front protiv NATO - lidera.

Stalna Komisija

To:
From: Herman de Tollenaere <hermantl@stad.dsl.nl>
Subject:
Cc:
Bcc:
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Permanent Commission on (Dutch) war crimes in Yugoslavia
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INTERNATIONAL PRESS COMMUNIQUÉ

Dutch court in Amsterdam: war crimes not ruled out; war against Yugoslavia being against international law not ruled out

First decision in appeal to higher court

On 6 July 2000, the court in Amsterdam decided on the lawsuit, brought by Dedovic and 28 other Yugoslav citizens, mainly living in Serbia. This lawsuit is directed **directly** against the Dutch Prime Minister **Kok**, Foreign Minister **Van Aartsen**, and Defence Minister **De Grave**.

This was the first decision in appeal to higher court of a series of lawsuits, organized by the PC ["Permanente Commissie"; Permanent Commission on (Dutch) war crimes in Yugoslavia].

The PC was founded on the initiative of the Anti-Fascist Former Resistance [against Nazi occupation of The Netherlands, 1940-1945] Fighters' League, the Lawyers for Peace League, and the Balkan Peace Coalition.

The PC's lawsuits

So far, the PC has organized four lawsuits in Dutch courts, as summary proceedings. In all those cases, different groups of Yugoslav persons, mainly living in Yugoslavia, were plaintiffs.

The **first** case was organized in February 1999, when NATO aggression was still only a **threat.** The demand, then asked from Dutch judges, was that The Netherlands should no longer support NATO in those threats, which violated the United Nations Charter, point 2 sub 4.

The **second** summary proceedings were in April 1999, when the NATO aggression against Yugoslavia had already started. This time, ten Yugoslavs, who had received a call up to serve as conscripts in the army, were plaintiffs. They demanded before the Dutch judges that The Netherlands, as a NATO member, would stop participating in the war, stop using them as targets in this unlawful war.

The **third** and **fourth** cases were shortly after one another in the beginning of May 1999, as it became clear that NATO aggression was directed more and more against civilians and civilian targets, and also in other respects was completely disproportional. The third summary

proceedings were at the The Hague court, the fourth summary proceedings were at the Amsterdam court.

Also in these two latest summary proceedings, different groups of Yugoslav persons were plaintiffs. The demand at the The Hague court was directed against the State of The Netherlands, and at the Amsterdam court against the Dutch government ministers Kok, Van Aartsen, and De Grave **personally.** In the last case, this was because of the Nuremburg trial 1945 rules, saying that everyone involved in war crimes is also **personally responsible** and **individually liable**, also if they are government functionaries. In these two latest court cases, the demand was that the defendants - the State of the Netherlands, and the three ministers **personally**- would do everything in their power to get The Netherlands out of this dirty war.

What happened at these court cases

In all cases, the demand was refused. However, also in all these cases, the plaintiffs appealed to higher courts in The Hague and Amsterdam. This happened when the bombings had already stopped.

Of course, in all these cases the demands had to be adapted, as, of course, now it could no longer be demanded that the court would force the State of The Netherlands, or the Dutch ministers, to end the Dutch participation in the war. That war **had** already stopped.

So, the **new** demand on appeal became that the court would oblige the State of The Netherlands, or the Dutch ministers, not to start again a war against Yugoslavia without explicit permission from the Security Council of the United Nations. And also, that the court would rule post facto that the war had been against international law, and as a consequence had hurt the interests of the Yugoslav plaintiffs.

The PC arranged that the appeal of the fourth summary proceedings would come first: at the Amsterdam court, with a more 'liberal' reputation than the court in the [Government city] The Hague; where the appeals in the three other lawsuits will have to be.

The decision by the Amsterdam court

So, the Amsterdam court made a decision in the case **Dedovic** and others vs. **Kok, Van Aartsen,** and **De Grave**, on 6 July 2000. The court did not take it easy. In a 26 pages long decision the Amsterdam court discusses the case extensively. Such an extensive decision is really **unique** for summary proceedings.

In itself, this is important and a striking gain: so, judges in The Netherlands state that they have the right to judge on the participation of the Dutch state in the NATO bombings. And even on the **personal** roles in this of the Dutch ministers. And that they can call them to account for this.

The Dutch state and the ministers in all lawsuits had stated as their **first line of defence** that Dutch judges should keep out of all those issues. These were 'political affairs.' However, this defence was rejected in all the court cases so far; including now, again, at the Amsterdam court.

The issues at stake in the case Dedovic versus Kok

In this case, basically **four** issues were at stake. The three most important ones were:

1. The demand by the Yugoslav plaintiffs that the court should order Kok c.s. to do everything possible to not get The Netherlands involved again in a possible **new** NATO aggression against Yugoslavia, without explicit permission from the Security Council of the United Nations.

2. The question whether the war, in which The Netherlands participated within the NATO alliance, and which was waged without explicit permission from the Security Council of the United Nations, was, or was not, against international law.

3. The question whether, once that war had started in March 1999, war crimes were committed during it or not, like attacks on civilian targets and the use of disproportional violence.

The fourth issue was the question whether the Dutch ministers, might, or might not, be held **personally** responsible for war crimes.

In the extensive decision, the Amsterdam court dealt at length with all those issues.

The court decision on two of these issues

On the **fourth** issue, the court concluded that the Dutch ministers could not be held personally responsible for this war.

According to the court, the 29 Yugoslav plaintiffs should sue the Dutch state, not the ministers personally. So, the court here rejected the **personal** liability of the Dutch ministers.

It was different with the three other issues.

On the **first** issue - so, asking that the court should forbid that The Netherlands would ever again participate in a possible new NATO aggression against Yugoslavia, without explicit permission from the Security Council of the United Nations, the court found that no decision on this might be made now. Because right now, new aggression is not yet already a really concrete threat. If there would come an acute threat of new NATO accession, then first the state should have the chance to make a decision on this. Only then the judges can decide, according to the court.

So, the court does not reject the demand definitively. The court basically says: on this point, the plaintiffs are too early with their demand. Just let them come back with their demand if there will be real decision making by the Dutch state about **new** aggression against Yugoslavia.

The court decision on the issues 2 and 3

In the **two** other issues -so, the question whether waging war against Yugoslavia without explicit permission from the Security Council was, or was not, against international law, and the question whether, once that war had started, war crimes were committed during it or not, like attacks on civilian targets and the use of disproportional violence- the decision by the **lower level courts** had always been, in all four court cases, that in no way the law had been violated in this. And that, of course, The Netherlands and NATO had been fully justified in their attacks on Yugoslavia.

However, the higher level court turns out to think very differently on this. In both questions, that court decides that it is unable to decide either for or against.

So, the court indicates that possibly, the Yugoslav plaintiffs are right here. And that this war was against international law, and that war crimes were as well committed during this war. Another possibility is that NATO and The Netherlands are right, that this war was allowed, and that no war crimes were committed.

The court continues to say: in order to decide **who** is right here, the Yugoslav plaintiffs or the Dutch state and the ministers, really much more **research** is needed. However, for that, such concise circumstances like summary proceedings are not really fitting.

Because the court does not know for whom it should decide on those **most important points** of the court case, for the **Yugoslav plaintiffs** or for the **Dutch ministers**, finally still all demands are not upheld. Because if the court cannot decide who is right, then the plaintiff loses; as usually in court cases.

Differently from when **lower** level courts decided on this case, this **higher** level court on the two most crucial points at stake during this court case, **no longer** takes the side of the Dutch state and NATO.

Here, the court says: I do not know. Both sides have a point. More research is needed in other, more extensive legal proceedings.

Further perspectives

The Dutch state and the Dutch ministers will **certainly** not be happy with this! It is a big blow for them. Because it shows that the support in the courts for their criminal war policy is clearly crumbling.

Concerning the issue that the court thinks that new, **more extensive** proceedings are needed to come to conclusions on the core questions, we can bring important news.

In this, the court will get what it asked for.

Shortly, the PC will start with lawsuits, for compensation for the victims of the bombing of the RTS broadcasting studio in Belgrade. Now, with the backing of the higher level court in Amsterdam, that the war was possibly against international law, and that during this war, possibly war crimes were committed!

However, there will also be an appeal in the case Dedovic versus Kok, to the highest Dutch court, the Hoge Raad ['Supreme Court']. There will also be appeals in the three other cases which are still going on.

Historical duty

Really, in every NATO country the fight should be waged at national level courts on the question whether war may be waged just like that against small countries like Yugoslavia. While we have international laws, **explicitly** prohibiting this.

We know that after the Second World War, all nations and peoples have committed themselves in the United Nations charter to outlaw 'the scourge of war'.

The PC in The Netherlands makes a start. **For the first time since the Nuremburg and Tokyo**

trials against the German and Japanese war criminals, government leaders have to take responsibility at a court of law for possible war crimes and crimes against peace.

It is an **historical** mission of lawyers and all supporters of the rule of law, to also in the other NATO countries make the government leaders take responsibility at their national courts of law. This is possible at lawsuits for **indemnities** for the victims of the bombings of Yugoslavia.

The PC asks urgently, to make the front against the NATO leaders broader, as soon as possible!

The PC

maart 2000.

MANIFEST INZAKE RTS-PROCES

In de nacht van 22 op 23 april 1999, enkele seconden na 2.15 uur plaatselijke tijd, veranderde de studio van de Radio en Televisie Serbia (RTS), midden in de uitzending, op slag in een hel.
Een door de NAVO gelanceerde maverick-raket drong door de toegang tot het hoofdgebouw naar binnen en verpulverde het inwendige. Alle verdiepingen van dit gebouw stortten in, alleen de muren bleven staan. Overal ter wereld waar de zender was op te vangen, was waar te nemen hoe het beeld van de omroepster in een dodelijk moment, midden in een zin, werd weggerukt. Zij die zich in dit hoofdgebouw bevonden en in het inferno niet meteen om het leven kwamen, werden onder het puin bedolven.
In het gehele RTS-complex waren die nacht ongeveer 150 mensen aan het werk.

Bij het RTS-complex bevinden zich nu twee eenvoudige monumenten. Eén voor de slachtoffers die geborgen zijn en een kleine, afzonderlijke gedenksteen voor twee televisie-medewerkers waarvan geen spoor is teruggevonden.
Gedood werden: Ksenia Bankovic, video-maakster; Jelica Munitlak, make up-medewerkster; Milovan Jankovic, technicus; Dragan Tasic, technicus; Tomislav Mitrovic, programma directeur; Ivan Stukalo, programma-maker buitenland; Slavisa Stevanovic, programma-maakster buitenland; Aleksandar Deletic, cameraman; Darko Stoimenovski, technicus; Nebojsa Stojanovic, technicus; Slobodan Jontic, equipment; Dejan Markovic, beveiliging; Milan Joksimovic, beveiliging; Branislav Jovanovic, programma medewerker.
Geen lichamelijke overblijfselen werden gevonden van: Sinisa Medic, programma vormgeving en Dragorad Dragojevic, beveiliging.
19 RTS-mensen raakten gewond, waarvan een aantal voor hun hele leven invalide zal blijven.

De NAVO stelde met deze aanslag een einde te willen maken aan de haatcampagne die de RTS zou voeren tegen het Albanese bevolkingsdeel in Joegoslavië. Dat was in elk geval een leugen, zoals in het komende proces aangetoond zal worden. Alle uitzendingen van de RTS gedurende de NAVO-agressie zijn, van dag tot dag en uur tot uur, door ons vastgelegd op band. Tot op de laatste dag waren er uitzendingen in het Albanees en van een haatcampagne tegen de Albanese bevolking als zodanig was geen sprake. Wel werd er door de RTS fors geageerd tegen het Albanese terrorisme onder leiding van het UCK. Maar dat is een heel ander verhaal.

De Joegoslavische lezing is dat de NAVO een totale controle van de nieuwsvoorziening over de oorlog wilde bereiken. Dit om, met escalatie op escalatie, Joegoslavië op de knieën te kunnen dwingen. Zonder daarbij in de wielen te worden gereden door een voortdurende stroom van 'negatieve' beelden van burgerslachtoffers en verwoestingen van civiele doelen. Zolang de RTS uitzond was een dergelijk absoluut NAVO-monopolie over de oorlogsbeelden onbereikbaar. In de media-oorlog, waarin de slag om de publieke opinie werd uitgevochten, vormde de RTS-

uitzendingen daarom voor de NAVO een onduldbaar obstakel.

Welke lezing waar is, die van de NAVO of die van Joegoslavië, het doet er niet toe.
De aanslag op de RTS-studio vormde, hoe dan ook, een grove inbreuk op de vrijheid van informatievoorziening. In zijn machtsarrogantie overschreed de NAVO hiermee een fundamentele grens. Die gerespecteerd had moeten worden. Als journalisten, wegens aan een van de strijdende partijen onwelgevallige berichtgeving, tot oorlogsdoelwit worden verklaard, is de vrijheid van informatie op slag om zeep. En daarmee de vrijheid van meningsuiting.

Dat deze terreuraanval een oorlogsmisdrijf vormde, staat daarmee vast.
Vast staat ook dat de NAVO, in een onmenselijk cynisme, in elk geval geen adequate waarschuwing vooraf heeft verstrekt. Zoals het humanitair oorlogsrecht dat eist. Artikel 57 van het Eerste Protocol bij de Verdragen van Genève eist immers dat bij aanvallen er alles aan moet worden gedaan om te voorkomen dat er burgerslachtoffers vallen. Onderdeel daarvan is dat op effectieve wijze vooraf moet worden gewaarschuwd als er burgerlachtoffers zijn te vrezen bij een aanval.
Dit maakt deze terreuraanslag van de NAVO tot een **dubbel** oorlogsmisdrijf.

Oorlogsmisdrijven lonen niet, mogen ook niet lonen. De daders dienen de rekening gepresenteerd te krijgen. Vroeg of laat. Dat geldt ook voor de daders van dit oorlogsmisdrijf.
Aansprakelijkheid voor oorlogsmisdrijven treft, naar internationaal recht, iedereen die voor de voorbereiding en uitvoering daarvan verantwoordelijkheid draagt of bij de uitvoering betrokken is geweest.
Voor dit oorlogsmisdrijf zijn dan, naar internationaal recht, allereerst de leidende politici van de NAVO-landen verantwoordelijk. Alsmede de militaire leiders en de bij de daadwerkelijke uitvoering betrokken militairen.

De nabestaanden van de RTS-slachtoffers wenden zich nu tot de Nederlandse rechter. En eisen in een proces tegen de Nederlandse Staat en de verantwoordelijke Nederlandse politieke leiders schadevergoeding en smartengeld.
Want dat is een ander beginsel van het oorlogsrecht: zij die, in het kader van een geintegreerd militair commando, **gezamenlijk** een oorlogsmisdrijf plegen, zijn daarvoor, ieder voor zich, **hoofdelijk** aansprakelijk.
Bovendien hebben Kok, van Aartsen en de Grave deze NAVO-terreuraanval van harte toegejuicht. En daarmee hun medeplichtigheid nog eens uitdrukkelijk bevestigd.

Gecoordineerd door de **Permanente Commissie inzake (Nederlandse) Oorlogsmisdrijven in Joegoslavië (PC)** worden in Nederland, vanaf het allereerste moment van de NAVO-oorlog tegen Joegoslavië, hiertegen processen gevoerd door burgers afkomstig uit Joegoslavië, slachtoffers van deze aanvallen. Uitgewaaierd over een breed scala van Nederlandse rechtscolleges hebben

deze processen inmiddels allemaal het stadium bereikt van verschillende Gerechtshoven of zelfs van de Hoge Raad. Zodoende is hier in Nederland al een brede ervaring opgedaan met het voeren van juridische procedures op het gebied van het humanitair oorlogsrecht en is hiermee inmiddels unieke jurisprudentie opgebouwd.
Om meedere redenen is Nederland dan ook het aangewezen NAVO-land om de schuldvraag voor dit NAVO-oorlogsmisdrijf voor de rechter te brengen en bij processen tot schadevergoeding voor deze terreurdaad de spits af te bijten. In de verwachting dat in andere NAVO-landen dit voorbeeld gevolgd zal worden.
De PC is een samenwerkingsverband op initiatief van de Vereniging van Anti-fascistische Oud-Verzetsstrijders, de Vereniging van Juristen voor de Vrede en de Balkan Vredescoalitie.

Voor de uitvoering van het proces tot schadevergoeding is veel geld nodig.
Geld waarover de nabestaanden van de door de NAVO-leiders gedode RTS-mensen in het sterk verarmde Joegoslavië niet beschikken.
Daarom doet de PC een beroep op solidariteit van iedereen, waar ook ter wereld werkzaam bij media, om dit RTS-proces financieel te steunen. Het moet glashelder zijn dat bombarderen van media en hun medewerkers, om welke al of niet vermeende reden dan ook, onder geen beding toelaatbaar is. Maar ook iedereen die verder deze NAVO-aanslag op burgers en op de vrijheid van informatieverstrekking afkeurt, wordt hierbij opgeroepen om dit proces financieel te ondersteunen.
Op giro 972992 van de Stichting Steunfonds Juridische Hulp te Zeist.

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N.M.P. Steijnen

Support the RTS-lawsuit.

Relatives of victims RTS-bombardments approach Dutch judge for damages and smart money.

During the night from April 22 to April 23, a few seconds after 2.15 h. local time, during broadcasting, the studio of the Serbian Broadcasting Corporation (RTS) was instantly transformed into an inferno.
A maverick missile launched by Nato, forced its way in through the entrance of the main building and crushed the interior.
Every floor of the building collapsed, only the walls remained intact.
All over the world - within reach of the broadcasting station - it was to be seen how the picture of the announcer vanished in a fatal moment in the middle of a sentence.
Those who were in the main building and werent't immediately killed in the inferno, were buried under the rubble.
In the entire RTS building, about 150 persons were at work during that night.

<u>The victims.</u>
Near the RTS building there are now 2 simple monuments. One for the victims that have been found, and a small separate memorial for 2 workers no trace has been found of. The persons killed were:
Ksenia Bankovic, videomixer, Jelica Munitlak, makeup artist, Milovan Jankovic, technician, Dragan Tasic, technician, Tomaslav Mitrovic, program director, Ivan Stukalo, executive realisation, Slavisa Stevanovic, executive realisation, Aleksandar Deletic, cameraman, Darko Stoimenovski, technician in international exchange, Nebojsa Stojanovic, technician, Slobodan Jontic, studio staff, Dejan Markovic, security worker, Milan Joksimovic, security worker, Branislav Jonanovic, technician.
No remains were found of: Sinisa Medic, program worker, and Dragorad Dragojevic, security worker.
19 RTS workers were wounded, a number of which will be disabled for life.

<u>The perpetrators and their motives.</u>
Nato alleged to have committed this outrage in order to put an end to the hatred campaign the RTS should wage against the Albanian part of the population in Yugoslavia.
This was undoubtedly a lie, as will be proved in the next lawsuit.
All broadcastings of the RTS during Nato agression have been recorded on tape from day to day and from hour to hour.
Up to the last day there were broadcastings in the Albanian language and a hatred campaign against the Albanian population was altogether out of the question.
The RTS strongly objected against Albanian terrorism under supervision of the UCK - it is true - but that's quite a different story.
The Yugoslav version is, that Nato wanted to achieve supervision of the provision of information about the war.
This in order to force Yugoslavia to surrender by means of constant attacks. Without being hampered by an incessant flow

of "negative" pictures of civilian victims and devastated civil targets.
As long as the RTS was broadcasting, such a complete Nato monopoly of news about the war, was impossible.
In the war of news provision, where the battle for public opinion was fought, the RTS broadcastings were an unbearable obstacle for Nato.
It does not matter which version is true, the one of Nato or the one of Yugoslavia.
The attack on the RTS studio was at any rate a gross violation of the freedom of supplying information.
In its arrogance of power Nato overstepped a fundamental line that should have been drawn.
If journalists are pronounced war targets because of news unwelcome to one of the struggling parties, freedom of information is also lost. And with it, freedom of expression of opinion.

War crime.
That's why it is certain that this terrorist attack was a war crime.
It is also certain that Nato in its inhuman cynicism, did not give a sufficient warning beforehand. As required by humane right of war.
According to article 57 of the 1st protocol of the Geneva Convention, it is required that at attacks, every effort should be made to prevent civilian casualties.
Part of it is, that there should be an effective warning beforehand, if civilian casualties are to be expected at an attack.
Because of all this, the terror attack of Nato can be described as a double war crime.

A Calling te Account.
War crimes don't pay and are not allowed to pay.
The perpetrators should be brought to justice sooner or later.
This is also true for the perpetrators of this war crime.
According to international law, leading politicians of Nato countries are the first to be held responsible.
Together with military leaders and the mlitary men involved in actual execution.

The RTS lawsuit.
The relatives of the RTS victims now apply to the Dutch judge. And demand damages and smart money in a lawsuit against the Dutch Crown and the Dutch political leaders. For that's another principle of the right of warfare: those who commit war crimes collectively within the framework of an integrated military command, can be held responsible seperately en personally.
Moreover, Kok, van Aartsen, and de Grave were fervent supporters of the Nato terror attack.
As a result, their complicity is once more given proof of.

The PC.
The Permanent Commission on (Dutch) war crimes in Yugoslavia (PC). Couwenhoven 52-05

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Experience gained by lawsuits in Holland.

Co-ordinated by the Permanent Commission on (Dutch) War Crimes in Yugoslavia (PC), from the very first moment of the Nato war against Yugoslavia, lawsuits are being held by civilians from Yugoslavia, victims of these attacks.
Extended to a wide range of Dutch Courts of Justice, these lawsuits have by now taken place in several Courts and even in the Supreme Court of Justice.
As a result, here in Holland, a great deal of experience in lawsuits in the sphere of humane war right, and a unique jurisprudence has been obtained.
For several reasons, Holland is de right Nato country to call the question of quilt to justice and to bear the grunt of lawsuits for damages for this act of terror.
Expecting that this example will be followed in other Nato countries .
The PC is a concerted action at the initiative of the Society of Anti Fascist Former Resistance Fighters, the Society of Lawyers for the Peace, and the Balkan Peace Coalition.

Money Required.

For the execution of the lawsuit for damages, a lot of money is required. Money, the relatives of the RTS workers, killed by the Nato leaders, don't have at their disposal.
That's why the PC appeals to the solidarity of everybody all over the world at news agencies, to support this RTS lawsuit financially.
It should be perfectly clear that the bombardments of the news agencies and their workers is not permissible for whatever reason.
But also, everybody who disapproves of this Nato attack on civilians, is requested to support this lawsuit financially.
To number 972992 transfer account of the "Stichting Steunfonds Juridische Hulp" te Zeist.

PROGLAS U PRAVNOJ STVARI RTS – PROCESA

U noći izmedju 22-og i 23-eg aprila 1999.g., nekoliko sekundi posle 2.15 časova po lokalnom vremenu, studio Radija i Televizije Srbije (RTS) , u sred emitovanja, pretvoren je u pakao.
Od strane NATO-pakta lansirana maverick-raketa probila je sebi ulaz u glavnu zgradu te je smrvila sve unutra. Svi spratovi te zgrade su srušeni, samo su ostali zidovi. Svuda u svetu gde je ova stanica dopirala moglo se videti kako se slika prezentatorke pretvara u smrtonosni momenat, u sred rečenice biva prekinuta i odsečena. Oni koji su se nalazili u glavnoj zgradi i koji nisu inferno odmah poginuli, zatrpani su pod ruševinama.
U celom RTS kompleksu te noći se na svom poslu nalazilo otprilike oko 150 ljudi.

Kod RTS-kompleksa sada se nalaze dva jednostavna spomenika. Jedan spomenik je namenjen žrtvama koje su pronadjene i identifikovane, a druga mala i posebna spomen-ploča namenjena je dvojici televizijskih saradnika od kojih nije pronadjen nikakav trag.
Poginuli su: Ksenija Banković, video-snimatelj; Jelica Munitlak, šminker; Milovan Janković, tehničar; Dragan Tasić, tehničar Tomislav Mitrović, direktor programa; Ivan Stukalo, proizvodjač inostranog programa; Aleksandar Deletić, kameraman; Darko Stoimenovski, tehničar; Nebojša Stojanović, tehničar; Slobodan Jontić, equipment; Dejan Marković, obezbedjenje; Milan Joksimović, obezbedjenje; Branislav Jovanović, programski saradnik.
Posmrtni ostaci nisu nadjeni od: Siniše Medić, obradjivača programa, i Dragorada Dragojevića, obezbedjenje.
19 RTS saradnika je ranjeno, od kojih će njih nekoliko ostati invalid za ceo svoj život.

NATO je ovaj napad postavio kao volju prekida kampanje mržnje koju je RTS navodno vodio protiv Albanskog dela stanovništva u Jugoslaviji. To je u svakom slučaju bila laž, kao što će se to pokazati u narednom sudskom procesu. Sve emitovane emisije RTS-a koje su emitovane tokom NATO-agresije, od dana do dana i od sata do sata, mi smo snimili na traci. Do zadnjeg dana emitovane emisije su bile na Albanskom jeziku a o kampanji mržnje prema Albanskom stanovništvu kao takvoj nije bilo ni govora. RTS je samo oštro agirao protiv Albanskog terorizma pod vodstvom UCK. Ali to je jedna sasvim druga priča.

Jugoslovensko javno predavanje je da je NATO hteo da postigne potpunu kontrolu nad izvešatvanjem o ratu. To zbog toga kako bi se Jugoslavija, uz pomoć eskalacije za eskalacijom, nasilno stavila na kolena. Kako se pri tom nebi pod točkove postavljala "negativna" slika za slikom o stradanju civilnih gradjana i uništavanju civilnih ciljeva. Sve dok je RTS mogao da emituje jedan takav absolutan NATO-monopol o ratnim dogadjanjima nije bio dostižan. U medijskom ratu, u kojem je vodjena borba za javno mnjenje, RTS je bio kamen spoticanja za NATO.

Koje javno predavanje je tačno, ono koje je NATO iznosio ili ono koje je iznosila Jugoslavija, nije bitno.
Bitno je to da je udar na RTS studio od strane NATO-a stvarao, bilo kako bilo, jedan grub upad u slobodu informacionog izveštavanja. U svojoj aroganciji jedne sile NATO je ovim prekoračio fundamentalnu granicu. Ta granica je morala biti respektovana. Ako novinari postanu ratni cilj zaraćenih strana radi nepoželjnog izveštavanja, onda je sloboda na informacije na mestu ubijena. A time i sloboda izjašnjavanja mišljenja.

Dat je ovaj teroristički napad obuhvatao ratno zločinstvo to stoji.
Takodje stoji i to da NATO, u svom jednom neljudskom cinizmu, u svakom slučaju nije prethodno poslao adekvatno upozorenje kao što to zahteva humanitarno ratno pravo. Član 57 Prvog Protokola u Ženevskim ugovorima zahteva uostalom da je napadač obavezan da sve preduzme kako nebi došlo do žrtava medju gradjanima. Deo sadržine ugovora je da se na efikasan način prethodno i prvenstveno mora upozoriti ako postoji opasnost da u napadima bude i gradjanskih žrtava.
Tako teroristički napad od strane NATO-a ovaj čini **duplim** ratnim zločinstvom.

Ratna zločinstva se ne nagradjuju, ona takodje i ne smeju ni biti nagradjena. Počiniteljima mora biti prezentovan račun koji moraju da plate. Kad tad. To važi i za počinioce ovog ratnog zlodela.
Odgovornost za ratna zločinstva pogadja, po Medjunarodnom Pravu, svakoga ko snosi odgovornost za pripremu i izvršenje ovoga ili je bio umešan u izvršavanju zlodela.
Za ovo ratno zločinstvo su po medjunarodnom Pravu prvenstveno odgovorni vodeći političari NATO zemalja. Isto tako su odgovorni i vojni čelnici a kod stvarnog izvršenja vojnici koji su zlodela izvršili.

Porodice RTS žrtava obraćaju se sada Holandskom sudu. Oni u procesu zahtevaju i traže od odgovornih političara Holandske države odštetu i naknadu za bol i patnju.
Jer to je jedno drugo načelo ratnog prava: oni koji u smislu jedne integrisane vojne komande **zajednički** počine ratna zlodela, oni su za to, savko ponaosob, **uglavnom** i odgovorni.
Pored toga Kok, (holandski Premijer, prim.prev.), van Aartsen (holandski Ministar za Inostrane poslove, prim prev.) i de Grave (Ministar za defenziju, prim. prev.), su od srca poklicali ovom terosrističkm napadu NATO pakta. Time su oni njihovo saučestvovanje u zlodelima još jedanput naglašeno potvrdili.

Koordinisano od strane **Permanentne komisije u pravnoj stvari za (Holandska) ratna zločinstva počinjena u Jugoslaviji (PC)** u Holandiji se od prvog momenta rata NATO pakta protiv Jugoslavije vode sudski procesi, u kojem protiv ovih procese vode gradjani poreklom iz Jugoslavije, žrtve ovih nasilja. Rasprostranjeni u širokoj meri kod Holandskih pravnih organa ovi procesi su u medjuvremenu dostigli stadijum različitih stepena Sudova pa su čak i stigli do Visokog Sudskog Saveta.
Tako je ovde u Holandiji već postignuto široko iskustvo u vodjenju pravnih procedura u sklopu sa humanitarnim ratnim pravom i ovim je u medjuvremenu postignuta jedinstvena pravna znanost.

Iz više razloga je upravo Holandija ta NATO zemlja u kojoj treba da se povede pitanje krivih za ovaj NATO zločin i nihovog izvodjenja pred sud pravde kao i zahteva u tim procesima da se nadoknadi pričinjena odšteta pri ovom terorističkom činu te da se tako otpočne sudjenje. U nadi i iščekivanju da se takvi procesi povedu i u drugim zemljama članicama NATO pakta.
Permanentna Komisija je jedan zajednički organ u saradnji sa, i na inicijativu Udruženja Anti-fašista, Udruženja Starih boraca otpora, Udruženja Pravnika za Mir i Balkanske koalicije.

Za vršenje procesa i da bi se došlo do odštete potrebno je mnogo novca.
Novac koji porodice od strane NATO-vodja ubijenih i nastradalih RTS ljudi u veoma osiromašenoj Jugoslaviji nemaju.
Zato **Permanentna Komisicija** poziva na solidarnost sve one, ma gde da se nalaze u svetu i koji rade kod medijskih ustanova da podrže ovaj RTS proces finansijski. Mora biti kristalno jasno da bombardovanje medija i njihovih saradnika, iz bilo kog tobožnjeg razloga, ni u kom slučaju ne može biti dopustljivo. Ali takodje i svi oni koji ovo nasilje NATO-pakta na gradjane i na slobodu na informacije osudjuju, pozivaju se ovim da finansijski podrže ovaj proces.
Uplate se mogu izvršiti na **žiro 972992** za **Zavod Potpornog Fonda za Pravnu Pomoć** u **Zeist**-u.

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N.M.P. Steijnen [Advokat – Prokurator]

S' holandskog prevela

D. Bekker-Isaković
[Zakleti Sudski tumač]

5-3-03

WESTERSE AGRESSIE EN OORLOGSMISDRIJVEN - WAT TE DOEN ?
Een Juridische Strategie

De oorlog en massa-aktie

Als u dit nummer van Procesnieuws onder ogen krijgt, is het oorlogsgeweld tegen Irak wellicht al losgebarsten. In al zijn afschuwelijkheid. De kans is immers klein dat het smalle pad langs het ravijn dan nog niet is doodgelopen. Amerika wil niets liever dan dat dit pad doodloopt.

We kunnen niet anders dan ons verzet zo breed en massief mogelijk te maken, in een uiterste poging het onheil af te wenden. Maar mocht dat uiteindelijk niet gelukt blijken: de daadwerkelijke weerstand van miljoenen mensen over de hele wereld, gemobiliseerd en manifest gemaakt door organisatoren wereldwijd van allerlei vormen van aktie, heeft niettemin effect gehad. De stem van miljoenen heeft zijn vertaling gevonden in de opstelling van veel regeringen. Aannemelijk is dat dit de oorlog in elk geval heeft vertraagd. En de zekerheid van de drijvende krachten naar deze oorlog is er door ondermijnd. Dat biedt dan een aanknopingspunt voor verder verzet.

Wat het internationale recht over de oorlog te zeggen heeft

De oorlog tegen Irak, die op het moment van het schrijven van dit artikel nog alleen maar als een zwarte dreiging boven ons hangt, maar inmiddels wellicht een barre werkelijkheid is geworden, roept uitroeptekens en vraagtekens op. Uitroeptekens bij het menselijk leed. En vraagtekens over hoe lang dit gaat duren. Maar ook over het internationale recht en wat dit over deze oorlog en zijn gevolgen te zeggen heeft.

Op dat laatste onderwerp wordt hieronder ingegaan.

Na de verschrikkingen van de Tweede Wereldoorlog kwam de wereldgemeenschap van volkeren tot een plechtige verzekering: **'dat nooit weer !'**. Dit werd beklonken in het Handvest van de Verenigde Naties. De **'gesel van de oorlog'**, zoals het wordt aangeduid in het Handvest, werd voor altijd in de ban gedaan. Het voeren van oorlog, sinds onheuglijke tijden beschouwd als een soort natuurrecht, werd voortaan verboden verklaard. Met nog maar twee uitzonderingen. Namelijk ter zelfverdediging, in geval van het afslaan van een gewapende aanval. En voor herstel van vrede en veiligheid, als die bedreigd zouden worden. Maar over dat laatste kreeg de Veiligheidsraad van de Verenigde Naties de exclusieve beslissingsbevoegdheid.

En al die oorlogen dan, die na de Tweede Wereldoorlog en sinds de oprichting van de Verenigde Naties zijn gevoerd in tal van derde wereldlanden ? In Vietnam, in Angola, in Afghanistan en op talloze andere plaatsen ? Waarbij sindsdien tientallen miljoenen doden zijn gevallen ?

Die oorlogen werden nu eens 'verkocht' als 'militaire hulp op verzoek van de gevestigde en wettige regering' van de betrokken landen, dan weer als 'legitiem militair verzet tegen binnenlandse opstanden'. Allemaal niet in strijd met het Handvest dus.
Bloedige en smerige oorlogen heeft het nieuwe volkenrecht dus niet weten te voorkomen. In genen dele.

Verbod van interstatelijk oorlogvoeren

Maar openlijk tussen staten is het ander verhaal. Vroeger waren staten gewoon om, als dat politiek zo uitkwam, elkaar openlijk de oorlog aan te doen. En dat mocht ook zo, vonden de volkenrechtsgeleerden. In feite ging dat door tot aan de Tweede Wereldoorlog. Het op eigen houtje toepassen van militair geweld van de ene staat jegens een andere staat werd toen voortaan buiten de wet gesteld. Behoudens dus het geval van zelfverdediging tegen een gewapende aanval.
Dat wordt aangeduid als het geweldverbod.

Sindsdien wordt het initiatief nemen tot een oorlog jegens enige andere staat gekwalificeerd als agressie. Althans, als die oorlog niet de ondubbelzinnige instemming heeft van de Veiligheidsraad van de Verenigde Naties.
Agressie is, sinds de Tweede Wereldoorlog, uitdrukkelijk verboden. Dat heet het agressieverbod.

Bij alle oorlogsverschrikkingen waarvan de twintigste eeuw - de bloedigste eeuw in de geschiedenis -, sinds de Tweede Wereldoorlog nog getuige is geweest, waren er in feite maar betrekkelijk weinig echte interstatelijke oorlogen. Die dus gevoerd werden openlijk in strijd met het agressieverbod.

Meer dan een halve eeuw is het agressieverbod onomstreden geweest. Geen mens, geen staat heeft het bestaansrecht daarvan fundamenteel op de helling durven zetten. Ook niet de staten die het waagden het te schenden. Wat, zoals gezegd, niet zo heel vaak, in klassieke van staat-tegen-staat-oorlogen, het geval was.

Is het agressieverbod en het verbod van oorlogsmisdrijven tandeloos ?

Het geweldverbod en agressieverbod vormen dus onderdeel van het internationale recht.
Twee aantekeningen worden hierbij vaak gemaakt.
De eerste is dat veel politici het internationale recht beschouwen als uiteindelijk zwak en, als het puntje bij paaltje komt, betrekkelijk irrelevant. En als iets waar je alle kanten mee op kan.
Het tweede punt is dat zij in elk geval constateren dat het internationale recht geen tanden heeft.

Nu is er natuurlijk een breed spectrum van internationaal recht, in allerlei soorten en maten. En waar we hier hier over hebben is dus maar een onderdeel van het internationale recht, aan te duiden als het recht inzake oorlog en vrede en het humanitair oorlogsrecht, tegenwoordig ook wel kortheidshalve internationaal humanitair recht genoemd.
Wat voor de ene categorie van internationaal recht geldt, bijvoorbeeld dat het zwak ontwikkeld of ingewikkeld te interpreteren zou zijn, behoeft dus nog geenszins ook voor een andere categorie van het internationale recht te gelden.

Datzelfde geldt voor de mate van afdwingbaarheid en handhaafbaarheid.
Als de ene soort internationaal recht zich mogelijk gemakkelijk aan de kant laat schuiven, hoeft dat niet automatisch ook voor de andere soort internationaal recht te gelden.
Natuurlijk treft elke soort internationale recht, min of meer, hetzelfde euvel. Namelijk dat er geen wereld-autoriteit is die handhaving automatisch afdwingt.

Misdrijven van de zwaarst denkbare soort

Maar dat maakt althans de categorie van het internationale recht, die wordt aangeduid als het recht inzake oorlog en vrede en het humanitair oorlogsrecht, nog niet tandeloos.

Allereerst worden schendingen van het humanitair oorlogsrecht gekwalificeerd als oorlogsmisdrijven en wordt schending van het agressieverbod aangeduid als een misdrijf tegen de vrede. Oorlogsmisdrijven en misdrijven tegen de vrede worden beschouwd als de ergst denkbare misdrijven. Waarvoor dan ook geen verjaringstermijn bestaat.

Voor schending van het agressieverbod en voor oorlogsmisdrijven zijn na de Tweede Wereldoorlog hoge Japanse en Duitse functionarissen opgehangen. En iets waarvoor je de strop om je nek kan voelen, kan je onmogelijk als tandeloos afdoen !

Maar niet alleen door de Tribunalen van Neurenberg en Tokio zijn na de Tweede Wereldoorlog zware straffen uitgedeeld aan schenners van het agressieverbod en plegers van oorlogsmisdrijven, ook hedendaagse tribunalen als het Joegoslavië Tribunaal en het Rwanda Tribunaal zijn druk in de weer met bestrafffing van zulke misdrijven. En uiteindelijk is daarvoor ook het nieuwe Internationale Strafhof bedoeld.

Bovendien is het volstrekt niet zo dat de bestraffing van dergelijke misdrijven louter afhankelijk is van dit soort internationale tribunalen en rechtsinstellingen. De meeste staten hebben, ook in hun eigen nationale wetgeving, op het plegen van misdrijven tegen het oorlogsrecht zware sancties gezet.

Bij het Tribunaal van Neurenberg is agressie omschreven als:

"...niet zomaar een internationaal misdrijf; het is het opperste internationale misdrijf, dat alleen hierin zich van andere oorlogsmisdrijven onderscheid, doordat het in zich omvat het verzamelde kwaad van alles tesamen."

Agressie geldt dus, sinds de processen van Neurenberg, uitdrukkelijk als 'de moeder van alle oorlogsmisdrijven'.

Openlijke schending van het agressieverbod

Het ziet er, desondanks, niet naar uit dat het agressieverbod deze oorlog zal tegenhouden.

In alle openheid het agressieverbod aan de kant gooien durven landen Amerika, Groot-Brittannië en een satelliet-landje als Nederland niet. Maar de weg die zij hebben uitgestippeld om dit agressieverbod onklaar te maken, is al op voorhand duidelijk.

Zij stellen gewoon: door het aannemen van de resolutie, waarin met 'ernstige gevolgen' tegen Irak werd gedreigd, heeft de Veiligheidsraad, in geval dat 'Saddam Hoessein' onvoldoende zou meewerken, het licht op groen gezet voor het gebruik van militair geweld tegen Irak.

Dat is natuurlijk niet zo, iedereen weet dat.
Maar de machtigen der aarde voorzien zich daarmee wel van een pseudo-legitimatie. Die het doet voorkomen alsof de door hun gepleegde agressie geen agressie is.

Herhaling van de geschiedenis - de NAVO-oorlog tegen Joegoslavië als precedent

En hier zien we de geschiedenis zich herhalen. In slechts luttele jaren. Per slot van rekening werd aan de vooravond van de NAVO-oorlog tegen Joegoslavië in 1999 dezelfde truc uitgehaald. Ook toen was er sprake van een Veiligheidsraadsresolutie die Joegoslavië met 'ernstige gevolgen' dreigde als 'Milosevic' niet zou inbinden. Die toen, evenzeer zonder enige grond, door de gezamenlijke NAVO-landen werd voorgesteld als een voldoende basis om dat land met wapengeweld te lijf te gaan.

Maar er is één groot verschil. Waar toen een groot deel van de westerse bevolking zich liet misleiden en de NAVO-agressie slikte voor wat door velen werd aangezien als 'het goede doel', is dit nu bepaald niet het geval.
Niettemin is de schade die toen, met stilzwijgende instemming van een groot deel van de bevolking van de westerse landen, is toegebracht aan de onschendbaarheid van het agressieverbod, enorm geweest.

De wereld, de internationale vredesbeweging, maar vooral ook het Iraakse volk, plukken nu de wrange vruchten van de herhaling van deze al in 1999 toegepaste truc om de oorlog tegen Joegoslavië te kunnen beginnen.

Agressieverbod is agressieverbod. En eenmaal beginnen daarop inbreuken te accepteren, voert met zekerheid naar de ondergang van het geweldverbod. En terug naar het tijdperk van de wetten van de jungle. Naar het recht van de sterkste in plaats van de sterkte van het recht.

Dat is ook de reden waarom in Procesnieuws, indertijd van het begin af aan, krachtig stelling is genomen tegen de oorlog tegen Joegoslavië.

Het leergeld dat verder nog met de NAVO-oorlog tegen Joegoslavië is betaald

Maar de oorlog van de NAVO-landen tegen Joegoslavië was ook om meer redenen een verbijsterende ervaring.
Niet alleen de schending van het agressieverbod werd hier door de overgrote meerderheid van de westerse bevolking voor zoete koek genomen, maar ook tegen westerse oorlogsmisdrijven werd in geen enkel opzicht aktie ondernomen.

Aangiftes van door de westerse alliantie gepleegde schending van het agressieverbod en van door diezelfde alliantie gepleegde oorlogsmisdrijven, gedaan door talrijke juristen van over de gehele wereld zowel als door slachtoffers zelf en hun nabestaanden, bleken achteloos terzijde te worden geschoven. Door de openbare aanklagers in de NAVO-landen even gemakkelijk als door de aanklager bij het Joegoslavië Tribunaal.
Dit onder het motto dat deze feiten niet bewezen waren, dan wel dat hier van agressie geen sprake was, aangezien het bij de oorlog tegen Joegoslavië om een humanitaire operatie zou zijn gegaan, die het agressieverbod zogenaamd terzijde zou stellen.

Een en ander leverde de bevestiging op dat het met de heerschappij van het recht nog steeds maar pover gesteld is. Als het gaat om de eigen oorlogs-wandaden van de westerse machten.

De verliezers worden vervolgd - de overwinnaars gaan vrijuit

Nog steeds doet blijkbaar opgeld, zo was de ervaring, dat alleen de verliezers van de oorlog - hier hoofdzakelijk dus Serviërs,'Milosevic', etc. - vervolgd worden. En niet de overwinaars, de NAVO-verantwoordelijken. Bijvoorbeeld voor hun bombardement op de studio van de Radio en Televisie in Belgrado (RTS), het gebruik van clusterbommen en van wapens met verarmd uranium. Precies als na de Tweede Wereldoorlog. Toen eveneens de geallieerde oorlogsmisdrijven - denk bijvoorbeeld

aan het gebruik van de atoomwapens tegen Hiroshima en Nagasaki en het vernietigingsbombardement op Dresden - volledig onbestraft bleven.

De onaanvaardbaarheid van 'Sieger Justiz'

Omdat het door velen als te enen male als onverdraaglijk wordt ervaren dat, anno 2000, het oorlogsrecht nog steeds alleen 'Sieger Justiz' zou zijn, en de overwinnaars, de machtigen der aarde, nog steeds automatisch zouden wegkomen met hun misdaden, werd naar andere juridische middelen gezocht. Om de schending van het agressieverbod als misdrijf en de door de NAVO verder begane oorlogsmisdrijven aan de kaak te stellen.
Nu gebleken was dat de bestaande strafrecht-fora weigerden om hun werk te doen jegens hen die gezegevierd hadden.

Recht staat of valt nu eenmaal met 'gelijke berechting voor allen'.

Oprichting van de PC - werken naar Neurenbergse beginselen

Door een aantal organisaties, waaronder de Vereniging van Juristen voor de Vrede, werd daarom opgericht de Permanente Commissie inzake westerse oorlogsmisdrijven (PC).
De PC stelt zich ten doel om zowel de slachtoffers van westerse oorlogsmisdaden als de daders hiervan een gezicht te geven. En ze in de rechtszaal met elkaar in confrontatie te brengen. Om zo het beginsel van Neurenberg hoog te houden, dat misdrijven tegen de vrede en oorlogsmisdrijven niet begaan worden door abstrakties als 'de staat', maar door mensen van vlees en bloed. Aanwijsbaar en identificeerbaar.

Processen van de slachtoffers tegen de daders, georganiseerd door de PC

De PC heeft al een fors aantal processen georganiseerd voor de Nederlandse rechter. Waarin groepen Joegoslavische slachtoffers van de NAVO-oorlog aan de ene kant als eisers stonden tegenover Nederlandse politiek verantwoordelijken voor de Nederlandse deelname aan deze agressie-oorlog aan de andere kant. Als gedaagden. Zoals bijvoorbeeld vooraanstaande politici als Kok, Van Aartsen en de Grave, maar ook hoge Nederlandse militairen als Kroon en Droste.
Met als eis dat zij hun verantwoordelijkheid moesten nemen om de Nederlandse deelname aan deze oorlog te stoppen, dan wel om een eerste begin van schadevergoeding te betalen aan de slachtoffers.

Wat duidelijk is geworden in deze processen

Een aantal van deze processen zijn ook in hogere instanties gevoerd, zoals voor het Gerechtshof in Amsterdam en zelfs de Hoge Raad.
De Joegoslavische eisers in deze processen zijn er niet in geslaagd om daarmee de Nederlandse deelname aan de NAVO-oorlog tegen hun land van hun hoofden te weren. Maar twee dingen zijn daarmee in elk geval duidelijk geworden.

Allereerst dat dergelijke processen een probaat middel zijn om de verantwoordelijke politici duidelijk te maken dat zij zich niet achter zoiets anoniems als de Staat kunnen blijven verschuilen. Dat zij persoonlijk rekenschap en verantwoording zullen moeten afleggen voor hun daden, die een inbreuk vormen op het internationale recht inzake gewapende conflicten en de gevolgen daarvan. Voor de rechter. Tegenover hun slachtoffers.

En een **tweede** belangrijk punt dat duidelijk is geworden, is dat het argument dat een Veiligheidsraadsresolutie, die niet uitdrukkelijk tot oorlogsgeweld machtigt, een legitimatie zou kunnen geven om ten oorlog te gaan, niet opgaat. Zoals de resolutie die in 1999 werd gehanteerd als vrijbrief tot oorlog tegen Joegoslavië, en de resolutie die nu wordt voorgesteld als toegangspoort tot oorlog tegen Irak. Dat is uitdrukkelijk uitgesproken door het Amsterdamse Gerechtshof in een van de rechtszaken, de zaak-Dedovic.

Tot een veroordeling van de wederpartij van Dedovic c.s., namelijk de Nederlandse politici Kok, Van Aartsen en de Grave, is het toen, in die zaak, op het nippertje niet gekomen. Dit omdat het Hof niet wilde uitsluiten dat de oorlog tegen Joegoslavië ook wellicht gerechtvaardigd zou kunnen worden als een humanitaire interventie.
Maar van dat laatste kan voor wat de oorlog tegen Irak betreft onmogelijk sprake zijn. Zodat hier, in alle naaktheid, een schending van het agressieverbod moet worden beoordeeld als een schending van het agressieverbod.

Kort geding van februari van inwoners van Bagdad tegen Nederlandse steun aan de toen nog dreigende agressie

Eind februari, toen de oorlogsdreiging tegen Irak al een acuut stadium had bereikt, organiseerde de PC al een kort geding van 17 inwoners van Bagdad en andere Iraakse steden. Tegen Bos, Balkenende en de Nederlandse Staat. Met als eis dat de laatstgenoemden, ieder voor zich, zichzelf maximale inspanningen zouden getroosten om Nederland afzijdig te houden van een oorlog tegen Irak. En met verder als eis dat de Nederlandse regering de Amerikaanse en Britse regeringsfunctionarissen zou dienen te waarschuwen dat zij, in geval van een agressieoorlog tegen Irak, het risico zouden lopen om voor het Internationale Strafhof te worden gebracht.

Op de laatste dag van februari 2003 wees de rechter de eis van de Iraakse burgers af. Met als argument dat het nog te vroeg was voor een rechterlijk oordeel hierover. De bal zou nog, aldus de rechter, nog alle kanten uit kunnen rollen.

Herhaling van het kort geding

Dat kort geding zal dus herhaald worden. Met dezelfde Iraakse eisers voor dezelfde rechtbank van Amsterdam. En met dezelfde eisen. Als de oorlog daadwerkelijk gaat losbreken.
Wellicht heeft, op het moment van verschijnen van deze Procesnieuws, dit nieuwe kort geding inmiddels al plaatsgevonden.

Een duidelijke boodschap aan de Nederlandse politici

Maar hoe dit ook afloopt, aan de Nederlandse politici van regering en Tweede kamer is inmiddels, individueel en persoonlijk, duidelijk gemaakt dat zij, volgens de normen van Neurenberg, van het Joegoslavië Tribunaal en van het Internationaal Strafhof, zich ook persoonlijk medeplichtig en mede-verantwoordelijk maken voor alle gevolgen van de oorlog. Als Nederland steun verleent aan een onrechtmatige oorlog tegen Irak.
Voorzover zij aan deze Nederlandse steun het groene licht geven. En dat zij daarmee mede-aansprakelijk zijn voor alle schade van de slachtoffers hiervan.

Het RTS-proces strekt tot voorbeeld

Inmiddels is het proces tot schadevergoeding van de slachtoffers van het NAVO-bombardement op de Radio- en Televisiestudio (RTS) in Belgrado tegen 15 Nederlandse (ex-)politici, alsmede tegen een aantal Nederlandse militairen en de Staat der Nederlanden zelf, in gang is gezet.
Over de voorbereidingen van dit proces werd al eerder in Procesnieuws bericht.
De media weigeren collectief, als was dit zo onderling afgesproken, hierover ook maar iets te melden.
Ons daarvan iets aantrekken doen we niet.

Met dit proces als voorbeeld zal de PC ook slachtoffers van de oorlogsmisdaden jegens Irak voor de Nederlandse rechter in confrontatie brengen met Nederlandse politiek verantwoordelijken. Als Nederland aan een deze oorlog steun verleent, zonder dat er een duidelijke Veiligheidsraadsresolutie is die ondubbelzinnig tot het gebruik van geweld machtigt.

De Nederlandse politici zijn hiervan uitdrukkelijk in kennis gesteld. Of zij zich daarvan onder de indruk betonen, is van

minder betekenis dan dat zij in elk geval hiervan op de hoogte zijn.

Help mee de daders en de slachtoffers een gezich te geven voor een Nederlandse rechtbank !

Bent u ook van mening dat het niet zo kan zijn dat Nederlandse steunverlening aan agressie en mede-verantwoordelijkheid voor westerse oorlogsmisdrijven onbeantwoord blijft, dat de Nederlandse mede-daders en hun slachtoffers een gezicht moet worden gegeven en dat zij in de rechtzaal tegenover elkaar moeten worden gebracht, steun dan de PC via en bijdrage op giro 972992 van de Stichting Steunfonds Juridische Hulp in Zeist o.v.v. 'processen Irak'.

Want dergelijke processen kosten veel geld, hoe goedkoop we ze ook proberen uit te voeren. En zonder u kan het niet.
Zie verder onze web-site in opbouw: www.natosued.org.

Nico Steijnen

KORT GEDING TEGEN DE OORLOG!

Kom allemaal!
vrijdag 21 februari 2003, om 10.00 uur
Rechtbank Amsterdam, Parnassusweg 220
(station A'dam-WTC)

17 inwoners van Bagdad spannen dan een kort geding aan tegen de Nederlandse staat en tegen de Nederlandse politici. Zij eisen dat Nederland alle politieke en militaire steun aan de VS-agressie tegen Irak achterwege laat.
Zo niet dan is Nederland mede-verantwoordelijk voor de slachtoffers. De politici zijn zelfs persoonlijk aansprakelijk, op basis van de beginselen van Neurenberg. De eisers zullen tot in lengte van dagen schadevergoeding kunnen eisen, op basis van het internationale recht.

Het kort geding is een initiatief van de Permanente Commissie inzake (westerse) Oorlogsmisdrijven (de PC).
Processen tot schadevergoeding tegen de toenmalige Nederlandse politici Kok, Van Aartsen en De Grave zijn al gaande, inzake de oorlog tegen Joegoslavië. Zij steunden toen de bombardementen op de RTS-radio-en t.v.-studio in Belgrado (uitspraak half maart).

Processen kosten geld: Steun de Iraakse aanklagers via giro 0972992
t.n.v. Stichting Steunfonds Juridische Hulp, Zeist.
Kom allemaal naar het kort geding, volgende week vrijdag!

We willen een wereld waarin het aankomt op de sterkte van het recht, in plaats van om het recht van de sterkste

Zie verder onze website-in-opbouw: www. natosued.org

NATO*SUED*.ORG
een voortzetting van de Permanente Commissie inzake
(Nederlandse) oorlogsmisdrijven in Joegoslavië

Aan de leden van de Tweede Kamer der Staten Generaal
en de leden van de regering

26 september 2002

Dames en heren,

Velen van u schijnen te denken: "Ach, een oorlogje op zijn tijd... Moet kunnen!"

Velen van u schijnen te denken: "Het internationaal recht. Wat doet het er toe."

Velen van u schijnen te denken: "Als er straks maar een soort van resolutie ligt, dan kunnen we veilig meedoen met oorlogsgeweld tegen Irak." Ook al zal die resolutie niet bepaald tot oorlogsgeweld machtigen.

Daarbij zal dan opnieuw op grote schaal naamloos leed worden aangericht. Daarbij zullen dan duizenden doden en tienduizenden gewonden vallen, zo gaat dat onvermijdelijk bij een oorlog.

Dat naamloos leed en die duizenden doden en tienduizenden gewonden zullen dan, in juridische en volkenrechtelijke zin, het gevolg zijn van úw agressie.

Zoals de duizenden doden en tienduizenden gewonden van de oorlog tegen Joegoslavië het gevolg waren van de agressie van de toenmalige leden van de regering en Tweede Kamer.

Al voordat de toenmalige leden van de regering en de Tweede Kamer Nederland in de oorlog tegen Joegoslavië betrokken, is ze in het vooruitzicht gesteld dat politieke carrières gaan en komen. Maar dat zij voor hun misdrijven tegen de vrede en oorlogsmisdrijven persoonlijk in rechte ter verantwoording zouden worden geroepen. En dat de daarmee gemoeid zijnde rechtszaken hun nog lang zouden achtervolgen. Lang nadat hun politieke carrière zal zijn beëindigd.

Natosued.org is vasthoudend als het er om gaat namens de burgerslachtoffers (en hun eventuele nabestaanden) van deze misdrijven schade bij de veroorzakers van hun leed te claimen. Geleidelijk worden de rechtszaken rond de oorlogsmisdrijven in Joegoslavië tegen u of tegen voormalige collega's van u opgestart.

Meent u ook nu weer, op dezelfde basis van een ontbrekend mandaat van de Veiligheidsraad, mee te kunnen doen met agressie tegen Irak, dan zullen opnieuw velen van u achtervolgd worden in civiele procedures. Tot in lengte van jaren. Door de slachtoffers van uw misdaden. In processen blijven zij dan tot u komen.

Vergeet u vooral niet om onze website www.natosued.org te raadplegen. En het bijgaande artikel.

Namens Natosued.org,

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olitici krijgen dagvaarding wegens oorlogsmisdrijven

27-3-2001

VAN ONZE VERSLAGGEVER

DEN HAAG - Ze was erg dankbaar. Vriendelijk nam Nancy Dankers (CDA) haar dagvaarding in ontvangst. Ze is het eerste lid van de Tweede Kamer dat individueel verantwoordelijk wordt gehouden voor Nederlandse oorlogsmisdrijven in Joegoslavië: 'Dank u wel'.



Joegoslavische vrouwen bij de uitreiking van dagvaardingen bij de Tweede Kamer *Foto: Arenda Oomen*

Dankers was dinsdag 27 maart toevallig de eerste die een groepje demonstranten voor de ingang van de Tweede Kamer wilde passeren. Nieuwsgierig las ze de tekst die vier Joegoslavische vrouwen vormden. Ondertussen luisterde ze naar de advocaat die uitlegde wat de bedoeling is. Maar of ze het meteen begreep?

De actie bij de Tweede Kamer luidde de eerste bodemprocedures in die de Permanente Commissie inzake (Nederlandse) oorlogsmisdrijven in Joegoslavië tegen de Nederlandse Staat en individueel verantwoordelijke politici heeft aangespannen. De commissie eist schadevergoeding en smartengeld voor (nabestaanden van) slachtoffers van de aanval op de televisiestudio in Belgrado en de aanval met clusterbommen op de centrale markt en de parkeerplaats van het ziekenhuis in Nis.

Gevechtsvliegers

De bodemprocedure is aangespannen nadat premier Kok en de ministers Van Aartsen en De Grave niet tegemoet waren gekomen aan een sommatie om voor 18 maart aan te geven over een schikking te willen onderhandelen.

Behalve Nancy Dankers kreeg ook Femke Halsema (GroenLinks) - als toevallige tweede passant - een dagvaarding uitgereikt. Ook leden van de Vaste Kamercommissie zullen echter in de bodemprocedure worden betrokken.

Volgens een woordvoerder van de Permanente Commissie inzake (Nederlandse) oorlogsmisdrijven in Joegoslavië is het de bedoeling ook individuele militairen, waaronder gevechtsvliegers, aansprakelijk te stellen. Het Openbaar Ministerie noch het Joegoslavië Tribunaal vervolgt NAVO-acties. Volgens de woordvoerder van (nabestaanden van) de slachtoffers zijn politici en militairen echter ook civielrechtelijk individueel te treffen wegens oorlogsmisdrijven.

Hoorzittingen

Het is voor het eerst dat bewindslieden, volksvertegenwoordigers en militairen aansprakelijk worden gesteld voor oorlogsmisdrijven van de NAVO, die ze - ook achteraf - hebben gebillijkt. De raadsman zal de rechtbank verzoeken om de ministers Kok, Van Aartsen en De Grave in openbare hoorzittingen te ondervragen over de gewraakte misdrijven.

RTS-manifest voor de Nederlandse volksvertegenwoordigers ter gelegenheid van de tweede verjaardag van de NAVO-oorlog tegen de Federale Republiek van Joegoslavië

In oktober 1998 verleende u reeds uw goedkeuring aan de Nederlandse deelname aan de NAVO-agressie tegen de Federale Republiek van Joegoslavië (FRJ). Alleen de parlementsleden van de SP deden dat niet.

Uw redenen voor het aanzetten tot deze agressie

Het is niet bekend wat precies uw motieven waren om Nederland te laten deelnemen aan een daad van zuivere agressie tegen een land en een volk dat niets misdaan had, noch tegen u noch tegen het volk dat u vertegenwoordigt.
Misschien dacht u wel dat het strookte met de belangen van het Westen om dit laatste deel van voormalig Joegoslavië, dat nog weigerachtig was zich dienstbaar te maken aan die belangen, open te breken voor westerse invloeden. Dat daarom het buitensporig geweld gerechtvaardigd zou zijn.
Misschien was het slechts de arrogantie van de macht. De FRJ was ongehoorzaam aan uw bevelen, bevelen van de machtigste landen op aarde, en zou daarom de les gelezen worden.
Misschien was het moorddadigheid en bloeddorst. In elk mens huist tenslotte naast een engel ook een duivel. Vermomd als engel heeft u die duivel losgelaten om, zoals door de hele menselijke geschiedenis heen, de oorlog te ontketenen voor een betere wereld.
Misschien heeft u ingestemd met deelname van Nederland aan dit oorlogsgeweld uit carrière overwegingen.
Misschien omdat de regering en uw politieke leiders van u verwachtten, dat u braaf in de lijn zou blijven: beter in het pluche als volgzaam fractielid, dan op straat als kritisch burger.
Misschien was u wel van mening dat het 'volk' en de 'media' dit van u als volksvertegenwoordiger eisten.
Misschien heeft u wel helemaal niet gedacht en bent u gewoon meegelopen met de rest.

De verkeerde beslissing

Welke redenen aan uw beslissing ten grondslag lagen, is niet zo belangrijk. Belangrijk is, te weten dat die beslissing verkeerd was, èn dat u zich daarvan bewust bent. Het was een onwettige beslissing waardoor u zich schuldig heeft gemaakt aan misdaden tegen de vrede en aan oorlogsmisdaden. U hebt duizenden mensen laten doden en verwonden of voor het leven invalide gemaakt in een land dat voor u geen enkele bedreiging vormde.
U weet dat het een verkeerde beslissing was, want u voelt de ogen van de slachtoffers op u gericht en u weet dat die ogen voor de rest van uw leven op u gericht zullen blijven.

Het Nürnberg tribunaal

Misschien bent u niet zo gevoelig en beschouwt u zich als een ferme 'reaal politicus' en laat het lot van de slachtoffers u koud. Maar dat is een zware misrekening. De slachtoffers zullen u als misdadiger weten te vinden en eigenlijk zitten zij u al zeer dicht op de hielen. De PC helpt hen daarbij.
Het internationale recht staat er garant voor dat u persoonlijk verantwoording zal moeten afleggen voor het aanzetten tot deze misdaad tegen de vrede en voor alle oorlogsmisdaden die uit deze misdadige agressie voortkwamen. Dat is de norm geworden sinds het Nürnberg Tribunaal aan het eind van de Tweede Wereldoorlog: de standaard waaraan u gemeten gemeten zult worden.

De slachtoffers van uw oorlogsmisdaden zullen niet rusten

Deze slachtoffers laten het er niet bij zitten. Zij komen verhaal halen voor de schade die u hen heeft toegebracht. Zij dagen u voor de Nederlandse rechter. De eerste processen zullen snel beginnen.
Als eersten zullen de slachtoffers van de terreuraanval op de studio van de RTS in Belgrado en van de aanval met clusterbommen op de markt van Nis u aanklagen. Ook Nederlandse oorlogsvliegtuigen hebben aanvallen gedaan met clusterbommen, zoals u waarschijnlijk weet.

Welke parlementariërs worden gedaagd?

In naam van de aanklagers, zullen we vandaag de namen van Nederlandse volksvertegenwoordigers onthullen die gedaagd zullen worden in deze eerste ronde. In de eerste plaats de meest geobsedeerde oorlogshitsers: Blaauw, Valk, Harrewijn, Vos, De Hoop Scheffer, en Middelkoop. Om duidelijk te maken dat men door het verlaten van de Tweede Kamer de verantwoordelijkheid niet kan ontlopen, wordt ook Van Zuylen, die een paar maanden geleden de Kamer heeft verlaten, gedagvaard.

Bingo

Om te onderstrepen dat het juridisch gezien, geen verschil maakt of men een uitgesproken standpunt heeft ingenomen of niet, staan we vandaag, op verzoek van de klagers, voor het Nederlandse Parlement teneinde door het toeval twee parlementsleden een dagvaarding te bezorgen. De twee parlementsleden die het eerst door de hoofdingang naar buiten komen, krijgen er een voor de eerste ronde.

Uw beurt komt ook

Wanneer u, als parlementslid, nog niet bent uitverkoren om in deze eerste ronde verantwoording af te leggen, weest dan niet teleurgesteld. U komt zeker aan de beurt wanneer andere Joegoslavische slachtoffers van de door u aangestichte agressie, hun schade zullen willen verhalen via de Nederlandse rechtbanken. Wacht maar af.
Het is duidelijk dat de juridische procedures vele tientallen jaren zullen gaan duren. Daarom kunt u er op rekenen nog zeer lang na het eind van uw carrière achtervolgd te worden wegens uw onverantwoordelijk gedrag.
De PC die al een aantal jaren de juridische procedures voor Joegoslavische slachtoffers van de Nederlandse agressie coördineert voor de Nederlandse rechtbanken, staat garant voor de continuïteit.

De Permanente Commissie in zake (Nederlandse) oorlogsmisdaden tegen Joegoslavië
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PROVISIONAL

WRIT OF SUMMONS

BELGRADE RTS-VICTIMS AND VICTIMS
OF CLUSTERBOMB-ATTACKS IN *NIS*

VERSUS

DUTCH POLITICAL RESPONSIBLES
FOR NATO AGGRESSION

Sir, Madam,

You are selected as MP to stand in trial for war crimes.

THE DAY HAS COME

War crimes can't stay without account. Even when these war crimes are committed by the victors of the war !

On the occasion of **THE SECOND ANNIVERSARY** of the Dutch participation on NATO-aggression against Yugoslavia, the Belgrade RTS-victims and the Nis clusterbomb-victims of NATO-terror come upon you right now.

They start a lawsuit versus you for claiming damages from you personally.
So you are pointed out to get the opportunity to account for the crimes within your liability and responsibility, according to the Nüremberg principles.

War crimes you have personally applauded on or at least you never dissociated yourself from.

You now get the opportunity to render the account of this crimes in court.
The account you never rendered in politics or in public.

After a long period of preparation and viewed in the light of the outcomes of preceding legal proceedings about the Dutch war crimes in Yugoslavia, carefully suppressed by our "pluriform" media, we gonna start **NOW**.

The PC

PC-action in front of the Dutch House of Parliament in The Hague on March 27 at 10.00 a.m.

The accompanying manifesto is distributed today in front of the House of parliament among the public, MP's and press. The first two MP's appearing on the scene got a provisional writ of summons. The RTS-victims and their relatives are about to sue them before the Dutch court of justice.

RTS-MANIFESTO FOR THE DUTCH MP'S WITH REGARD TO THE SECOND ANNIVERSARY OF NATO-WAR AGAINST THE FRY

October 1998 already you did give your approval on Dutch participation on NATO-aggression against the Federal Republic of Yugoslavia.
Only the MP's of the Socialist Party (SP) abstained from such an agreement, but you are not a SP-MP.

Your reasons for your instigation of this aggression

It is unknown what exactly were your motives for your choice to put in motion Dutch participation on a full scale aggression against a nation and a people that didn't do any harm to you and the people you represent.

Maybe you were convinced that it was in the interests of the West to break open this part of the former Yugoslavia for western influence, the last part that was reluctant to serve those western interests. And that this disclosure was justifiable even when this could only be done with the utmost violence, at the cost of thousands of innocents.

Maybe it was pure arrogance of power. The FRY didn't obey your orders, orders of the mightiest countries on earth, and should be punished.

Maybe it was purely murderousness and bloodthirstiness. After all, behind every human being there is a beast and your specific position as an MP gave you a unique chance to unleash it ! Of course for the better of the world, like all war violence trough human history always has been proclaimed for the salvation of the world.

Maybe you decided to give your approval on this war violence of the Netherlands because you thought it should be the right step for your political career.
Maybe it was because your administration and your political leaders expected you to suit. And better an obedient MP party representative than no more a MP party representative for the next four years !

Maybe you thought that "the people" and "the media" required this of you. And that you as an MP has to act as the people demands, isn't it ?

Maybe you simply thought nothing at all and, as normal, followed the others.

The wrong decision

In fact, it doesn't matter what reasons you had for the choice you have made.
Because it was the wrong decision and you are aware of that.

It was a decision against the law and it makes you responsible for crimes against peace and for war crimes.
It made you responsible for thousands of deaths, wounded and disabled people for the rest of their lives in a country without any hostility to you.

You know that it was the wrong decision, because you are aware that these victims of this aggression stare at you.
And that they keep staring at you for the rest of your life.

The Nürmberg rulings

Maybe you are not sensitive to this fact and you consider yourself a tough 'real politiker',that does not feel compassion for your victims.

But that should be a vital miscalculation.
Even if you can forget the victims of these attacks, they will never forget you and they perfectly well how to find you as a perpetrator. In fact they are close upon your heels, very close.
The PC is there to give them assistance.

And the international law is there to ascertain your personel liability as an instigator for this crime against peace and for all war crimes resulting from this crime of aggression.
So are the the inexorable rulings of Nürmberg, customary law since the end of World War II.

Your war crimes victims are behind you

These victims are coming upon you right now.
They sue you for damages that you have inflicted upon them. Before Dutch law-courts. The legal proceedings are about to begin right now.

In this first round it is the victims of the terror-attack on the RTS Belgrade, together with the victims of the Nis market place clusterbomb attacks, that gonna tackle you.

Dutch war planes have been dropping clusterbombs themselves, as you probably know.

Selection of the Dutch MP's who have to face trial

Today, in the name of the Yugoslav plaintiffs of this first round, we will reveal the names of the Dutch MP's selected to stand in trial in this first shift.
First of all of course the most obsessive preachers of this war of aggression against Yugoslavia in Dutch parliament: Blaauw, Valk, Harrewijn, Vos, Hoekema, de Hoop Scheffer, Middelkoop.

In order to demonstrate that leaving the parliament not implies leaving behind legal responsibility for instigation of this war of aggression and for the present war crimes, also van Zuylen is selected.
She left Parliament a few months ago.

Two more Dutch MP's purely assigned by lot

In order to underline definitely that, from a legal point of view, it doesn't matter at all in relation to their legal liability if MP's took a pronounced stand or not, we are here today in front of the Dutch House of Parliament at the request of the plaintiffs, in order to select two more Dutch MP's, assigned purely by lot.
So the two MP's showing first their face here, at the entrance of House of Parliament, will be summoned as well in this first round.

Your turn is coming as well

If you as a member of parliament are not selected for this first shift, don't be disappointed!
Your turn to stand in trial will certainly come in the future, when other Yugoslav victims of the agression that you instigated, would bring there claims for damages in Dutch courtrooms.
So have patience!

Once initiated, its clear the legal proceedings that are undertaken gonna take maybe tens of years.
So they will pursue you, a long, long time after you political career is finished.
The PC, that is already coordinating for years four legal proceedings from Yugoslav victims of Dutch aggression going on before Dutch courts of justice, guarantees this continuity.

the PC

Permanent Commission with regard to
(Dutch) war crimes against Yugoslavia
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e-mail: hans.hupkes@planet.nl

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van holst en steijnen

From: G.W. Bekker <bekkerw@zonnet.nl>
To: Miroslav Antic <miroslav@antic.org>
Cc: Ruza Despotovic <despot@wishmail.net>; Nico Stijnen Advokat <n.h.van.holst@freeler.nl>; Milan Tepavac <miltep@EUnet.yu>; Miroljub Minja Veljanovic <veljanovic@dplanet.ch>; Nebojsa Joveljic <Joveljic.Nebojsa.N@bhp.com>; Mirko Stevanovic <mirko@nortelnetworks.com>; Hans Hupkes <hans.hupkes@tomaatnet.nl>
Sent: zaterdag 14 april 2001 09:22
Subject: PROSLEDITE DALJE MOLIM!

APRIL 2001-APPEAL BY THE DUTCH PC TO ALL SERBIAN AND

FURTHER PEOPLE LIVING IN NATO-COUNTRIES AND

DEDICATED TO THE CAUSE OF JUSTICE

WHAT'S THE PC ALL ABOUT ?

PC stands for: Permanent Commission with regard to (Dutch) War Crimes against Yugoslavia.

The PC is an organisation of people in The Netherlands from Dutch and Yugoslavian origin, founded to initiate a number of legal proceedings.

Legal proceedings for the civilians in Yugoslavia, and by the civilians, that became a victim of NATO's aggression.

PC-INITIATIVES

The PC is the first organisation in NATO-countries that undertook lawsuits directed against NATO-aggression. More specific: the Dutch participation on this NATO-aggression.

In the period of the open aggression between March and half June 1999 the PC made possible 4 summary proceedings undertaken by Yugoslav citizens, living in Serbia, including in Kosovo, in Dutch courtrooms. This as an attempt to get a verdict by Dutch courts, that should prohibit a further participation of The Netherlands on this joint NATO-aggression.

Basic assumption of the PC is that the present state of international law and domestic law systems in NATO's countries offer sufficient tools to undertake and complete succesfully legal action against NATO's criminal behaviour.

RECONFIRMING THE NUREMBERG-RULINGS IN DOMESTIC COURTROOMS

Contesting the breaches of international law by Dutch participation on NATO's criminal aggression, the Yugoslav plaintiffs in the four legal proceedings not only turned against the State of The Netherlands, but also against the decision-making Dutch politicians and Dutch high-ranking military and bombing pilots of NATO aircraft.

Since according to the principles of Nüremberg all the people involved in the preparation, decision-making and committing of war crimes, the crime of aggression and crimes against humanity are also personally liable and individually responsible for these crimes.

DESPITE THE DISMISSAL OF THE CLAIMS TILL NOW, HOPEFUL SIGNS

In all these lawsuits, the claims of the Yugoslav plaintiffs to stop the Dutch participation were taken seriously by the various Dutch courts. Nevertheless the claims were dismissed. Because in the hysterical anti-Serbian climate in NATO's coutries during the period of agression, simply no judge approached by the plaintiffs let convince himselve that there really were blatant violations of international law at stake.

All claims were dismissed by alleged lack of evidence that NATO comitted crimes against peace and warcrimes.

ut still in all verdicts there were positive and hopeful elements.

So we decided to appeal in all these cases.

In appeal both the Courts of Appeal, approached by the plaintiffs, showed that they had to deal with a big problem. Two cases are still pending and two are now brought before the Dutch Supreme Court. After the Courts of Appeal gave the defendants a narrow escape! In one case the Court of Appeal needed even more then 30 pages to justify this decision, a unique situation for a summary proceeding in The Netherlands.

OUR MOMENT IS COMING !

We have a good expectation that the Dutch Supreme Court will bring even better results.

And that the moment is coming, sooner or later, that the State of The Netherlands and the Dutch personal politically responsibles for the war crimes, committed by Dutch participation on the aggression, have to face their conviction in court.

So it's our legal experience here in The Netherlands that claims for repairing settlements are, on the long term, absolutely not losing !

ime is on our side.

The more the hysterical anti-Serbian mood is declining, the more the climate in The Netherlands is ripening for a turn in legal judgment.

The culprits now really have to fear for this moment !

PC'S SHOULD ORIGINATE IN ALL NATO'S COUNTRIES

But not only in The Netherlands the climate is changing, the same is happening in all NATO's countries.

If there ever was a moment to challenge the culprits of war crimes - NATO- State parties and guilty individuals alike - in legal proceedings seeking damages for suffering by individual Yugoslav citizens, then it is now !

And we, people from Yugoslavian origin and other people dedicated to truth and justice, living in NATO-countries, must do the utmost to bring history to a turning point. In order to prevent a further shameless falsification of history. That make perpetrators out of the Serbian people. Instead of the victims they really are.

ur duty is to fight for justice for the victims.

WE MUST TAKE TROUBLE TO REACH OUR GOAL

Justice and repair settlements don't come as a matter of course.

We should struggle for that, also and specially by long-standing and tough legal fights in the courtrooms of NATO's countries !

We appeal to everyone, dedidated to the sake of justice, in order to follow the example of the PC in The Netherlands. And to built up an organisation in every NATO-country, especially in the United States, that gonna make contact with the victims of NATO's aggression in Yugoslavia and that gonna create the opportunity for them to file claims for damages on domestic courts in the respective NATO-coutries.

Then also legal aid is a condition.

In The Netherlands there exist the lucky situation that PC-lawyers are cooperating on a solidarity base. Nevertheless, the Dutch PC is desperately in the need of funds !

LEGAL PROCEEDING ON A NO CURE NO PAY-BASE

Especially in the United States perhaps it should be also possible to attract sollicitors on a base

no cure no pay.

After all, by seeking damages there are millions at stake !

A NEW LAWSUIT, INITIATED BY THE DUTCH PC: SEEKING DAMAGES FOR THE RTS-VICTIMS AND THE NIS CLUSTERBOMB-VICTIMS

The PC in The Netherlands has started to create the opportunity for requirement of payments for compensation for the victims of the RTS-bombardment and for the victims of the Nis clusterbomb-terroract.

The starting signal for this legal proceedings has been given.

But there are tens of thousands other war crimes left uncovered. And the victims in Yugoslavia are waiting for help.

So there is enough room for tens of PC's.

SEEKING DAMAGES IS THE KEY FOR ENTRANCE TO DOMESTIC COURTROOMS

The PC realizes quite well that all money of the world cannot take away the suffering, but financial compensation possibly could bring some redress and make life more bearable for the victims.

And an very important side-effect of this kind of legal action, namely seeking damages, is that it's the only way to get through to domestic courtrooms in NATO's countries and to force the judges of NATO's countries to pronounce sentences about the legitimacy of NATO's warfare against the people of Yugoslavia.

PACK IN ONE'S FEELINGS OF DISAPPOINTMENT !

We have noticed in many contacts with sympathizers in other NATO-countries that people are disappointed in the results till now of legal action against NATO's war crimes.

But they make a error of reasoning.

In most NATO-countries there were individuals or groups that lodged complaints on a criminal law base with domestic prosecutors. Or even with the prosecutor of the Kangeroo Court in the Hague !

But that's to easy ! Prosecutors aren't independent in whatever country, even not by name. So they can block effectively the way to the judge and so they simply did in all NATO-countries. Taking orders from their respective administrations.

THE KEY IS LEGAL PROCEEDINGS ON A CIVIL LAW BASE

The only way to get a direct entrance to court and to the judge is the way of legal proceedings on a civil law base.

That's a long, complicated and mostly costly route.

The only case, so fas as we know, also following the long, long way of the civil law proceedings like the PC-cases, is the lawsuit against the Government of Canada, undertaken by Aleksic and 56 co-plaintiffs, living in Canada and Yugoslavia.

And also in this case the Yugoslav plaintiffs till now absolutely didn't turn out prospectless at all !

On the contrary, the plea of the Canadian Government that this must be considered as a "political question" and that the law was "unknown" with a legal action seeking damages for war crimes has been rejected by the Ontario Superior Court of Justice. And January 2001 the court gave to the plaintiffs a respite of 60 days to amend their claim with "material facts how the individual plaintiffs were affected by the actions of the Canadian ministers and offcials".

Till now it is, unfortunately, unknown to the PC whether the plaintiffs did succeed in amending their claims just in time. And whether they succeeded in raising enough funds to continue this important lawsuit !

It really isn't ethical to be disappointed about the outcomes of legal proceedings, as long as it even hasn't been tried systematically and at length to get an entrance to the domestic courtrooms in NATO's countries.

The only examples till now are the PC-lawsuits in The Netherlands and the Canadian lawsuits and they turned out really threatening for NATO's culprits !

WE MUST REDOUBLE OUR EFFORTS

So it's our duty to intensify our efforts and to bring about such lawsuits seeking for damages in as much NATO-countries as possible !

When we can realize a breakthrough in one or another NATO-country, then it should have a domino effect !

And this is the moment that all culprits of NATO-aggression fear like hell !!

SO FOLLOW THE PC-EXAMPLE - MAKE CONTACT WITH THE VICTIMS IN YUGOSLAVIA AND BRING THEIR CLAIMS FOR DAMAGES INTO DOMESTIC COURTS IN THE NATO-COUNTRY YOU LIVE IN - START IT RIGHT NOW, TIME IS RIPE FOR IT !

Mr. N.M.P. Steijnen

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