

2014Z15085

Vragen van het lid **Omtzigt** (CDA) aan de Ministers van Buitenlandse Zaken en van Veiligheid en Justitie over *de juridische verplichtingen die voortvloeien uit het mogelijk plegen van genocide en andere misdrijven door de zogenoemde Islamitische staat* (ingezonden 8 september 2014).

Vraag 1

Kunt u de interne juridische adviezen over het kabinetsstandpunt dat vermoedelijk sprake is van genocide en andere ernstige internationale misdrijven door de Islamitische Staat in Irak en Syrië, alsmede de mogelijke internationaalrechtelijke verplichtingen die daaruit voortvloeien, aan de Kamer doen toekomen?¹

Vraag 2

Wanneer heeft u om een extern volkenrechtelijk advies gevraagd, wat was de vraag en wanneer is/wordt dat uitgebracht?

Vraag 3

Kunt u het volkenrechtelijke advies per ommegaande aan de Kamer doen toekomen?

¹ Antwoorden van de Minister van Buitenlandse Zaken d.d. 3 september 2014 op schriftelijke vragen van het lid Omtzigt (2014Z14233).

Vraag 4

Welke verplichtingen volgen er voor Nederland concreet uit de Srebrenica-zaak (Bosnië-Herzegovina tegen Servië-Montenegro) en dan met name de door u in uw antwoorden op de schriftelijke vragen² aangehaalde paragraaf 430 van de uitspraak van het Internationaal Gerechtshof?³

Vraag 5

Kunt u deze vragen voor het plenaire debat over ISIS/Irak van 10 september a.s. beantwoorden?

² Idem, antwoord op vraag 4.

³ Paragraaf 430 van de uitspraak van het Hof luidt: «430. Secondly, it is clear that the obligation in question is one of conduct and not one of result, in the sense that a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide: the obligation of States parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A State does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the State manifestly failed to take all measures to prevent genocide which were within its power, and which might have contributed to preventing the genocide. In this area the notion of «due diligence», which calls for an assessment in concreto, is of critical importance. Various parameters operate when assessing whether a State has duly discharged the obligation concerned. The first, which varies greatly from one State to another, is clearly the capacity to influence effectively the action of persons likely to commit, or already committing, genocide. This capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the events, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events. The State's capacity to influence must also be assessed by legal criteria, since it is clear that every State may only act within the limits permitted by international law; seen thus, a State's capacity to influence may vary depending on its particular legal position vis-à-vis the situations and persons facing the danger, or the reality, of genocide. On the other hand, it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce.»