

Human dignity for all

A human rights strategy for
foreign policy



Buitenlandse
Zaken



Published by the Ministry of Foreign Affairs of the Netherlands
Text Human Rights Division
Lay-out Eindeloo
www.minbuza.nl

Human dignity for all

A human rights strategy for
foreign policy

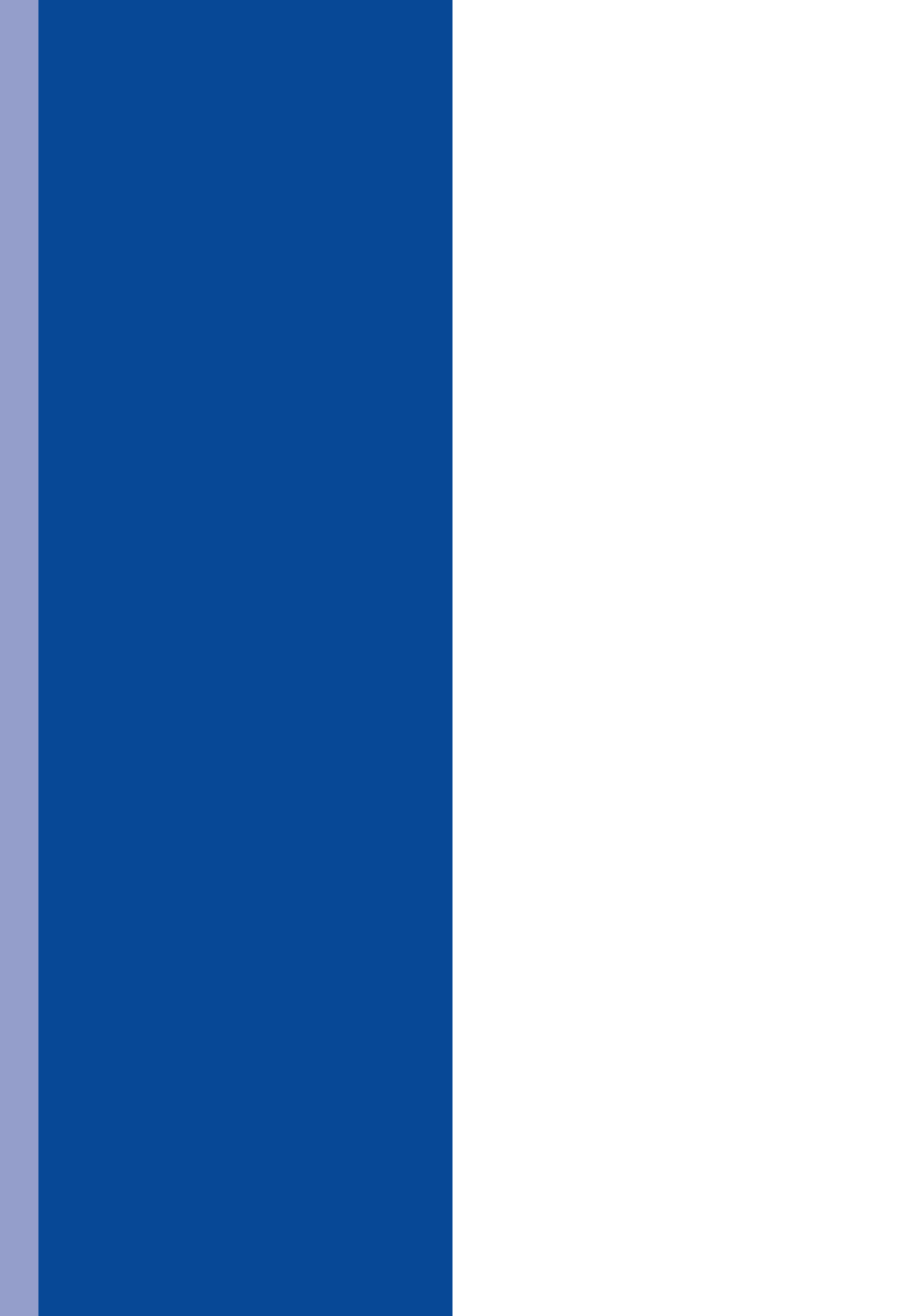
Human rights policy is made by and for people, so we are always open to ideas and suggestions from people as to how we can improve the implementation of this human rights strategy. We have set up a special email address for the purpose: mensenrechten@minbuza.nl

Contents

Preface	VII
Summary	XI
1 The importance of human rights	1
1.1 Introduction	1
1.2 Developments in the world around us	2
1.2.1 Human rights as a common thread	2
1.2.2 Legitimacy	3
1.2.3 Universality	4
1.2.4 The importance of <i>all</i> human rights	5
1.2.5 The effectiveness of human rights policy	6
1.2.6 Non-state actors	7
1.2.7 Emphasis on compliance	8
1.3 Developments in the international community	9
1.3.1 European Union foreign policy	9
1.3.2 The United Nations' human rights system	15
1.3.3 Human rights and the Council of Europe	20
1.3.4 The Organisation for Security and Cooperation in Europe (OSCE)	25
1.4 A more active role for the Netherlands	26
1.4.1 Greater political effort	27
1.4.2 Support through targeted action	28
1.4.3 Partnership	29
2 Human rights for all people, in all places, at all times	31
2.1 Introduction	31
2.2 Death penalty	32
2.2.1 Working towards worldwide abolition	32
2.3 Torture	34
2.3.1 An absolute ban on torture	35
2.4 Human rights and religion	36

2.4.1	The right to freedom of religion or belief	37
2.4.2	Protecting freedom of religion and opening it up to international debate	39
2.4.3	Relationship between freedom of religion and other rights and freedoms	42
2.5	Women's rights are human rights	43
2.5.1	Violence against women	45
2.5.2	Human trafficking	47
2.6	Greater focus on children	48
2.6.1	Violence against children	49
2.6.2	Need for protection	50
2.6.3	Eliminating child labour	50
2.7	Non-discrimination against homosexuals	54
3	Human rights, peace and security	57
3.1	Introduction	57
3.2	Counterterrorism	58
3.2.1	Standards and compliance in a UN context	59
3.2.2	European Union	62
3.2.3	National initiatives	62
3.3	A responsibility for the international community	66
3.3.1	The concept of 'Responsibility to Protect'	66
3.3.2	Practical application	66
3.4	Human rights and instability	68
3.4.1	Fragile states	68
3.4.2	Security sector reform	69
3.4.3	Small arms and arms exports	69
3.5	Crisis management in practice	72
3.5.1	Military and civilian operations	72
3.5.2	The UN Peacebuilding Commission	73
3.5.3	National Action Plan for security Council Resolution 1325	73
3.6	A just peace	74
3.6.1	Tackling impunity	74
3.6.2	Transitional justice	76

4	The indivisibility of human rights	79
4.1	Introduction	79
4.2	A national ‘infrastructure’ for human rights	81
4.3	Human rights and the Millennium Development Goals	83
	4.3.1 Similarities and differences	83
	4.3.2 Synergy in practice	84
4.4	Corporate social responsibility	85
5	The voice of human rights	87
5.1	Introduction	87
5.2	Human rights defenders	88
	5.2.1 Political attention	88
	5.2.2 Financial support	89
	5.2.3 The ‘Human Rights Defenders Tulip’	90
5.3	Freedom of expression	91
	5.3.1 Media diversity	92



Preface

Human rights, now more than ever

‘We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This Universal Declaration of Human Rights may well become the international Magna Carta of all men everywhere.’ These were the words of Eleanor Roosevelt to the United Nations General Assembly on 9 December 1948, commenting on the adoption of the Universal Declaration of Human Rights.

The Declaration, whose 60th anniversary we will be celebrating next year, was a milestone, that much is certain. For the first time in the history of humankind, the international community had agreed a set of universal principles for human dignity and equal rights. Over the next few decades the human rights in the Declaration were enshrined in human rights instruments, in the constitutions of states and in the statutes of international and regional organisations, creating a legitimate basis for international involvement in the human rights policies of otherwise sovereign states.

However, this by no means secured universal respect for human rights – far from it. We need only pick up a newspaper to see that human rights are still being violated on a massive scale. I see it on my trips abroad. Persecution on religious or political grounds, torture, detention without due process, genital mutilation of women and girls, and rape as a weapon of war are just a few of the violations that are all too commonplace today.

Proactive promotion of human rights, on moral grounds and out of conviction, is a key feature of my foreign policy. Justice, equality, humanity, respect, solidarity and love of others are values central to any civilised society that respects human dignity. They are values that we in the Netherlands cherish, and that we must promote in the rest of the world. Drawing attention to human rights is a logical aspect of this. Respect for human rights also contributes to

security and to social and economic progress both nationally and internationally. In this sense, it is in the direct interests of Dutch society.

Respect for human rights as such seems to be less self-evident these days. For a variety of reasons states, – or other parties – feel less bound by universal rights than they did in the past. Cultural relativists, for example, argue that human rights are a Western concept that takes no account of cultural or religious differences. I see this reflected in the attitude of some non-Western states that regard international involvement in human rights as uncalled-for interference in their internal affairs. The nature of violent conflict has also changed over the past few decades. Conflict within states is now more common than conflict between states, and the warring parties in these domestic conflicts often have little regard for international law. The same applies to terrorist groups, who are not bound to a single place or nation, let alone by international treaties. In other cases, national security has become such a major priority for states that they have imposed restrictions on certain rights.

Now, more than ever, we must make an extra effort to ensure that human rights remain at the top of the political agenda. And *now, more than ever*, we must be extra watchful to ensure that good intentions and fine words are actually converted into deeds. It is therefore important that we seek the most effective and realistic approach possible, in combination with other foreign policy goals.

At a time when it seems that human rights are being eroded internationally, I want to reinforce Dutch policy in this area, and this human rights strategy sets out how I plan to do so. The basic principle is that human rights apply to all people, at all times. This principle is not to be haggled over in the context of cultural or religious differences, in the fight against terrorism, or in the interests of national security. This also means that we must dare to be critical of our allies and be prepared to examine our own record. I agree entirely with former UN Secretary-General Kofi Annan when he said: ‘It was never the people who complained of the universality of human rights, nor did the people consider human rights as a Western or Northern imposition. It was often their leaders who did so.’ In my human rights policy I want to identify the people he was referring to and support the work of those who stand up for their own rights and those of others, sometimes at the risk of their own lives. As tribute to these defenders of human rights, I intend to present a special award – the Human Rights Defenders Tulip – every year.

Let us not forget that in the negotiations on the Universal Declaration of Human Rights, right up to the moment of its adoption, there was heated debate on how national differences might affect how human rights were upheld. The champions of universal human rights knew *then* how to win the argument. *Now*, almost sixty years later, we cannot give up the fight. Because, as Eleanor Roosevelt said, ‘The field of human rights is not one in which compromise on fundamental principles is possible.’ With this in mind, my goal is to pursue a human rights policy that makes a difference. In the interests of human dignity for all.

Maxime Verhagen

Minister of Foreign Affairs of the Kingdom of the Netherlands

Summary

Human rights are the ground rules for a society in which people are free to be different, and all are equal before the law. They oblige governments to protect their citizens from violence and ensure that all people enjoy equal opportunities. Human rights are the fundamental values on which democratic states and the rule of law are built: justice, equality, humanity, respect, solidarity and love of others. We want to work towards a society based on these values – not only for ourselves, but for others too. Everyone has a right to human dignity. It is this strong moral conviction that drives us to pursue a more active human rights policy.

But this choice is also born of a sense of reality. Persistent violations of human rights undermine stability, and the consequences – terrorism, international crime, forced migration – are no longer restricted, in today's world, to certain countries or regions, but extend right into the heart of our societies. At the same time, we can enter into close relations in all kinds of areas with countries that do respect human rights. More than ever before, protecting and promoting human rights as an essential part of the international legal order is firmly in the interests of a country like ours.

With our foreign policy we hope to work towards a safe, equitable, clean and prosperous world. This is not an abstract goal. It is ultimately about the people who live in this world – about our fellow human beings, and about ourselves.

A human rights strategy for foreign policy

Our goal is comprehensive and ambitious: to protect and promote human rights throughout the world. It will require extra investment in human rights policy across the board. At the same time, we will make strategic choices in response to developments in the world around us, choosing issues where our input is most needed, and developing a vision of how we can achieve results on those issues.

More investment across the whole of human rights policy will make human rights an *integral* part of our relations with other countries, our efforts at EU level and our actions in multilateral fora. Where necessary, the Netherlands will be critical of its allies, and will be equally prepared to examine its own record.

This extra investment in human rights policy is a task for everyone – ministers, ambassadors, staff at ministry headquarters and at the embassies. Everyone will be called upon to be alert, inventive and proactive. The Dutch Human Rights Ambassador will also be actively involved.

But, no matter how much we might want to, we cannot do everything at once. We will have to use our resources where they are most needed. With this in mind, we have singled out four key themes: universality; human rights, peace and security; the indivisibility of human rights; and the voice of human rights.

Human rights for all people, in all places and at all times

Universality – the idea that human rights apply to all people, in all places, at all times – was the basic principle underlying the 1948 Universal Declaration of Human Rights. Now, more than ever, it is important that this value form the centrepiece of human rights policy. At a time when intercultural dialogue is high on the agenda, it is vital that we emphasise the common basis. Human rights are part of that basis. The conviction that everyone is equal in terms of their rights and dignity is for example the driving force behind efforts to secure equal rights for men and women, to prevent cultural and religious traditions being used as a pretext for not respecting certain rights, and to ensure that everyone in the world is free to express their views.

In specific terms, this has led to a decision to make extra efforts in six areas where serious violations of these universal human rights are currently occurring. The Netherlands will for example press for child labour to be banned, and take action throughout the world to combat discrimination against homosexuals.

- The protection of life and the person, guaranteeing physical integrity, is one of the most fundamental human rights, relevant to everyone on the planet. The death **penalty** (1) and **torture** (2) constitute extremely serious violations of this right. The battle against the death penalty and torture is far from won. There is still no worldwide consensus on the abolition of the death penalty, and the absolute ban on torture is under pressure. The Netherlands will continue to work for the universal abolition of the death penalty, with a worldwide moratorium on executions as a first step. The Netherlands will also make efforts individually, at EU level and via NGOs to persuade as many countries as possible to eradicate torture.
- Human rights for all people, in all places and at all times means that it does not matter if someone is a Muslim, Christian, Buddhist or atheist. Human rights transcend all religions. No restrictions may be placed on human rights in the name of religion. No religion may formulate its 'own human rights'. This also means that every individual is free to practise his or her religion or belief, change his or her beliefs or choose not to have any religious convictions. Governments have a duty to protect this freedom, both in legislation and in practice. Inequality before the law, discrimination and the persecution of religious minorities are serious violations of the rights to which every individual is entitled. With this in mind, the Netherlands will make particular efforts to promote **individual freedom of religion and the protection of religious minorities** (3).
- In many parts of the world, **women** (4) are prevented from functioning as fully-fledged members of society. The rights of women and girls are violated on a massive scale, whether in the form of rape as a weapon of war, discrimination at work or domestic violence. The universality of human rights is not therefore a reality for around half of the world's population. Women's rights are human rights. Political attention is therefore needed to combat discrimination and violence against women. The Netherlands will work to move women's rights higher up the political agenda in its bilateral contacts, in the EU, within the Council of Europe and at the UN.
- Children are the most vulnerable members of our society; they therefore especially need support to achieve their rights. The Netherlands will therefore promote, in a bilateral and multilateral context, a focus on **children** (5), particularly in terms of combating violence against children and child labour.

- The Netherlands will also make every effort to combat **discrimination against homosexuals** (6) throughout the world. We will work to stamp out discrimination by governments on the grounds of sexual orientation and strive to ensure that homosexuality is nowhere defined as a criminal offence.

Human rights, peace and security

The connection between human rights, peace and security is the second key theme of our human rights strategy. Persistent human rights violations almost always lead to instability in the long term. Today's society, where threats to security transcend national boundaries, is highly vulnerable in this respect. Countries whose structure and stability are undermined become a haven for international terrorism and international crime.

Human rights are closely linked to stability. Security is jeopardised whenever human rights are violated, and the reverse is also true. Human rights will therefore feature prominently in our efforts to promote peace and security.

Human rights policy and security policy must reinforce each other. They intersect at various levels. At an international political level, it is important to increase support for the concept of 'Responsibility to Protect'. Though this concept emphasises states' own responsibility to protect the rights of their citizens, it also acknowledges that, where a state is unable or unwilling to do this, the international community cannot stand passively on the sidelines. The Netherlands will promote this concept wherever possible. In our own foreign policy, human rights must form part of our efforts to tackle instability in other countries. This is relevant to our policy on fragile states, security sector reform, small arms and arms exports. The meshing of human rights and security must also be reflected at an operational level, in the way we prepare for and implement crisis management operations.

There can never be a just peace if crime goes unpunished. The Netherlands will work at international level to combat impunity, and will itself make a major contribution to this process.

The security of the individual is a fundamental right and the protection of

individuals a fundamental responsibility of every government. Combating terrorism helps create an environment in which human rights can be protected and promoted. This applies both to our own country and to countries where we are contributing to the international effort to fight terrorism. Terrorism aims to undermine societies based on the rule of law and democracy by using or threatening violence to sow fear and disorder. Lack of respect for human rights and fundamental freedoms can also foster extremism and violent political opposition. Ultimately, the best defence against terrorism is a well-functioning national and international legal order which provides peaceful means for everyone to express themselves and defend their own rights. Though the fight against terrorism will demand some new restrictions on individual rights, they must always remain within the bounds of the limitation clauses enshrined in the various international human rights instruments. After all, the primary aim of the fight against terrorism is to protect and uphold democracy and the rule of law.

At international level and in its bilateral contacts, the Netherlands will actively call for the fight against terrorism to be linked to promotion of human rights. The Netherlands will also work towards solutions to the problems currently facing the international legal system.

The indivisibility of human rights

Civil and political rights and development-related rights (economic, social and cultural rights) are equal in status and must be promoted without distinction. This is referred to as the indivisibility of human rights. Like civil and political rights, economic, social and cultural rights are necessary to a life of dignity. Civil and political rights are vital if progress is to be made on economic, social and cultural rights. The integrated nature of our foreign policy gives us excellent opportunities to give practical expression to the indivisibility of human rights.

The Netherlands will, among other things, contribute to structural improvements in all rights by building and strengthening national systems for the protection of human rights. Furthermore, its development policy will focus attention on the relationship between human rights and the Millennium Development Goals. The private sector also has a valuable contribution to make to both civil and political rights and economic, social and cultural rights through corporate social responsibility.

The voice of human rights

We can promote respect for human rights throughout the world by reminding countries of their international obligations, and by protesting against violations. However, for a society to change, pressure from outside is not enough. In the end people have to stand up for their own rights. Fortunately, however, in every society there are people courageous enough to raise their voices, inform their fellow citizens and call their governments to account, despite the dangers this can entail. Human rights defenders are the voice and the conscience of a society. Freedom of expression is needed if they are to be heard by their fellow countrymen and the government. Without media freedom human rights defenders are silenced, and without media diversity the public have no access to a range of different views. The Netherlands will support human rights defenders both politically and practically. It will also promote freedom of expression by encouraging media freedom and diversity.

A special annual award – the ‘Human Rights Defenders Tulip’ – has been created to honour human rights defenders.

Strategic initiatives

The Netherlands wants to make a difference and achieve progress on these key themes (universality; human rights, peace and stability; indivisibility; and the voice of human rights). They will be reflected in the resolutions that the Netherlands introduces in the United Nations, either individually or with its EU partners, they will be consistently raised in international discussions, and they will form the subject of activities organised or funded by the Netherlands. We hope in these efforts to join forces as far as possible with international, regional and local civil society organisations.

To increase funding for human rights projects, a new human rights fund has been set up. A total of 20 million euros has been earmarked for the fund in 2008.

For foreign policy to be effective, it is important to view the promotion of the international legal order and of human rights in combination with other

elements of policy. To ensure an appropriate response to the challenges and threats of our time, we need to take a firm stand on human rights, without losing sight of the wider context.

We must also be careful to choose the most effective approach in each situation. Sometimes, making an issue of a case is counterproductive, and merely puts the people concerned at risk. In such cases, quiet diplomacy is the best approach, perhaps in the form of a critical dialogue behind closed doors. Sometimes, however, it is more effective to call a country publicly to account, by issuing a statement, for example, or calling upon its ambassador to clarify matters. The goal – to improve the human rights situation – is always paramount, even though the means may vary. At the same time, it is important to remember that the human rights situation cannot be improved overnight. We must therefore persist in our efforts, even when results are not immediately apparent.

Guide for the reader

This human rights strategy opens with a chapter discussing the importance of human rights in this day and age and exploring the active role the Netherlands feels it must play. Chapter 2 ‘Human rights for all people, in all places and at all times’ looks at the six key themes that the Netherlands intends to pursue in order to strengthen the universal application of human rights. Chapter 3 looks at the relationship between human rights, peace and security. Chapter 4 examines a number of aspects of the indivisibility of human rights, and explores ways of ensuring they are better reflected in Dutch foreign policy. Finally, Chapter 5 looks at Dutch efforts to support the ‘voice of human rights’ from within.

I The importance of human rights

1.1 Introduction

'If the 21st century wishes to free itself from the cycle of violence, acts of terror and war, and avoid repetition of the experience of the 20th century, there is no other way except by understanding and putting into practice every human right for all mankind, irrespective of race, gender, faith, nationality or social status.'

(Iranian lawyer Shirin Ebadi on receiving the Nobel Peace Prize in 2003)

Human rights are essential, but they cannot be taken for granted. The international agenda is sometimes dominated by the threat of terror and international organised crime, and the uncertainty caused by scarce energy resources and climate change. In the difficult search for international solutions, human rights risk being overlooked, sometimes deliberately. Human rights are regarded by some as a luxury, or as an unnecessary complication. The acquired rights that seemed to have gained ground since the Cold War ended have not in fact proved inviolate.

Human rights are no luxury, however. They must be the *point of departure*, now more than ever. Human rights are the fundamental values on which democracy and the rule of law are built. They are the ground rules for a society in which people are free to be different and are assured of equal treatment. A society in which courts are independent and everyone has the right to a legal defence. A society in which people elect their own representatives and have a say in how they are governed. Human rights are also the ground rules for a society in which the state does not use unnecessary violence, but in fact protects its people from violence. A society in which people have equal access to education, work and health care. A society in which people are free to speak, think and believe.

Over the years, human rights have become a permanent feature of our ideas and our society. We must actively promote for others the values we ourselves cherish – justice, freedom, equality, humanity. These values transcend all boundaries. The decision to place human rights at the centre of our foreign policy has therefore been prompted above all by a moral conviction and by our constitutional duty to strengthen the international legal order.

But it is also a realistic imperative. It is to our advantage for human rights to be promoted all over the world. Global issues are more closely related to human rights than people often assume. At a time when national boundaries are blurring, the impact of what happens within those boundaries concerns us all. We will be able to respond adequately and find sustainable solutions only if we accord human rights the key role they deserve.

This chapter looks at the context in which Dutch human rights policy currently operates, a policy that is still based on the international human rights instruments.¹ It describes developments in the world around us, including the key changes that have taken place in recent years. It also considers the more active international role the Netherlands hopes to play in the field of human rights. The main features of this effort will be examined in the chapters that follow.

1.2 Developments in the world around us

1.2.1 Human rights as a common thread

Dutch human rights policy is based on the idea that strengthening the international legal order – of which human rights are a key component – is a moral and constitutional obligation. It is important at both national and international level that we agree on how we should treat each other, and that we abide by those agreements. We cannot live in a world without rules. Strengthening the international legal order is therefore enshrined in the Dutch Constitution.² However, this is not only a question of moral conviction. A strong international legal order, including human rights, is also in our interests. Though this is not always recognised, it is a point that has become more relevant in recent times.

1 These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights.

2 Article 90 of the Dutch Constitution states that the Dutch Government will promote the development of the international legal order.

Persistent human rights violations undermine stability in the long term, leading to consequences that are no longer restricted to certain countries or regions, but can extend right into the heart of our society. Our global society involves ever more cross-border activities, with both positive and negative effects on states, citizens and non-state actors. States face more external threats, citizens are better informed about what is happening in the rest of the world and non-state actors find it easier to operate internationally. As a result, human rights violations in one particular country are now more likely to be felt in others, thus impacting on the interests of countries further away. Instability has implications for security, as unstable countries provide a base for terrorists, to name but one example.³ Instability also has a negative impact on investment in certain countries and on forced migration. Although it is not always immediately apparent, human rights are a common thread running through many contemporary international issues. To respond adequately to international developments, it is important that we do not lose sight of this thread.

1.2.2 Legitimacy

It seems obvious to conclude on the basis of these developments that more than ever before human rights are a legitimate concern for the international community. Although the Dutch government believes this to be the case, and although it has been acknowledged time and again as a guiding principle in UN resolutions, this view does not enjoy universal support. The growing acceptance of this ‘principle of legitimacy’ since the Cold War now seems to be stagnating.

One positive step was the adoption by the World Summit held during the 60th UN General Assembly (2005) of the *World Summit Outcome* which acknowledged, among other things, the concept of ‘Responsibility to Protect’.⁴ This concept underlines the primary responsibility of governments to protect their citizens. It also, however, acknowledges that the international community has a responsibility to intervene when a country violates the rights of its own citizens on a massive scale or refuses to end such violations. But it will take a great deal of political will to develop and apply this concept, as illustrated by the situation in Darfur.⁵

3 The relationship between security and human rights is discussed in Chapter 3.

4 *World Summit Outcome 2005*, document A/60/RES/1, paragraphs 138 and 139.

5 Though the High-Level Mission used the concept of ‘Responsibility to Protect’ in its report on the situation in Darfur to the UN Human Rights Council, the UN Security Council had not previously used it in its deliberations on Darfur. See also section 3.4.

The voice of countries that regard international involvement in country-specific situations as unacceptable interference in internal affairs seems to be more prominent in international fora than a decade ago – not least because these countries have gained more influence in the UN Human Rights Council.⁶ As a result, in some respects it has become more and more difficult to call countries to account within the UN for their human rights policy. This trend has also impacted on bilateral relations, particularly in view of the fact that the relatively new major players on the international stage pay scant attention, if at all, to issues like good governance and human rights in their bilateral agendas. By contrast, for the EU and its member states, human rights have increasingly become an intrinsic part of relations with other countries. The challenge for traditional supporters of human rights, including the Netherlands, is to convince others that respecting and promoting human rights is in everyone's interests. National sovereignty can never be an excuse for rejecting criticism of the human rights situation in a country.

1.2.3 Universality

The concept of 'legitimacy' cannot be viewed in isolation from the principle of universality. Under the Universal Declaration of Human Rights, human rights are a legitimate concern of the international community. However, the idea that the rights set out in the Declaration apply to all people, in all parts of the world, had little practical impact for many years. After the end of the Cold War the concept of universality gained broader acceptance, however. In 1993, it proved possible to agree in the Vienna Declaration the principle that differences in historical, cultural or religious background may never justify violation of a person's rights. However, things have not gone so smoothly in practice. Though universality is still acknowledged as a guiding principle on paper, we nevertheless see the diversity argument being invoked when it comes to the actual application of international standards.

The Dutch government remains of the opinion that international engagement and dialogue are possible only on the basis of universal principles. To undermine the universal application of human rights undermines the legitimacy of this engagement. However, this is not a position that should be defended from behind a barricade. It will require lively debate, employing the latest arguments. We must also be able to show that we make every effort in our own

⁶ The distribution of seats among regional groups in the UN Human Rights Council differs from the old UN Commission on Human Rights. The Western Group has 7 of the 47 seats on the Council, as opposed to 10 of the 53 seats on the Commission.

society to ensure that human rights are respected, and that we cooperate with the international legal system to the utmost of our ability. Human rights apply to all people, in all places, at all times.

It is also important to underline the fact that universality does not mean that every society must be the same. It means that the way governments behave towards their citizens must meet certain minimum standards defined by human rights. Governments must for example protect their citizens from torture, guarantee the equality of men and women before the law and in society, and respect the right to life. This applies to every society. Cultural relativism with regard to human rights is incompatible with individual equality, wherever you are in the world. Those who reject human rights as ‘Western’ values are wrong. Hiding behind cultural or religious differences to claim that human rights are not applicable is incompatible with the principle of universality.

Chapter 2 looks in closer detail at the application of the principle of universality.

1.2.4 The importance of all human rights

The pressure on human rights – and the need to provide a counterbalance – applies particularly to civil and political rights. These rights must therefore be reaffirmed as a matter of dire necessity. These, after all, are the rights that are most under threat from leaders who attempt to stay in power whatever the cost, undermining freedom of expression, freedom of association, and freedom of religion or belief. This is no coincidence. Civil and political rights are essential for the freedom of the individual and for a society that allows such freedom. These are the rights that determine the relationship between government and citizen. Civil and political rights give people a say in how their country is governed and their society is organised. They therefore pose the greatest threat to non-democratic rulers and are the most difficult issue for countries that cling most fervently to their national sovereignty. It is also these rights in particular – such as the ban on torture and the right to a fair trial – that risk being undermined in the fight against terrorism.

Civil and political rights are also essential for the achievement of rights that affect people’s economic, social and cultural development. Though it is often said that civil and political rights can be achieved only once a country has reached a certain level of development, this is often not the case. Indeed, these rights are vital for the development of a prosperous democratic society. People

who can vote, express and organise themselves freely are more likely to achieve progress and development than people who do not enjoy these rights. Civil and political rights give people the tools they need to express their needs and desires, and spur their government into action.

The need to provide a counterbalance to the pressure on civil and political rights does not detract from the fact that Dutch human rights policy is based on the indivisibility of human rights. Respect for one right is impossible without respect for others. Furthermore, *every* right is equally relevant to the dignity and personal development of the individual. The integrated nature of our foreign policy gives us a perfect opportunity to give practical expression to the links between and equality of rights. Chapter 4 looks at this subject in more depth.

1.2.5 The effectiveness of human rights policy

The effectiveness of foreign policy and human rights policy is currently – and rightly – drawing a great deal of attention. In this context, it is important to remember two facts: a strong human rights policy can enhance effectiveness in other policy areas and it is important to use the instruments of human rights policy itself as effectively as possible.

For an effective foreign policy, it is important to view the promotion of the international legal order and human rights in combination with other policy goals. To ensure an adequate response to the challenges and threats of our time, we need to take a firm stand for human rights, without losing sight of this wider context. This means that the relationship between human rights and other issues – such as security and development, or international trade, for example – must be fully taken into account. This need not preclude discussion of human rights with important trading partners. On the contrary, in fact. The private sector stands only to gain from stable markets and a good climate for investment, and they require democracy and the rule of law, as well as respect for human rights. The basic principle of our integrated foreign policy remains that the various areas of policy should strengthen each other as far as possible.

Obviously, we have a duty to ensure that human rights policy is as effective as possible. Implementation is vital to the credibility of human rights policy – and this applies equally to the way in which we implement it. Words must be followed up by deeds, but they must be effective deeds that achieve goals. We must always opt for the most effective instrument in the given circumstances.

The goal – to improve the human rights situation – is paramount. The means – imposing sanctions, for example – must not become an end in itself. In complying with universal standards, we must consider local conditions in deciding the best approach.

At the same time, we must underline the fact that it will not be possible to improve the human rights situation overnight. By its very nature, human rights policy requires a sustained effort, even when results prove difficult to achieve. Sometimes it is possible to measure results against effort, as in the case of lobbying for the worldwide ratification of human rights treaties or the abolition of the death penalty. However, the desire for effectiveness must never cause us to fail to act if the prospects of achieving results at first appear poor. Nor must the focus on measurable results mean that we only work towards measurable results. Protecting human rights is a moral obligation, and often requires great perseverance. If a minor is about to be executed or a human rights defender is arrested, action must be taken, even if the authorities have shown themselves to be impervious to international protest in the past. Human rights require principled action, based on the natural principle of effectiveness.

1.2.6 Non-state actors

Our global society is becoming ever more complex, and this raises the question of the responsibilities and liability of non-state actors for human rights. The term human rights has traditionally been associated with the relationship between government and citizen – the ‘vertical meaning’ of human rights. However, that relationship is constantly developing, and non-state actors are having a growing influence on the rights and freedoms of the individual. As with governments, this influence can be either positive or negative.

Violent conflict between governments and armed groups that lead to serious violations of human rights and international humanitarian law is by no means a new phenomenon. However, the desire to take a balanced approach to such situations at international level means in practice that all parties to a conflict, not just the government concerned, are increasingly being held to account for their behaviour towards citizens. One recent example is the resolution on the situation in Darfur, which the UN Human Rights Council adopted at its fourth

session, for which the Netherlands had campaigned particularly strongly.⁷ International human rights policy and international criminal law are also becoming increasingly interwoven. In recent years the international community has rightly focused a great deal of attention on tackling impunity. In this sense, there is a direct link between human rights policy and the establishment of the International Criminal Court. The Court is competent to try individuals for crimes that the international community deems so serious that failure to prosecute would undermine the international legal order.⁸ This allows the international community to tackle individual human rights violators, giving international human rights policy an extra dimension. These individuals may have acted not on behalf of their government but in a ‘personal capacity’. The same applies to other recently established international tribunals. The Hague has become known as the ‘legal capital of the world’, and the Netherlands plays a key supporting role in developments in this area. Efforts to tackle impunity as a way of promoting human rights in conflict situations will be examined further in Chapter 3.

One potential positive influence of non-state actors lies in the growing recognition of the role the private sector can play in promoting protection of human rights. This will be explored further in Chapter 4. The Ministry of Economic Affairs is shortly to submit to the Dutch Parliament a memorandum on corporate social responsibility.

The growing influence of non-state actors on the human rights situation does not affect the primary responsibility of governments for protecting and promoting human rights, however. Serious crimes such as terrorism and human trafficking can lead to major violations of victims’ fundamental rights, such as the right to life and the right to freedom, but it is the task of governments to put an end to such crimes. After all, governments have a duty to protect their citizens.

1.2.7 Emphasis on compliance

Compliance is vital to the credibility of human rights. An impressive system has been built on the basis of the Universal Declaration. However, human rights

7 A/HRC/4/L.7/rev 2, paragraph 4: ‘Calls upon all parties to the conflict in Darfur to put an end to all acts of violence against civilians, with a special focus on vulnerable groups including women, children and internally displaced persons, as well as humanitarian workers’.

8 See articles 6, 7 and 8 of the Rome Statute of the International Criminal Court. The crimes concerned are genocide, crimes against humanity, war crimes and the crime of aggression.

become devalued if they are not put into practice. The current High Commissioner for Human Rights, Louise Arbour, has emphasised on numerous occasions that failure to comply with rights already acquired threatens to erode those rights.⁹

The focus of Dutch human rights policy will therefore be on compliance with human rights. This means, among other things, that the Netherlands' efforts in international fora will be geared towards raising specific violations and problems, with the most urgent situations naturally being given highest priority. International supervisory mechanisms must be used to their best advantage, and strengthened where possible. Better compliance will also be promoted by giving individuals the opportunity to submit to an international body their complaints concerning their government's implementation of human rights instruments. This also means that bilateral policy too must make the most practical contribution possible to improving the human rights situation: words where necessary, but above all deeds wherever possible. Countries that are prepared to take human rights seriously must be offered a helping hand.

1.3 Developments in the international community

There are many actors in the international human rights arena, most of whom are discussed elsewhere in this strategy. This section looks at the most striking developments of recent years: the strong growth in European Union human rights policy and the establishment of the UN Human Rights Council. We also consider the work of the Council of Europe and the Organisation for Security and Cooperation in Europe (OSCE).

1.3.1 European Union foreign policy

'We stand up for liberties and civil rights also in the struggle against those who oppose them. Racism and xenophobia must never again be given any rein. We are committed to the peaceful resolution of conflicts in the world and to ensuring that people do not become victims of war, terrorism and violence. The European Union wants to promote freedom and development in the world.'

(From: Declaration on the occasion of the 50th anniversary of the signature of the Treaties of Rome, 25 March 2007)

9 Taken from, among other things, the speech that Louise Arbour made to the last session of the UN Commission on Human Rights on 14 March 2006.

The European Union's field of activities includes more and more issues that are directly or indirectly associated with human rights. This section looks at the European Union's external policy, with a particular focus on the common foreign and security policy (CFSP). There is also an important human rights dimension to the Union's internal policy and in cooperation in fields such as justice and social affairs. These are not discussed here, however.

More cooperation

The CFSP has continued to develop right from its very inception, particularly since the appointment of the High Representative. The number of subjects that the Union's member states now coordinate has grown steadily, as has the political will to take joint action.

This increased cooperation is particularly apparent in action to protect and promote human rights – one of the explicit objectives of the CFSP. The EU member states are stronger when they act as one. Over the past ten years, the scope of European human rights policy has grown considerably. It is now common, in the event of human rights violations in third countries, for the EU to present demarches and issue declarations. The EU has also adopted guidelines on matters such as the death penalty, torture, human rights defenders, child soldiers, human rights dialogues and international humanitarian law.¹⁰ These guidelines represent, as it were, the Union's policy on particular 'human rights priorities'. The Union attempts, through human rights dialogues (with countries including China, Russia, Iran and Uzbekistan), to bring about actual improvements in the human rights situation of the country concerned.¹¹ In external relations, the Thematic Programme for the promotion of democracy and human rights worldwide, which is administered by the European Commission, provides for specific projects to improve the human rights situation in third countries. The Netherlands is keen for this programme to address countries where the human rights situation gives the most cause for concern. Respect for human rights is a fundamental aspect of the criteria for membership, and therefore of the EU enlargement process. The new EU Treaty refers specifically to these criteria, as advocated by the Netherlands and other member states, reflecting the idea of the Union as a community of values. Human rights are also a recurring theme in the dialogue with European Neighbourhood Policy partners. There has also been a visible increase in the focus on human rights in

¹⁰ The guidelines can be found at www.consilium.europa.eu

¹¹ The last EU-Iran human rights dialogue took place in June 2004, and the process has effectively been moribund since then.

EU cooperation on international development, and in the implementation of military and civilian missions. The same applies to bilateral trade agreements and cooperation with regional organisations. Finally, the EU has introduced sanctions – partly in response to UN resolutions – against countries where serious human rights violations occur, including Belarus, Zimbabwe and Burma.

Another important development is the increase in joint action by the EU in multilateral human rights fora. EU countries submit joint resolutions on human rights situations, and member states coordinate their position prior to and during sessions of the UN General Assembly Third Committee and the UN Human Rights Council. This applies both to its ‘own’ initiatives and also to the Union’s response to the initiatives of other countries or regional groups. EU member states can also submit resolutions individually, though the underlying principle is that they are supported by the Union as a whole. When internal coordination gives rise to EU resolutions or declarations on a specific situation, they are submitted by the Presidency on behalf of the Union as a whole.

Restriction or opportunity

Developments in European external policy have benefited countries such as ours. By cooperating more closely, the European Union has become a more important actor on the international stage. And an important actor has a bigger voice, which gives joint initiatives more weight. The European resolutions in UN fora, its declarations and sanctions illustrate this point. Since all member states are obliged to adapt their national policies to EU positions, and to actively and unreservedly support these positions, the Netherlands can help determine the message that the Union and its member states put across internationally.¹² By actively and effectively operating within the Union, the Netherlands can as it were amplify the effect of Dutch policy by ensuring that it becomes EU policy. In this sense, it is important that the Netherlands proactively and consistently put forward its views and take the lead on human rights issues.

One good example is the abolition of the death penalty, for which the Netherlands has been lobbying for many years (see also section 2.2). The Union has drawn up guidelines setting out the Union’s position on the death penalty and the instruments it uses to disseminate its view. In doing so, the EU not only sends a strong political signal, it also means that less time is needed for coordination. As a result, 27 countries are now working together to achieve one

¹² Treaty on European Union, article 11.

of the goals of Dutch human rights policy, which makes a much greater impression on third countries than the efforts of one individual country. The Netherlands is also closely involved in the implementation of the guidelines. Along with a number of other member states, it has been designated a 'burden sharer' on this issue, and will therefore take on some of the Presidency's work in this area.

Challenges for the future

The changes in the European Union have placed a number of challenges before us. Firstly, policy coherence, both within human rights policy, and between this and other policies. The more human rights activities, the more human rights dialogues and the more policy overlaps there are, the greater the pressure on coherence. This might well focus attention on human rights in a particular country or as part of a certain issue to the detriment of others. However, it is important for the effectiveness and credibility of the Union that the various instruments it has at its disposal are properly coordinated. This assumes a view that extends beyond a single policy area, region or country. Indeed, it is the connections between them that are most important. The Personal Representative of High Representative Javier Solana, a post created during the Dutch Presidency, must play a greater role in integrating human rights into all aspects of the Council's work. The Netherlands also believes that a mechanism that the Commission could use to test Community policy against international human rights standards would help boost the coherence of European policy. At the same time, it is important for all the Netherlands' efforts within the EU's field of activities – including areas beyond external policy – to contribute to achieving human rights goals. To create more coherence, finally, it is important that everyone in the Union has sufficient knowledge of human rights. The Netherlands will do its part to ensure this is the case by publishing an updated version of the *Human Rights Reference Handbook*, which is intended mainly for embassy staff of EU member states in third countries.

Besides striving for more coherence, the question of how the Netherlands can act most effectively within the Union is important for an effective and active EU human rights policy, particularly now that there are more member states. Whereas, in the past, it was relatively easy to reach decisions during official meetings, decisions now have to be prepared beforehand in coalitions. It also often takes more time and effort to reach agreement on matters of substance. This has made bilateral contacts and coalitions with other member states more important. And that has implications for the way in which the Netherlands

attempts to achieve its objectives for EU human rights policy. The Netherlands will specifically invest in relations with other countries that support a proactive EU human rights policy. It will also make greater attempts in its bilateral contacts to change the views of other countries.

The third challenge is to work with other countries or groups of countries in a multilateral context. The EU cannot do everything by itself, after all. The increased coordination of European human rights policy within the UN and other organisations is not without its drawbacks. The coordination that precedes any joint action, whether a bilateral or multilateral initiative, is generally a very time-consuming process. In a multilateral context, in particular, it leaves less time and energy for making contacts with countries outside the Union, and this can place the EU at a slight disadvantage in negotiations. The Union often comes across as a closed block. Drawing on the diversity within the Union, we should actively invest in contacts with third countries, particularly in Africa, Asia and Latin America. Contact should be frequent and more systematic. The Netherlands recently proposed a 'permanent outreach chart' that would link every EU member state to a fixed number of countries outside the Union. The member states would conduct a permanent dialogue on human rights with these countries at all levels, in a multilateral context. Besides engendering support for EU positions, more contact should also lead to more joint initiatives by EU member states and countries outside the Union. Cooperation would also benefit if member states were to raise their individual profiles within the limits of common EU policy, perhaps by undertaking initiatives on a national basis, or speaking out more frequently in international fora (in support of the EU position). By creating more focal points on various issues, the Union could make itself a more accessible partner.

Strategic initiatives

- The Netherlands will press for a mechanism to be set up within the European Commission to scrutinise the human rights aspects of Community policy.
- The Netherlands will work to strengthen external EU human rights policy, playing a leading role on this issue.
- The Netherlands will make a proactive contribution to effective compliance with EU human rights guidelines on the death penalty, torture, human rights activists, child soldiers, human rights dialogues and international humanitarian law.
- The Netherlands will devote specific attention to the coherence of external EU human rights policy, ensuring that the instruments at the EU's disposal are deployed more coherently. The role of the High Representative's Personal Representative on Human Rights in this must be strengthened.
- The Netherlands will publish an updated version of the Human Rights Reference Handbook in the near future. This publication aims above all to increase knowledge of human rights among staff at EU member states' embassies in third countries.
- The Netherlands will promote more effective EU action at multilateral level, including by calling for the introduction of a 'permanent outreach chart' and by holding consultations with countries in other regions. This should lead to more interregional cooperation.
- To help ensure that the Netherlands' priorities and views on human rights are fully integrated into EU policy, the Netherlands will step up its bilateral cooperation with member states in the field of human rights.
- The Netherlands will work to ensure that efforts to conduct an effective European Union foreign policy in the field of human rights draw on the expertise of the Council of Europe and the case law of the European Court of Human Rights.

1.3.2 The United Nations' human rights system

UN Human Rights Council

Clearly it will never be an easy matter to promote human rights internationally. Human rights are, after all, about the relationship between a government and its people. This, more than any other, is an area where states are reluctant to accept external interference. However, human rights are a legitimate concern for the international community (see also 1.2.2). It is therefore essential that human rights form an integral part of the work of the largest multilateral forum in existence: the United Nations.

The United Nations Charter shows that the founders of the UN envisaged an organisation with the goal of promoting security, development and human rights in parallel. The fact that this desire for coherence has not been adequately put into practice was one of the main reasons behind former Secretary-General Kofi Annan's attempts to reform the UN: 'We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights'.¹³ One of his proposals was to replace the UN Commission on Human Rights with a new UN principal organ for human rights, which would be equal in status to the Security Council and the Economic and Social Council (ECOSOC). This would not only reflect the fact that human rights are one of the three pillars of the UN, it would also provide an opportunity to address the weaknesses of the Commission on Human Rights. As Annan saw it, the Commission was suffering a growing lack of credibility and professionalism. However, the Human Rights Commission was clearly also to some extent a victim of its own success. The very fact that it managed to pronounce on human rights situations led a number of countries to withdraw their cooperation, leading to politicisation and the formation of blocks.

The UN Human Rights Council, which met for the first time on 19 June 2006, does indeed potentially represent an improvement on the Commission in some respects. It is better equipped – at least on paper – to address specific violations because it meets more often and a system of universal monitoring is being established. This was a key point for the Netherlands during the negotiations on the establishment and structure of the new body. Although the Council is not a permanent principal organ, it does meet at least three times a year, which provides an opportunity to discuss urgent issues and monitor whether

¹³ In *Larger Freedom: Towards Development, Security and Human Rights for All*, UN document A/59/2005, page 6.

agreements are being honoured. The Netherlands and the EU also succeeded in making the discussion of country situations a prominent item on the agenda, and retaining the Special Rapporteurs on country situations. The threshold for convening special sessions in the event of urgent situations has also been lowered, and indeed this instrument has already been deployed: during the first year there were four special sessions. The fifth and most recent concerned the situation in Burma/Myanmar, and came about partly thanks to the Netherlands' proactive stance. The Council also has a new instrument at its disposal – the 'universal periodic review' – a kind of country examination on human rights, which also has a prominent place on the agenda. Although the Netherlands would have preferred this mechanism to be stronger, it does at least mean that the Council will regularly discuss the human rights situation in every country. This will mean that situations that might not easily find their way onto the Council's agenda will nevertheless be reviewed. The Netherlands also successfully called for NGOs to be allowed to make a major contribution to the work of the Council. Finally, an essential element of the Commission was also salvaged, in the form of the system of independent rapporteurs.

Whether these changes will prove their worth in the long term depends however on the political will and commitment of the Council members. The balance of power within the Council is less favourable from a Dutch point of view than within the old Commission.¹⁴ This meant that, during its first year the Council spent a disproportionate amount of time discussing the situation in the Middle East, and the discussions were usually biased. It also complicated the negotiations on the revision of the Council's instruments – particularly the system of special procedures.¹⁵ It is vital for the credibility of the Council that the most serious human rights violators are not members. The Netherlands is keen for the outcome of country examinations to play a decisive role in the election of countries to the Council.

No matter how difficult the work of the Council, it is essential that the Netherlands and other like-minded countries invest all they can to make the most important human rights organ as effective and credible as possible. We cannot give in to the demands of countries that are not well-disposed towards the Council and are themselves none too particular about upholding human

14 See footnote 6. It should be noted however that, on some issues, like-minded countries also exist outside the Western Group.

15 'Special procedures' are procedures that the Council (and the Commission on Human Rights before it) has established to focus attention on a particular theme or country. They usually involve Special Representatives, though working groups have also been established.

rights simply because we have given up the fight. In 2006 the Netherlands was elected as one of the first members of the Council, and in 2007 was re-elected for a period of three years. The Netherlands has so far used its membership to the full in helping to shape the work of the Council, and will continue to do so. Now that the start-up phase is over, attention must shift to the Council's core mandate: to promote the universal protection of human rights, all over the world. The Dutch effort will focus above all on achieving actual results at country level. This means that the Council must be able to support countries that are genuinely willing to adapt their policy on human rights. At the same time, countries that do not show such willingness and refuse to cooperate with the Council must be called to account by the Office of the High Commissioner or via special procedures. It is therefore vital that the Council be in a position to effectively monitor the situation in countries causing concern and to encourage them to cooperate with the UN system. As we have said, thanks partly to the efforts of the Netherlands, the new Council offers many opportunities in this respect, though it will above all take political will to ensure that what goes on in Geneva has an impact on the ground. The efforts of countries that are out to neutralise the Council must be countered just as vigorously by countries that do want an effective instrument for the protection and promotion of human rights.

Relationship between UN Human Rights Council and the Third Committee of the General Assembly

Some believe that the establishment of the UN Human Rights Council has far-reaching implications for the human rights work of the General Assembly. The fact that the Council is a subsidiary organ of the General Assembly only complicates this debate further. It hangs, among other things, on the question of whether, and to what extent, the Third Committee of the General Assembly, which has traditionally been concerned with human rights, should assess or ratify the Council's decisions. The possible division of roles or responsibilities between the Council and the Third Committee is also an issue.

In principle, the Netherlands supports a rational and strategic division of work between the two bodies. However, the basic principle is that duplication of activities, including resolutions, is ultimately preferable to issues being overlooked altogether, and that every opportunity to tackle the worst situations must be seized. This applies particularly to the human rights situations in individual countries. The fact that the Council now performs regular country examinations does not mean, as some countries maintain, that country resolutions will no longer be necessary. The General Assembly which, unlike the

Council, has universal membership, also has a mandate when it comes to serious human rights violations. The activities of the Third Committee should not therefore change in essence, certainly until it is clear how the UN Human Rights Council, particularly its periodic country examinations, will actually work in practice. The EU has, for example, drawn attention to the human rights situation in Burma/Myanmar during the current Third Committee, at the urging of the Netherlands and other member states.

It is however very important that the subject of human rights does not become 'monopolised' by a limited number of specially designated fora. A truly effective human rights policy at multilateral level requires the deployment of as many different instruments as possible, including in the field of development and security. The Netherlands is calling for human rights to be integrated into the entire UN system, and will undertake initiatives to this effect with like-minded partners. The same applies to other international organisations, including the international financial institutions. The Netherlands is for example supporting the High Commissioner for Human Rights in her efforts to integrate human rights into the work of the World Bank, in collaboration with the Bank itself.

UN treaty bodies

Committees have been set up to oversee the implementation of the UN human rights instruments.¹⁶ They play an important role in supervising the enforcement of international norms, advising the parties to the conventions on measures to improve the human rights situation, for example, and in some cases allowing individuals to submit complaints on human rights abuses.

There are however a number of shortcomings in the way the treaty bodies contribute to the protection of human rights. The problem is twofold. On the one hand, not all states are party to all human rights instruments, some fail to report on their fulfilment of treaty obligations on time, if at all, and the committees' recommendations are not always adopted. On the other hand, the way the treaty bodies actually work is not without its problems. In practice, they lack sufficient capacity and administrative and financial support, which delays

¹⁶ They are the Committee on Economic, Social and Cultural Rights, the Human Rights Committee for the International Covenant on Civil and Political Rights, the Committee on the Elimination of All Forms of Racial Discrimination, the Committee on the Elimination of All Forms of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Migrant Workers and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Two further conventions establishing committees were adopted by the General Assembly in December 2006: the Convention on the Rights of Persons with Disabilities (13 December 2006) and the Convention on Enforced Disappearances (20 December 2006).

the processing of reports. This undermines the effectiveness of the committees, and therefore the effectiveness of human rights instruments.

The Netherlands is keen for the UN to have an effective set of instruments and is eager to contribute to reform of the UN treaty system. The Netherlands believes the committees can best be strengthened by introducing a number of changes in the short to medium term geared towards harmonisation, coordination and integration of the work of the various committees. The government is working to make the treaty bodies more effective and efficient, without forfeiting any of the valuable elements of the individual committees in the attempt to strengthen the coherence between them. This is in line with the recommendations concerning reform of the UN treaty system in a recent advisory report by the Advisory Council on International Affairs. At the request of the government, the Advisory Council examined how the UN treaty system can be improved, as well as the pros and cons of the various options. It also looked at the relationship between the treaty system and the new UN Human Rights Council.¹⁷

In order to promote reform of the treaty bodies and thereby improve monitoring of compliance with human rights instruments, the Netherlands will convene a meeting on the subject, preferably in the margins of a session of the UN Human Rights Council.

17 'The UN human rights treaty system: strengthening the system step by step in a politically charged context', Advisory Council on International Affairs, no. 57, July 2007. The report was presented to the House of Representatives on 16 August 2007, Parliamentary Paper 2006-2007, 30800 V, no. 116, House of Representatives. The government's response to the report will be presented to the House separately, as usual.

Strategic initiatives

- The Netherlands' efforts concerning the work of the UN will focus on improving the human rights situation at country level. Any opportunity to discuss serious human rights violations in a UN context must be seized. The Netherlands will press for the most serious situations to be debated in the UN Human Rights Council and the General Assembly's Third Committee. However, it is important to ensure that a disproportionate amount of attention is not devoted to a particular country or region.
- The Netherlands will press for the institutional agreements on the work of the UN Human Rights Council to be used to greatest effect, particularly in raising the most serious human rights violations. This will be reflected, among other things, in an active role in 'universal periodic reviews', the retention of country mandates and in the convening of special sessions of the Council.
- Given the importance the Netherlands attaches to interregional cooperation, it will attempt to bring about initiatives with partners outside the European Union.
- The Netherlands will work with like-minded partners to ensure better integration of human rights into the work of the entire UN system so that all parts of the UN, including the funds and programmes, focus sufficient attention on the issue. The same applies to other international organisations, including the international financial institutions.
- Given the importance the Netherlands attaches to compliance with human rights obligations, it will play an active role in strengthening the protection of human rights by the treaty bodies, and will organise a meeting on the subject during a session of the UN Human Rights Council.

1.3.3 Human rights and the Council of Europe

Instruments under development

Over the years, more than 200 conventions have been concluded under the auspices of the Council of Europe. Many of them are also open to countries that are not members of the Council. At the core of this large corpus lie the human

rights conventions. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) plays a key role, though the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Social Charter must not be overlooked. These instruments played a major role in the development of ideas on human rights protection in Europe, and still provide a point of reference for countries outside Europe.

Since societies – and therefore also human rights issues – are constantly changing, the Council of Europe must continually change, too. It is still concluding new conventions, instruments that can play a key role in the protection of fundamental rights. One good example is the Convention on the protection of children against sexual exploitation and sexual abuse, which the Netherlands recently signed. The aim of this Convention is to make deliberately seeking access to child pornography online a criminal offence. Child pornography on the internet is a relatively new form of violation of the rights of a vulnerable group, which requires a specific and targeted approach. The Convention makes such an approach possible, and is thus a good example of the Council of Europe's role in developing instruments to protect human rights in a changing world. The Convention is also open to countries that are not Council of Europe members.

The Netherlands will continue to contribute to the development of instruments to protect human rights, particularly those of vulnerable groups, and to the adaptation of those rights to changes in society. The Council of Europe is a key forum for such development. The Netherlands is therefore committed to ensuring that the Council operates effectively, as the guardian of Europe-wide agreements on human rights, with an essential place in the international legal order. In this connection, the Council of Europe's work for the protection of minorities is very important. The Netherlands will press for further concentration of the organisation's scarce resources on its core tasks: promotion of human rights, democracy and the rule of law. Standard-setting must be combined with supervision and assistance in eliminating human rights abuses at national level.

European Court of Human Rights

Any individual who believes they have been the victim of a violation of the ECHR may submit a complaint directly to the European Court of Human Rights in Strasbourg. Any member state may refer to the Court an alleged breach of the ECHR by another member state. The Court acts as a model for other regional

courts. It is still the only international tribunal where individuals can obtain legal protection against breaches by the state of their fundamental rights. Over the decades, the Court has developed an important body of case law that guides member states' policy and legislation in areas involving human rights. This case law is also an important frame of reference both for countries outside the Council of Europe and for other regional human rights courts. The Court's rulings have had a major impact on member states' policies, and will continue to do so. It has had a particularly important influence on aliens law and criminal law and procedure. The Court thus plays an important part in harmonising the policies and legislation of the member states of the Council of Europe. An impressive number of cases – around 45,000 – come before the Court every year. However, this also gives cause for alarm, given the workload it imposes on the Court. Protocol no. 14 to the ECHR is designed to address this problem. All the member states apart from Russia have ratified the Protocol, but it will not enter into force until they have all done so. It is therefore important that Russia ratify the Protocol as soon as possible, to ensure that the Court remains effective. In November 2006 a Group of Wise Persons issued a report detailing measures which, alongside Protocol 14, are designed to guarantee the Court's effectiveness in the long term. Further exploration of and follow-up to the Group's recommendations will help address the Court's increased workload, and the Netherlands will play an active role in this. The Netherlands' key aim is to ensure the Court functions effectively. Obstacles to further streamlining must be overcome, starting with Russia's refusal to ratify Protocol 14.

Council of Europe institutions and committees

Committees and institutions are active in a number of areas fostering compliance with the objectives of the Council of Europe. These organisations provide a forum and significantly contribute towards achieving the Council's objectives. One influential committee is the European Committee for the Prevention of Torture (CPT), which monitors compliance with the European Convention for the Prevention of Torture (see also section 2.3.1). Another leading body is the European Commission against Racism and Intolerance (ECRI), an independent body that monitors whether member states are fulfilling their obligation to combat racism, xenophobia, anti-Semitism and intolerance, by visiting member states and issuing reports. The Netherlands is convinced that ECRI plays a valuable role and is therefore pressing for it to concentrate on its core mandate. The Netherlands will also continue its efforts to ensure that the Venice Commission is able to operate effectively. This body aims to bring the legal regimes of member states into line with Council of Europe principles

concerning democracy, human rights and the rule of law. It has made a major contribution to support for the countries of Central and Eastern Europe to make political, legislative and constitutional reforms alongside economic reform. The work of the Venice Commission also attracts interest from countries outside Europe.

The Parliamentary Assembly of the Council of Europe, whose role in human rights protection has gained universal recognition in recent years, also makes an important contribution.

Relationship with the European Union

The Netherlands is a major proponent of effective coordination between the European Union and the Council of Europe in the field of human rights, with a view to strengthening the protection of human rights both in Europe and beyond. One key step forward in this area would be for the European Union to accede to the ECHR, as provided for in the Treaty of Lisbon. The Netherlands is firmly convinced of the need for accession and will press for it as soon as the Treaty enters into force.

Strategic initiatives

- The Netherlands will press for further concentration of the activities of the Council of Europe on democracy, human rights and the rule of law, and the creation of the social conditions necessary to achieve them.
- The Netherlands (which has ratified more conventions and protocols (132) than any other member state of the Council of Europe) will urge other member states to ratify important conventions and protocols.
- The Netherlands is keen for the workload of the European Court of Human Rights to be reduced and will therefore continue its diplomatic efforts (both bilateral and in an EU context) for the early entry into force of Protocol 14 to the ECHR.
- The Netherlands will remain actively involved in efforts to act on a number of proposals made by the Council of Europe's Group of Wise Persons concerning the long-term effectiveness of human rights protection by Council bodies.
- The Netherlands will press for the Council of Europe to play a major role in the development of instruments to protect human rights, particularly those of vulnerable groups.
- The Netherlands will continue to press for a solid institutional and financial basis for the Court and for the other relevant supervisory institutions of the Council of Europe, including the Commissioner for Human Rights, the Committee for the Prevention of Torture (CPT), the Venice Commission, and the Commission against Racism and Intolerance (ECRI).
- To this end, funding will be provided for an expert at the offices of the Commissioner for Human Rights. The Netherlands will also make a voluntary contribution to fund Council of Europe human rights projects in Eastern Europe, and will provide funding for an extra member of staff at the Registry of the Court.

1.3.4 The Organisation for Security and Cooperation in Europe (OSCE)

The OSCE's human dimension allows participating States to be called to account over their compliance with politically binding obligations.¹⁸ The Organisation's specific added value lies in linking respect for human rights with the internal and external security of states. The OSCE is also an important player on a number of issues that are of specific interest to the Netherlands: the rights of individuals belonging to national minorities, the monitoring of the organisation of free and fair elections, and promotion of freedom of religion or belief. Combating discrimination should also be a key OSCE priority. Dutch efforts are geared towards fighting all forms of discrimination (including that based on gender, race or sexuality). The Netherlands' focus on tackling anti-Semitism and intolerance towards and discrimination against Christians, Muslims and members of other religious groups is also part of this strategy. The OSCE is thus an ideal channel for propagating Dutch human rights policy in the Euro-Atlantic and Euro-Asian region ('from Vancouver to Vladivostok').

The OSCE's operational institution (ODIHR) does useful work on human rights and democratisation. The High Commissioner on National Minorities, the Representative on Freedom of the Media and the OSCE field operations also help participating States meet their obligations.

The High Commissioner on National Minorities (HCNM) deserves a special mention. This OSCE institution was established in 1992, with its office in The Hague. Dr Max van der Stoep held the office until 2001. It is the HCNM's task to identify and resolve at the earliest possible stage any ethnic tensions that threaten to undermine peace, stability and friendly relations between countries. The HCNM's role is specifically to prevent conflict at an early stage, as part of the OSCE's first – politico-military – dimension. The Netherlands traditionally holds the activities of the HCNM in high regard. It contributes towards the office's accommodation costs and provides staff, and will continue to do so in the future.

¹⁸ The OSCE's area of activity is divided into three dimensions: the politico-military dimension, the economic dimension and the human dimension.

Strategic initiative

- In regional terms, the Netherlands will focus specifically on Central Asia within an OSCE context. Thematically, it will prioritise freedom of religion or belief, promotion of free and fair elections and respect for the rights of minorities at national level.
- The Netherlands will seek to ensure that the ‘human dimension’ of the OSCE devotes sufficient attention to all forms of discrimination in the OSCE region. This applies to the fight against anti-Semitism, and discrimination and intolerance directed at Christians, Muslims and members of other religions. The Netherlands will also focus on fighting discrimination on the grounds of homosexuality.
- The Netherlands will continue its active support for the High Commissioner on National Minorities in The Hague.

1.4 A more active role for the Netherlands

‘Please use your freedom to promote ours.’

(Aung San Suu Kyi, Burmese human rights defender and winner of the Nobel Peace Prize in 1991)

Human rights cannot be taken for granted. It is an issue that arouses strong emotions, calling as it does on our conscience and our sense of responsibility. It takes a great deal of effort merely to get the subject of human rights on the agenda, let alone to ensure they actually become a reality. We cannot simply rely on human rights being given enough attention internationally if we fail to take action ourselves. Given the importance of human rights, doing nothing is not an option for the Netherlands. The protection and promotion of human rights will therefore be accorded a key role in Dutch foreign policy.

If we are to make a meaningful contribution to the protection and promotion of human rights, we will need to be alert, inventive and active at all levels, and with all instruments at our disposal. This principle should form the cornerstone of our foreign policy, a principle that we defend and propagate with conviction. This applies to the Netherlands’ actions in a multilateral context, including in the fora discussed above. However, what we achieve at multilateral level must

ultimately have an impact on specific situations. This will not happen automatically. It is therefore at least as important that human rights, now more than ever before, should form an integral part of our bilateral relations with other countries. It is also important that we are consistent in this. We must abandon the idea that human rights can only be raised with countries with whom relations are already difficult. It must also, and more especially, be possible for less comfortable issues and concerns related to human rights to be discussed in the context of good bilateral relationships. The subject must therefore feature on our agenda for talks not only with Sudan, Iran and Sri Lanka, but also with the United States, China and the Russian Federation. Even in our bilateral relations with EU member states we must not turn a blind eye to developments in the field of human rights. We cannot afford to be selective.

1.4.1 Greater political effort

With its extensive network of diplomatic missions, the Netherlands is well-placed to pick up and respond to signals. We must ensure that all concerned are indeed alert and have sufficient knowledge to assess the value of information and take action. Sometimes it is a matter of keeping a close watch on human rights in the context of broad developments in society, for example if independent newspapers are closed down in the run-up to elections. At other times it will be a matter of protecting individuals, such as journalists who are arrested for criticising the government, or priests who are threatened for professing their faith. We must be alert – keeping our eyes and ears open in other countries – and show our determination by taking action against human rights violations.

When we take action, we must decide on a case-by-case basis which instrument will be most effective. Sometimes, making an issue of something is counterproductive, and merely puts the person concerned at risk. In such cases, quiet diplomacy is the best approach, perhaps in the form of critical talks behind closed doors. Sometimes, however, it is more effective to call a country publicly to account, by issuing a statement, for example, or calling upon its ambassador to clarify matters. Where possible, the Netherlands will initiate such action at EU level, to ensure it carries most weight. This does not, however, mean that we will leave it entirely up to the Presidency. Even when the EU takes action, it is important that the Netherlands still feels free to act itself, either reiterating the same message or emphasising certain aspects of it.

As we have said, promoting and implementing the Netherlands' human rights

policy will require effort at all levels. Firstly, the Ministers will have to draw on the human rights perspective more frequently in their bilateral contacts, and in the EU context. The Dutch Human Rights Ambassador plays an essential role in the implementation of human rights policy. The embassies must also play an active part, attending court proceedings against journalists, for example, organising meetings with human rights defenders or, where necessary, arranging for legal counsel. It is therefore important that Dutch ambassadors are well informed about the human rights situation in the country where they work. The entire Ministry will also have to make more effort on human rights – they are after all an integral and inextricable element of our foreign policy.

1.4.2 Support through targeted action

An active human rights policy involves more than simply responding to human rights violations, however. Ultimately, it is a matter of ensuring that the human rights situation in a country shows permanent improvement. The Netherlands hopes to make a proactive and constructive contribution to such efforts by means of specific activities. To expand these activities, a Human Rights Fund will be established this year, for which 20 million euros will be made available in 2008. A large proportion of this money will be transferred to the Dutch embassies, as part of the shift towards supporting local initiatives. This might take the form of support for NGOs that are lobbying their government to ratify and comply with international human rights treaties, development of education programmes, or training for judges and journalists.

Besides activities at bilateral level, the Netherlands will also actively lobby in multilateral fora for the protection and promotion of human rights. We have already discussed how the Netherlands can step up its political effort in several fora. The Netherlands also intends to make a considerable financial contribution to multilateral human rights work. Its annual contribution to the Office of the High Commissioner for Human Rights (OHCHR) and associated funds exceeds six million euros, making the Netherlands one of its biggest donors.

Around 40 million euros has been earmarked for human rights, including contributions to several international organisations, in the 2008 budget. We will seek to maintain this as a minimum level of funding in the years to come.

1.4.3 Partnership

It is not possible to promote human rights from an ivory tower. Human rights policy cannot develop in a vacuum, nor can it be successfully implemented by the government alone. Cooperation with civil society – both national and international NGOs and local human rights organisations in third countries – is vital. Our relationship with Dutch organisations that focus on human rights is also very important. This applies to organisations that are explicitly concerned with human rights and to organisations that in other ways increase support in Dutch society for the protection and promotion of human rights in other countries, such as organisations run by and for young people. It is important that young people in the Netherlands are aware of the importance of human rights, and the government will make every effort to ensure this is the case.

These organisations possess very valuable knowledge and experience. We are ultimately seeking to achieve the same goal: a world in which the rights of every individual are protected.

The Human Rights Ambassador

The Human Rights Ambassador has already been mentioned. In 1999 the Netherlands was one of the first countries in Europe to establish such an office. Now five other EU member states have appointed a Human Rights Ambassador. The Dutch Human Rights Ambassador promotes Dutch policy abroad and draws attention to serious cases. Another important aspect of the Ambassador's mandate is to maintain contacts with civil society both at home and abroad and make an active contribution to the building and maintenance of partnerships.

Strategic initiatives

- A new fund will be set up to finance activities designed to protect and promote human rights worldwide. A total of 20 million euros has been earmarked for the fund in 2008.
- The Netherlands will make a substantial annual contribution to the Office of the High Commissioner for Human Rights. The 2008 budget sets aside six million euros for the purpose. The Netherlands will also offer political support for the continued independence of the OHCHR.
- The Human Rights Ambassador will be deployed as a visible instrument of Dutch human rights policy, making an active contribution to building and maintaining partnerships with civil society.
- When they are sent to a new posting, ambassadors will hold talks with one or more human rights organisations concerning the human rights situation in the country in question.
- Dutch embassies will organise regional human rights conferences each year, beginning with a conference for all embassies in North Africa, the Middle East and the Gulf in 2008.

2 Human rights for all people, in all places, at all times

2.1 Introduction

‘All human beings are born free and equal in dignity and rights.’

(Art. 1, Universal Declaration of Human Rights, 1948)

‘All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted.’

(Art. 1, Constitution of the Kingdom of the Netherlands)

Universality and human rights are inextricably linked. The principle of universality therefore deserves a key place in this human rights strategy. At a time when, for various reasons, intercultural dialogue is high on the agenda, it is vital that we emphasise the common basis. Human rights are part of that basis, precisely because they are concerned with the equality, dignity and rights of every human being on the planet. Basic values such as the right to life, protection from torture and the equality of men and women transcend cultural differences.

An abstract concept like universality can be put into practice by placing equality and the equality of rights at the core of our human rights policy. The conviction that all human beings are equal and entitled to the same rights is the driving force behind efforts to secure equal rights for men and women and prevent cultural and religious traditions being used as a pretext for not respecting certain rights, and to ensure that everyone in the world is free to express their views. Equality also means that everyone has a right to protection of his or her physical integrity and that discrimination on the grounds of homosexuality or gender must be eliminated. This chapter explores these themes.

Universality is also the common thread running through all the Netherlands' efforts concerning themes that are not specifically discussed in this strategy document, particularly the fight against all forms of discrimination. Protecting the rights of those who are discriminated against because of their origins or ethnicity – minorities such as Roma and Sinti in Eastern Europe and Dalits in India, for example – should be an explicit focus of Dutch policy.

2.2 Death penalty

The death penalty is a flagrant violation of the right to life, as enshrined in article 3 of the Universal Declaration of Human Rights and elsewhere. It is an irreversible punishment that can lead to innocent people losing their lives. Furthermore, it has not been proved that the death penalty serves as a deterrent to potential criminals, reducing violent crime.

2.2.1 Working towards worldwide abolition

A combination of national and international political and public pressure prompted a worldwide trend towards abolition of the death penalty or suspension of executions. The Netherlands abolished the death penalty in 1983.¹⁹ Since then more than 60 other states have done the same, some for certain categories of criminal offence, others for all crimes. This brings the total number of countries where the death penalty is not applied to 143. This number includes countries that have abolished the death penalty for all crimes (88), countries that have abolished it only for certain categories of offences (9) and countries that no longer carry out the death penalty, though without formally abolishing it (46).²⁰

Although international human rights instruments do not explicitly forbid the death penalty, three optional protocols on this matter have been added to major conventions since 1980. These are the Second Optional Protocol to the International Covenant on Civil and Political Rights (1989), Protocol No. 6 to the ECHR, concerning the abolition of the death penalty (1983) and Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances (2002). Over the past few decades more and more countries have ratified one or more of these protocols. Some countries that have not (yet) ratified them have nevertheless abolished the death penalty.

19 This was the year in which it was removed from the Constitution. It had been eliminated from the Dutch criminal code in 1870.

20 Figures used by the EU, June 2007.

The EU works actively for the worldwide abolition of the death penalty. Where it still exists, states are called upon first of all to restrict its application, and at any rate to comply with certain minimum requirements. These requirements, set out in article 6 of the International Covenant on Civil and Political Rights, state for example that the death penalty may be imposed only for the most serious crimes, leading to death or severe consequences, and that it may not be imposed on people with psychiatric disorders, people who were minors at the time of the crime, or on pregnant or nursing women. The international standards for fair trials as set out in the Covenant (art. 6 (2) and art. 14) must also have been observed.

In 1998 the European Council adopted EU guidelines on the death penalty, further fleshing out the EU's external policy on this matter. With general demarches, and special efforts in specific cases, the EU is helping to accelerate the worldwide trend towards complete abolition of the death penalty. The Netherlands, with its extensive system of diplomatic missions, plays an important role in monitoring local human rights situations and implementing these guidelines. It draws no distinction between countries. Its aim in all states – both allies and countries with whom ties are less close – is full abolition of the death penalty. The Netherlands and the EU are open about this aim in all countries. The EU also presents demarches in individual cases where minimum standards are not observed, as for example in the case of the execution of minors, pregnant women or the mentally ill, or when a *de facto* moratorium is suspended. Demarches in individual cases in countries that frequently carry out executions are subject to an additional effectiveness criterion. The EU enjoys the assistance of local experts in these matters. It also emphasises the need for full abolition of the death penalty in its dialogue with these countries.

Building consensus

Although progress has certainly been made, it is difficult to achieve an overwhelming majority in favour of the abolition of the death penalty at the UN, and there is a real danger that the existing consensus will be undermined. This difficult situation has arisen because of resistance on the part of countries that wish to retain the death penalty. This is exacerbated by the fact that it is not always clear whether countries that have abolished the death penalty *de facto* but not *de jure* are actually prepared to support worldwide abolition. Specific activities in a UN context must therefore be conducted with extreme caution. This applies in particular to the submission of any resolution on the matter to the General Assembly. Last year the EU chose to issue a Declaration that was supported by 90 countries. Building on this, it has decided to submit a resolution this year (2007).

The Netherlands hopes to act as a bridge, by helping to build a worldwide alliance of countries that are either actively seeking to achieve universal abolition of the death penalty, or that support this goal. Besides active lobbying at the UN, this also requires a strategy aimed at the long term, which targets the internal factors behind the continued application of the death penalty in certain regions. The Netherlands will hold regional seminars, involving legal experts and others, to support those who are pressing for abolition of the death penalty at regional or local level.

Many NGOs are also active in the campaign for abolition of the death penalty. The Netherlands supports these organisations – both national and international – in their activities at local, regional and international level. For example, it is to support a regional conference on abolition of the death penalty to be held in Southeast Asia.

Strategic initiatives

- The Netherlands will continue to work for the universal abolition of the death penalty, starting with a worldwide moratorium on executions.
- The Netherlands will, as an EU member state, actively lobby the UN to persuade as many countries as possible to support a resolution calling for abolition.
- The Netherlands will organise regional seminars for legal experts and others to produce recommendations for exerting pressure on governments to abolish the death penalty or introduce a moratorium.
- The Netherlands will support NGOs and research institutes that campaign for abolition of the death penalty, including in Southeast Asia and Africa.

2.3 Torture

Thanks partly to the efforts of the Netherlands, the absolute ban on torture and cruel, inhuman and degrading punishment has been enshrined in a number of international human rights instruments (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention against Torture, the European Convention for the Protection of

Human Rights and Fundamental Freedoms) and is also part of international humanitarian law (the Geneva Conventions). Nevertheless, this basic norm is under pressure, including in civilised societies. Some countries still deliberately fail to enforce the ban on torture. In others, torture is on the increase, despite governments' intention to abolish the practice. The fight against terrorism has revived the debate on circumstances in which torture might be permitted. The definition of torture is also under debate. To the Netherlands, any such debate is undesirable on principle: exceptions to the ban on torture are incompatible with international law. Freedom from torture is an absolute human rights norm which may not be tampered with under any circumstances.

2.3.1 An absolute ban on torture

As with the death penalty, the EU has also drawn up guidelines to combat torture throughout the world. The EU adopted a *Global Action Plan* during the Dutch Presidency in 2004, boosting the EU guidelines for the prevention of torture. The Union is continually engaged in discussions with authorities all over the world, urging them to adopt national laws banning torture, to comply with the obligation to protect people from torture in detention centres and to comply with international norms. Dutch diplomatic missions will continue to work actively to put the EU guidelines into practice.

Efforts to tackle impunity are another important element of the fight against torture. This is important not only so that justice is done, but also because of the deterrent effect that a conviction for torture might have. Victims of torture have a right to redress, in the form of financial compensation and adequate medical care, for example. The Netherlands will actively support the work of various human rights organisations that campaign for an end to impunity and the prevention of torture, and champion the rights and rehabilitation of torture victims.

Monitoring

The ban on torture is an important item in the political dialogue with third countries. The UN Special Rapporteur on Torture and regional mechanisms such as the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) must have unrestricted access to detention centres and other locations. Monitoring is after all an essential part of the fight against torture. The CPT, for example, visits prisons and other detention facilities and psychiatric institutions to see how individuals who are

deprived of their liberty are treated. After each visit the Committee draws up a report setting out its findings and recommendations, which is sent to the Council of Europe member state concerned in order to launch a dialogue. The Netherlands was visited by the CPT in 2007. The UN Special Rapporteur does the same, submitting his report to the UN Human Rights Council. In its bilateral contacts, the Netherlands consistently presses for international monitors to be given free access.

The Kingdom of the Netherlands has signed the Optional Protocol to the Convention against Torture and will ratify it in the near future. The Protocol, which unlike the CPT in principle applies throughout the world, aims to prevent torture by providing for a system of regular visits to detention centres by independent international and national inspection mechanisms. The Netherlands will urge other countries to ratify the Protocol.

Strategic initiatives

- The Netherlands will work actively within the EU and in an individual capacity to persuade as many countries as possible to join the fight against torture, by first of all ratifying the relevant anti-torture conventions and protocols.
- The Netherlands will support NGOs that are active at local, regional or global level in the fight against torture and offer help to the victims of torture, both via the UN Voluntary Fund for Victims of Torture and via direct contributions.
- Given the importance the Netherlands attaches to compliance with human rights standards, the Netherlands will urge other countries to admit the UN Special Rapporteur and/or the Council of Europe's Committee for the Prevention of Torture and to implement their recommendations.

2.4 Human rights and religion

Human rights for all people, in all places and at all times means that it does not matter if someone is Muslim, Christian, Buddhist or atheist. Human rights transcend the differences between religions. No restrictions may be placed on human rights in the name of religion, and no religion may formulate its 'own

human rights'. It also means that every individual is free to practise his or her religion or belief, change his or her beliefs or choose not to have any religious convictions. Governments have a duty to protect this freedom, both in legislation and in practice. Inequality before the law, and discrimination against and persecution of religious minorities, are serious violations of the rights to which every individual is entitled.

Respect for freedom of religion or belief is declining throughout the world. In her report to the Human Rights Council, Special UN Rapporteur Asma Jahangir expresses concern about the violation of this freedom, particularly the rights of religious minorities.²¹ More and more countries are forcing people to wear religious symbols or prohibiting them from doing so, respect for holy places is declining, and members of religious groups are experiencing more and more problems in openly practising their religion. In many countries, for instance, it is difficult to establish or maintain a place of worship or other meeting place. There is also growing intolerance: an OSCE analysis has for example shown that the number of violent anti-Semitic incidents increased in 2006.²² Generally speaking, we can say that freedom of religion is coming under increasing pressure. The Netherlands will therefore focus its efforts on individual freedom of religion or belief and the protection of religious minorities.

2.4.1 The right to freedom of religion or belief

Since the United Nations was first established, the Netherlands has always worked for the protection of freedom of religion or belief. To a certain extent, the way in which a government upholds this right is seen as a litmus test for the general human rights situation in a country. Freedom of religion or belief encompasses many things, after all, and is associated with other human rights and fundamental freedoms, particularly freedom of expression and freedom of association. Furthermore, freedom of religion or belief affects the personal choices people should be free to make in life. If a state violates these fundamental freedoms by discriminating against or even persecuting members of religious minorities there is a strong chance that they will fall short on other human rights too.

In the current age of globalisation and increasingly interwoven cultures, religion and belief have become more important to many people. Though it was

²¹ A/HRC/6/5, 20 July 2007.

²² *Hate Crimes in the OSCE Region: Incidents and Responses*; ODIHR annual report 2006.

originally expected that globalisation would be accompanied by increasing secularisation, this has in fact not always turned out to be the case. For some people, it has become even more important to cling to religious and cultural traditions in their attempts to define their place in the 'global village'. Others are looking for new anchors at a time when information is available in endless supply. The sharp increase in migration has also blurred the geographical boundaries between different religious and ideological movements. Whereas previously a single religion would be the principal or only religion of a given country, nowadays many countries are home to ever-increasing numbers of religious, ideological or philosophical minorities. To countries that have traditionally had a single religion in the past, globalisation and the rise of non-traditional religions and beliefs can seem particularly threatening. They might respond in the form of denial, feigned tolerance or even direct repression and discrimination against members of minority religious movements.

Protecting the group through respect for individual rights

Dutch policy is based on the fundamental right of all people to freely practise their religion, change their beliefs or choose not to hold any religious convictions. No government or religion may restrict this freedom. Every individual has the right to choose his or her religion, or relinquish their religious beliefs, as laid down in article 18 of the Universal Declaration of Human Rights, and article 18 of the International Covenant on Civil and Political Rights. The treaty body relevant to the latter article has provided a specific explanation stating that freedom to change one's religion or belief also means that one must be free to espouse atheism.²³ The government must guarantee this freedom by ensuring that it applies unconditionally to every individual, in all circumstances. People who change or relinquish their beliefs must not under any circumstances be prosecuted under criminal law. It is therefore entirely unacceptable that 'apostasy' should carry the death penalty, as it does in some countries.

If a religious group is being threatened or discriminated against, it is the government's responsibility to offer protection and take measures to bring the situation to an end by means of legislation and enforcement. Promoting and respecting freedom of religion or belief and ensuring that every citizen not only has this right on paper, but actually enjoys it in practice, provide the basis for a society in which religious diversity goes hand in hand with individual freedom.

23 General Comment 22 of the Human Rights Committee, paragraph 5.

Religious and ideological tolerance can be achieved only in a climate of openness. This means that people must have access to information, from childhood, on religious and ideological movements. Children must be made aware through education of the fact that other religions and beliefs exist besides their own, and that all people are equal, no matter what they choose to believe.

Such openness does not exist in many parts of the world. In many countries, religious minorities are discriminated against, intimidated or persecuted. Sometimes, for example, official documents do not allow people to indicate that they do not belong to any religion, or are perhaps humanists or atheists. More and more often, freedom of religion is dependent on whether a religion is officially registered, since non-registered religious groups are not allowed to build places of worship, for example. Such a policy is in flagrant breach of the principles of the international human rights instruments, which ban any form of discrimination on the grounds of religion or belief. If members of a particular religion or ideology engage in illegal activities, the courts should deal with the matter on the basis of the grounds for limiting that freedom set out in those instruments. Forbidding a religious movement as such is quite a different matter, however. The individual right to a religion or belief is after all absolute.

2.4.2 Protecting freedom of religion and opening it up to international debate

Dutch efforts within international fora focus particularly on promoting such openness throughout the world. The Netherlands therefore presses for full respect for freedom of religion or belief, including the freedom to change one's religion, as well as the promotion of intercultural, interreligious and intrareligious dialogue.

Protection

In 2007 the Netherlands succeeded in getting the subject of freedom of religion or belief onto the agenda of the UN Human Rights Council. During the Council's sixth session the Netherlands initiated a resolution on religious intolerance.²⁴ It deliberately chose to do so in an EU context, to maximise the impact of the message. The resolution was in fact held over until the session resumes in December 2007. After a hopeful start, whereby fifty countries had shown themselves willing to support the resolution, it turned out that the

²⁴ The sixth session of the Human Rights Council commenced on 10 September 2007 and was adjourned after three weeks. It will resume in December 2007.

Organisation of the Islamic Conference wanted to make a number of amendments that were unacceptable to the EU. It is not yet clear whether these amendments will receive a majority in December. The Netherlands will take advantage of the adjournment to actively lobby other countries to support the original text. The Netherlands also individually organised a special meeting on freedom of religion in Geneva during the sixth session of the Council. It was attended by the UN Special Rapporteur on freedom of religion or belief. The Netherlands will continue to play an active role in the drafting and consideration of these resolutions in the General Assembly's Third Committee and in the UN Human Rights Council, either by taking the lead on behalf of the EU, or by supporting the member state that takes on this role. The Netherlands also traditionally takes the lead on the issue of freedom of religion or belief during the OSCE's Human Dimension Implementation Meetings.

Outside multilateral fora, too, the Netherlands will continue to work for the protection of freedom of religion or belief. Firstly, it will raise the subject in its contacts with third countries, particularly those where religious minorities are under threat. The Human Rights Ambassador will hold talks during his visits with representatives of religious minorities. Protection of freedom of religion or belief will also be one of the specific objectives of the new Human Rights Fund, which will be used to fund activities in this area. The Ministry is also in direct contact with a large group of NGOs concerned with this issue via the Multifaith Freedom of Religion Consultative Committee. Some of these organisations regularly supply information on the situation in countries about which they are particularly concerned. The embassies use this information to pursue an active policy on the issue, either by means of quiet diplomacy, or in the form of demarches (EU or otherwise).

Dialogue

Since early 2007 the Netherlands has been a member of the Group of Friends of the 'Alliance of Civilisations'. The Alliance sprang from a 2005 initiative by the Turkish and Spanish Prime Ministers, Recep Tayyip Erdogan and José Luis Rodríguez Zapatero, which was later taken up by UN Secretary-General Kofi Annan. It attempts to reduce the tensions between population groups with different ethnic, cultural or religious backgrounds by arranging high-level political meetings and promoting contact between people from different backgrounds at international, regional, national and local level. This year the High Representative, former Portuguese President Jorge Sampaio, published an

implementation plan. The Alliance focuses among other things on media literacy – teaching people how to put media messages into perspective and preventing extreme reactions like those over the Danish cartoons. The Alliance also hopes to establish a network of influential non-governmental individuals who can use their influence to reduce tensions in such situations.

The activities of the Alliance therefore tie in well with the Netherlands' efforts to enhance tolerance between different cultural, ethnic and religious groups. The Netherlands works on the principle that dialogue, particularly at grassroots level, helps people understand each other better and prevent tensions. In all these activities, however, respect for the universal applicability of human rights and fundamental freedoms is paramount. The Netherlands is particularly interested in supporting the plan to set up a clearing house that will allow information on successful and failed initiatives aimed at dialogue to be shared more rapidly at all levels.

The Netherlands is to team up with Thailand in organising the ASEM Interfaith Dialogue, to be held in Amsterdam in 2008.²⁵ At the meeting, working groups will discuss the significance of interreligious dialogue for poverty reduction and religious education. One working group will attempt to identify how information on interreligious dialogue can be made accessible via the internet and what role such dialogue plays in government policies. Apart from discussions in working groups, Amsterdam city council will also run a more practically-oriented programme which will allow participants to see for themselves a number of current initiatives promoting dialogue in the city.

The Hague city council will join forces with the Ministry of Foreign Affairs to hold a meeting on the 60th anniversary of the Universal Declaration of Human Rights on 10 December 2008 at which religious leaders from all over the world will speak about their efforts to achieve human rights.

Such activities should never undermine the universal nature of human rights. They should in fact reaffirm it by means of dialogue.

²⁵ The Asia-Europe Meeting (ASEM) is a forum for discussion between the 27 EU member states, 16 Asian countries and the ASEAN secretariat.

2.4.3 Relationship between freedom of religion and other rights and freedoms

At the beginning of this section, we referred to the connections between freedom of religion and other rights and freedoms. These connections can give rise to tension. Besides protecting freedom of religion or belief and promoting dialogue, Dutch policy is also geared to eliminating such tensions.

Within the UN, Islamic countries argue forcefully for protection of religions as such. From a human rights point of view, however, this is neither correct nor desirable. Human rights – including freedom of religion or belief – are individual rights. A religion as a whole cannot be protected by invoking rights that are vested in individuals. The difference in these two approaches was clearly highlighted in the conflict over the Danish cartoons depicting the prophet Mohammed. On that occasion, the Netherlands focused both on de-escalating the tension and on protecting freedom of expression. However, neither freedom of expression nor the right to practise one's own religion or belief is unrestricted. Freedom and responsibility always go hand in hand. Anyone who exercises free speech has a responsibility to treat others with respect and not to hurt them unnecessarily. Everyone also has a responsibility under the law. It is ultimately up to the courts to decide in specific situations, based on the facts, whether one right is being so seriously violated that restriction of another is justified.

In other areas, too, there can be tension between freedom of religion and other human rights. The position of women and homosexuals deserves particular attention. Often, a mix of cultural traditions and religious laws can lead to them being disadvantaged or even discriminated against, particularly when such traditions and laws have been incorporated into national law. The Netherlands will always attempt to tackle such disadvantage, on the basis of the principle of non-discrimination.

The Netherlands will work actively to promote dialogue and, ultimately, improvements in legislation on this point, including in the context of the above-mentioned Alliance of Civilisations. It will also organise side events at meetings of the UN Human Rights Council and the General Assembly's Third Committee to launch such dialogue. At such events, the Netherlands will champion cultural and religious diversity, guided always by the principle of the universality of human rights and respect for the principle of non-discrimination.

Strategic initiatives

- The Netherlands will systematically raise the subject of freedom of religion or belief in its contacts with third countries. During visits to other countries, the Human Rights Ambassador will draw attention to the individual right to freedom of religion or belief, and emphasise governments' duty to protect religious minorities.
- Protection of freedom of religion or belief will be a specific goal of the new Human Rights Fund.
- The Netherlands will keep the subject of freedom of religion or belief on the UN agenda, acting as lead country on behalf of the European Union.
- The Netherlands will approach the UN Special Rapporteur on freedom of religion or belief to establish where and how the Netherlands can help improve the status of religious minorities.
- As a member of the Group of Friends of the Alliance of Civilisations, the Netherlands will actively promote dialogue.
- In 2008 the Netherlands will host the ASEM Interfaith Dialogue in Amsterdam. In the same year, a meeting of religious leaders from all over the world will be held in The Hague.

2.5 Women's rights are human rights

Around half the people on the planet are women. As has often been acknowledged, women are in many respects the key to change in the society where they live. Which makes the fact that they, in particular, have limited opportunities to participate in society all the worse. The rights of women and girls are violated on a massive scale, whether we are talking about participation in public life or their status within the four walls of their homes. Traditions and cultural customs are often incompatible with the universally recognised ideal that all human beings are equal in dignity and rights. The fact that men and women do not have equal opportunities is not only a great injustice. Improving the status of women is also essential for social, economic and political development.

Much has been achieved over the past few decades in terms of standards and international policy guidelines. This has been reflected at international level in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the global conferences in Beijing and Cairo. CEDAW has been ratified by 185 countries. But looking at the daily reality of the lives of many women, we are forced to conclude that this is by no means enough. Women are still hugely disadvantaged in many ways. In sub-Saharan Africa, for example, young women are three times more likely than young men to acquire an HIV/AIDS infection. Women account for two-thirds of illiteracy in the world. In Europe, women earn on average 15% an hour less than their male colleagues. Only 14% of members of parliament in the entire world are women.

Improving the status of women worldwide is therefore a priority for the Netherlands. This is reflected in several elements of foreign policy. The Netherlands focuses generally on eliminating discriminatory provisions from national and international law and ensuring that agreements to do so have a practical impact. Sexual and reproductive health and rights – an issue that in fact concerns both men and women – will be high on the agenda. The priority will be violations of sexual and reproductive rights that prevent the rate of maternal mortality and sexual violence from being cut. Extra attention will also be focused on preventing the feminisation of HIV/AIDS and tackling its underlying causes. This is in line with broader Dutch policy on HIV/AIDS, which adopts a human rights based approach.²⁶ In the fields of education and security policy, too, improving the status of women and girls plays a key role. A greater focus on the status of women is also required in a general sense if the Millennium Development Goals are to be achieved despite the delays. Two of the MDGs specifically refer to women, but the inequality between men and women is also seriously delaying progress towards most of the other goals, too.

Women's rights are human rights. As part of its human rights policy, the Netherlands will seek to move women's rights generally up the political agenda, both in its bilateral contacts and in an EU context. Within the UN, too, there is growing acknowledgement of the fact that women's rights are first and foremost human rights, and therefore also a political issue, and only secondarily a development issue. The rights of women must be a permanent feature of the Netherlands' relations with other countries, in the context of development relationships and in other areas. To ensure that this is also the case in the

²⁶ An internal memorandum was recently drafted to guide Dutch embassies in approaching the HIV/AIDS problem from a human rights perspective. It too focuses on sexual and reproductive health and rights.

European Union's external activities, the Netherlands will press for guidelines on women's rights to be adopted. The EU's human rights policy needs to be more specific, coherent and active in this area. This is particularly important in terms of member states' position on sexual and reproductive health and rights. The EU should reaffirm and unanimously propagate the common positions on the matter adopted in the past. The Netherlands will contribute by organising a number of activities with the Visegrad countries (Poland, Czech Republic, Slovakia, Hungary). It will also actively support women's rights, including sexual and reproductive health and rights, in human rights fora and in its bilateral relations.

2.5.1 Violence against women

The Netherlands makes particular efforts to combat violence against women. Such violence demonstrates all too clearly the consequences of inequality and the urgent need to give women the resources they need to assert their rights. Women all over the world fall victim to violence, in both rich and poor, developed and developing countries. According to United Nations figures, one in three women worldwide has been the victim of sexual violence within an intimate relationship. On average, more than five thousand women a year are victims of honour killings, which are not criminal offences in some countries. Of the world's current female population, 130 million have undergone genital mutilation. Violence against women is an issue that exposes cultural, religious and traditional sensitivities. We must therefore be aware of the fact that no single society is free of violence against women, including our own. The Netherlands plans to step up its international efforts on this issue. Efforts to eliminate violence not directly related to conflict are examined below. The relationship between women, peace and security is examined in chapter 3.

Taking the lead internationally

The issue of violence against women rightly occupies an ever more prominent place on the UN agenda. This is to a large extent thanks to the leading role the Netherlands has played on this issue. The UN General Assembly has adopted several resolutions initiated by the Netherlands regarding traditional practices that are damaging to the health of women and girls, including genital mutilation. More recent Dutch initiatives have targeted honour crimes and domestic violence against women.

In 2003, in a resolution that enjoyed broad support, the Netherlands called upon the UN Secretary-General to commission a study into all forms of violence

against women. This study, which was published in 2006, formed the basis of a Franco-Dutch resolution setting out specific steps towards the elimination of violence against women.²⁷ The resolution urges states to take action to eliminate violence against women and to develop and implement integrated policies to tackle such violence. It also calls on the UN to expand and, above all, better coordinate its efforts in this area, for example by setting up a database to allow country information to be gathered on violence against women. An Interagency Task Force is working to restructure various activities in the UN system to achieve a more coordinated approach to violence against women at country level. The Netherlands and France jointly head a Group of Friends that works actively for the implementation of the resolution.

The Netherlands will work to expedite compliance with the commitments in the resolution, by making extra financial contributions and bringing political pressure to bear on governments and the UN system, to which the Netherlands is already a major donor. The issue must remain on the UN's agenda, both in the General Assembly and in other relevant fora. It is for example important that the elimination of violence against women receive the attention it deserves from the UN Human Rights Council in Geneva. This would underline the fact that the problems lie not only in economic and social development, but that the continuation of violence against women is unacceptable from a human rights perspective. The Netherlands has urged the sixth session of the Human Rights Council to focus special attention on this subject.

Bilateral policy

The Netherlands supports a large number of projects and programmes run by international organisations, NGOs and government bodies throughout the world in support of women's human rights. Many focus on combating violence against women and supporting victims. Examples include projects aimed at eliminating female genital mutilation, early and forced marriage, honour crimes, trafficking in women and forced prostitution. Embassies in several partner countries will help with research and the tightening up of legislation aimed at protecting and enforcing rights. Specific attention will be focused on abolishing discriminatory traditional and customary law, and on awareness-raising activities for both men and women.

The importance of legislation and enforcement will be referred to explicitly in

²⁷ A/RES/61/143.

bilateral contacts. As long as offenders are not dealt with – for lack of adequate legislation or enforcement or because victims are afraid to speak out – there will be little stimulus for change in a society. Taboos and lack of political will can prevent the actual scale or nature of the problem being revealed. Embassies will be asked to report on this matter, to consistently bring it to the attention of the authorities, and to support projects that make a specific contribution to efforts to tackle impunity.

2.5.2 Human trafficking

Though the abolition of slavery was one of the first human rights issues on which the international community reached agreement, we are unfortunately forced to conclude that full abolition has still not been achieved. Measures against human trafficking – a modern form of slavery – should therefore always be set in a human rights context. After all, victims of human trafficking are prevented from asserting their human rights. The preamble to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons states, for example, that a comprehensive international approach is needed, including measures to protect the victims of human trafficking, including their human rights. Women and children are often victims of trafficking. The approach is not however confined to them.

Strategic initiatives

- Alongside the Netherlands' enhanced efforts on other non-discrimination issues, the rights of women will receive prominent attention in its bilateral relations. The Human Rights Ambassador will pay particular attention to this issue during his visits to other countries.
- Reporting, dialogue and specific projects will focus on tackling violence against women in an institutional context, particularly measures to combat impunity.
- The Netherlands will work to ensure that the EU drafts guidelines on the rights of women as part of its external policy.
- The Netherlands will also aim to increase support for promoting sexual and reproductive health and rights within the EU, by organising country activities with the Visegrad countries, among other things.
- The Netherlands will actively encourage compliance with the UN resolution on violence against women, at both national and international level, and within the UN itself.
- The Netherlands will urge the UN Trust Fund on Violence against Women to help guarantee better coordinated UN efforts at country level.
- The Netherlands will continue its active efforts in the fight against human trafficking at national and international level, taking human rights into account at all stages of efforts to combat human trafficking.

2.6 Greater focus on children

The more vulnerable a person, the more important it is that they are aware of their rights and that they can seek help in asserting them. And this applies above all to children. Children who are not taught that they have rights also often fail later in life to see that they themselves can do something to improve their situation.

Many countries have an ambivalent attitude towards children, and this is

reflected in international developments in this area. The International Convention on the Rights of the Child was one of the last UN human rights instruments to be adopted, in 1989, but it has been ratified by the highest number of countries. In countries where human rights are under pressure generally, children's rights can often be promoted, albeit on a limited scale. In such countries, the achievement of children's rights will more often than not be hampered by certain traditionally and culturally determined attitudes. The idea that children's rights mean a ban on corporal punishment, that people may not marry until they are adults and that girls have just as much right to education as boys goes too far for some countries.

Permanent international attention is needed if these rights are to be achieved. The Netherlands will make an active contribution to this effort. To strengthen EU policy on children's rights, the Netherlands is pressing for the rapid adoption of and compliance with the EU guidelines on children's rights. The focus should be on tackling violence against children – an issue which the Netherlands highlights via other channels, too, including the recently adopted Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse.

2.6.1 Violence against children

In 2006, the UN Secretary-General commissioned Professor Paulo Sérgio Pinheiro of Brazil to publish a study on the incidence, nature and causes of violence against children. This study, which the Netherlands helped to fund, was based on extensive research, regional meetings and close contact with children and NGOs. It looks at all forms of violence, including trafficking in children, child pornography, domestic violence, child labour and corporal punishment in schools. The study provides a good starting point for further UN measures on this often difficult issue.

The Netherlands will ensure that the UN makes optimum use of the study's recommendations, for example by drawing attention to them in the annual resolution on children's rights at the General Assembly. The Netherlands will also support third countries – either individually or in an EU context – in developing and implementing strategies and action plans to eliminate violence against children. It will work to enhance international support for measures to combat violence against children by pressing for ratification and implementation of international human rights instruments in both a bilateral

and a multilateral context. The status of children will be a special focus of the Netherlands' activities aimed at strengthening national systems for the protection of human rights (see section 4.2). The Netherlands will also press for a UN Special Representative on Violence against Children to be appointed. He or she would promote measures to combat violence against children, foster international cooperation in this area and generally ensure that the recommendations from Professor Pinheiro's study were put into practice.

To make information on violence against children accessible to the young, thus raising their awareness, the NGO Save the Children has produced a 'child-friendly' version of the Professor's study, which has already been translated into several languages. The Netherlands will fund the translation of this children's version into Dutch and the languages of countries with which it has a special relationship that have expressed a willingness to actively use the information.

2.6.2 Need for protection

The UN studies on violence against women and children published in 2006 showed that girls are particularly vulnerable to all forms of violence. Every year, millions of girls are aborted or killed shortly after birth simply because their families are unable to pay for their upbringing and dowry. Often, girls do not attend school, but are made to contribute to the household budget. They are more likely than boys to be sold or married off at a young age. Where money is available for health care, it is more often spent on boys than on girls.

Although the two UN studies look at specific aspects of violence against girls, it will take more to ensure that this highly vulnerable group receives enough attention internationally. The Netherlands therefore intends to organise an international conference, collaborating closely with Professor Pinheiro, the UNICEF Innocenti Research Centre and others. In this way, the Netherlands hopes to encourage action to tackle violence against girls, particularly in the form of traditional practices such as genital mutilation, child marriage and honour crimes.

2.6.3 Eliminating child labour

Child labour is a daily reality for over 200 million children. Three-quarters of them are victims of the worst forms of child labour, including prostitution, slavery and trafficking. Children need to be able to learn and play, not work.

Working robs them of the chance to build a future, and work in dangerous and unhealthy conditions places them in immediate danger. It also deprives countries of the skilled workers and well-informed citizens they need for their future development and prosperity. It was agreed in the International Convention on the Rights of the Child that children must be protected from economic exploitation and that they may not perform work that is damaging to their health and development. The International Labour Organisation (ILO) conventions ban children from working before they reach school-leaving age, or if the work is damaging to their health.²⁸ Although these conventions have been ratified by a large number of countries, compliance is poor. Many countries have no minimum working age, and in those that do, compliance often goes unmonitored. In many cases there is no supervision of children's working conditions, and violations remain unpunished.

The Netherlands will take the lead in combating all forms of child labour, starting with the worst forms. This will be possible only if we take an integrated approach involving a number of government ministries. We have a duty to exploit to the full every opportunity to eliminate all forms of child labour. Elimination of all forms of child labour will be included in the above-mentioned EU guideline on children's rights, which will be reflected in the Union's external policy. The subject will be raised during bilateral visits and visits by the Human Rights Ambassador to countries where child labour exists. The Netherlands will work closely with the future UN Special Representative on Violence against Children, particularly on the issue of child labour. In its development cooperation efforts, the Netherlands works to make education available and to raise living standards in order to create the conditions necessary for child labour to be eliminated.

Products made using child labour should eventually disappear from the shelves. To start with, production processes in countries that use child labour must be made more transparent, by applying the new ISO 26000 standard for corporate social responsibility, for example. The Netherlands will initiate a process designed to arrive at effective EU measures against child labour, starting with a ban on imports of products whose manufacture involves the worst forms of child labour. Since international trade is regulated at European level, the Netherlands will urge the Commission to be proactive on this matter. Given the current WTO regulations, it is desirable for the organisation's rules to eventually be brought

²⁸ These provisions are enshrined mainly in the conventions on the minimum working age and on the worst forms of child labour (ILO Conventions 138 and 182).

in line with ILO Convention 182 which, partly thanks to the efforts of the Netherlands, defines 'the worst forms of child labour'. The definition encompasses not only forced labour but also work that seriously jeopardises the health and development of children. The Netherlands will raise this issue during trade missions to countries where child labour is known to exist. At international level, the Netherlands will press for social standards that will help eliminate child labour, by stipulating, for example, that the minimum wage of parents or carers must be high enough to allow their children to attend school.

As long as child labour continues, consumers must have the option to buy 'child labour-free' products. The Netherlands will therefore initiate measures designed to reveal to consumers which products have been produced using child labour. This ties in closely with policy on corporate social responsibility, a government memorandum on which will be published in January 2008. The memorandum will examine improved information for consumers, with clear explanations of the many forms of certification that exist on the market, for example. A new website (www.consuwijzer.nl) to be launched shortly will list all such forms of certification, making it clear which ones apply for child labour.

Strategic initiatives

- The Netherlands will work actively to eliminate child labour, beginning with the worst forms. The Netherlands must exploit to the full every opportunity to eliminate child labour, including political dialogue, national and international measures to discourage production involving child labour and the creation of conditions for the elimination of child labour.
- The Netherlands will help build international support for combating violence against children by calling, in both a bilateral and a multilateral context, for ratification and implementation of human rights instruments.
- The Netherlands will press for the early adoption of EU guidelines on child labour for the Union's external policy, with an initial emphasis on combating violence against children.
- The Netherlands will take an active role in the EU working group on children's rights to ensure that the guidelines are put into practice. • Both individually and in an EU context, the Netherlands will support third countries in the development and implementation of strategies and action plans to combat violence against children.
- The Netherlands will press for the appointment of a UN Special Representative on Violence against Children.
- The Netherlands will fund the translation of a child-friendly version of the Pinheiro study on violence against children and actively publicise it, to ensure it reaches as many children in as many countries as possible.
- The Netherlands will organise an international conference on violence against girls in collaboration with the independent UN expert on violence against children.

2.7 Non-discrimination against homosexuals

In more than 80 countries around the world, sex between people of the same gender is a criminal offence. Although actual prosecution is rare, this nevertheless places homosexuals in a difficult position.²⁹ Even in countries where sex between people of the same gender is not an offence, homosexuals are often discriminated against. Finally, a lack of acceptance by society can in some cases lead to homophobia and animosity towards homosexuals.

International policy on gay rights seeks to abolish the criminalisation of consensual sex between people of the same gender, combat discrimination by governments on grounds of sexuality, and promote social acceptance of homosexuality. Various instruments are used for this purpose; diplomacy and project-based support for NGOs can both be effective, depending on the local context.

The government regards the Yogyakarta Principles as a guideline for its policy.³⁰ These principles summarise the human rights and fundamental freedoms relating to sexuality. At their core lies the message that the universality of human rights means that all people – including gay men, lesbians, bisexuals and transgenders – are entitled to the same human rights.

In cases where the human rights of homosexuals – including freedom of association and freedom of peaceful assembly – are violated, the Dutch government will register its protest and draw the relevant authorities' attention to their international obligations, including the principle of non-discrimination. Sometimes the channel is the European Union's Common Foreign and Security Policy (CFSP), while in other cases the Netherlands uses bilateral channels. The Human Rights Ambassador also plays an active role.

The Netherlands presses for the issue of discrimination against homosexuals to be placed on the agenda of international organisations. Dutch funding is, for example, being provided for an expert in the field of non-discrimination against homosexuals at the office of the Council of Europe's High Commissioner for Human Rights. This is an issue requiring the attention of Council of Europe member states, since the rights of homosexuals (including freedom of association and freedom of peaceful assembly) are under pressure in some parts of the region. Within the OSCE, the Netherlands highlights the issue of

²⁹ In this strategy, homosexuality and homosexual also refers to lesbians, bisexuals and transgenders.
³⁰ See www.yogyakartaprinciples.org

homophobia. The Netherlands also believes it is important for gay and lesbian interest groups to be represented at the UN, and to be granted consultative status for this purpose. The Economic and Social Council's (ECOSOC) NGO Committee generally rejects requests from gay and lesbian groups. The Netherlands, which has been a member of ECOSOC since January 2007 (though not of its NGO Committee), works through the EU and in collaboration with like-minded countries in support of applications from gay and lesbian groups and in approaching other ECOSOC member states to press for these organisations to be given consultative status.

Alongside its diplomatic efforts, the Netherlands also supports gay and lesbian interest groups financially as part of its effort to combat discrimination against homosexuals in other countries.

The policy document on gay and lesbian rights 2008-2011, which will be sent to Parliament in November 2007, also looks in detail at Dutch policy on promoting acceptance of and non-discrimination against homosexuals at international level.

Strategic initiatives

- In its bilateral contacts, the Netherlands will focus attention on the position of homosexuals and where necessary call for homosexual acts to be decriminalised.
- The Netherlands will support capacity-building for international and local NGOs fighting discrimination against homosexuals.
- The Netherlands will actively lobby in support of NGOs that fight discrimination against homosexuals and are seeking consultative status at ECOSOC.
- The Netherlands will fund an expert in the field of non-discrimination against homosexuals at the office of the Council of Europe's High Commissioner for Human Rights.

3 Human rights, peace and security

3.1 Introduction

'We discovered that peace at any price is no peace at all. We discovered that life at any price has no value whatever; that life is nothing without the privileges, the prides, the rights, the joys which make it worth living, and also worth giving. And we also discovered that there is something more hideous, more atrocious than war or than death; and that is to live in fear.'

(Eve Curie, French writer, in a speech on 9 April 1940)

Human rights and security are two sides of the same coin. Only once the security of a state and its people are guaranteed and human rights respected can there be true peace. At the level of a society, peace exists when there is no violent conflict and the existence of the state is not under threat. But human rights are also essential. Only when people are free to live, adhere to their own religion or belief, be open about their sexuality and have access to economic opportunities do they actually experience peace. This 'human dimension' of peace is also referred to internationally as Human Security.

Security and human rights are also strongly interdependent. Concerns about security are concerns about human rights, and vice versa. Armed conflict is almost always accompanied by serious violations of people's rights. Conversely, persistent human rights violations inevitably lead to instability. 'Today's human rights violations are the causes of tomorrow's conflicts,' said former High Commissioner for Human Rights Mary Robinson. Attacking minority groups, stifling ethnic or religious diversity and restricting political freedoms are just a few examples. And while the ensuing problems used to remain confined to a single country or region, today's global society is much more vulnerable. This can clearly be seen in the current threats to our own security. Where states'

structure and stability fail, they become havens for international terrorism and international crime.

Security policy – whether conflict prevention, peacebuilding or counterterrorism – and human rights policy can and must reinforce each other. Any appropriate response to the current threats must acknowledge the connection between security and human rights. The Netherlands recognises that there is a strong link, and puts this into practice with its ‘3 Ds strategy’ in peacebuilding operations, among other things. Peace cannot be achieved by military means alone (Defence). To bring about peace, one also needs Diplomacy and Development. That is not, however, to say that there is an automatic synergy between security policy and human rights policy. This chapter looks at a number of areas that require further attention, on the basis of a number of themes: human rights and counterterrorism, Responsibility to Protect, human rights and instability, crisis management in practice, impunity, and transitional justice.

3.2 Counterterrorism

Former UN Secretary-General Kofi Annan once aptly described the multi-faceted relationship between human rights and terrorism: ‘It [human rights] is a prerequisite to every aspect of any effective counter-terrorism strategy. It is the bond that brings the different components together. That means the human rights of all, of the victims of terrorism, of those suspected of terrorism, and of those affected by the consequences of terrorism.’³¹

Terrorism aims to undermine societies based on the rule of law and democracy by using or threatening violence to sow fear and disorder. The safety of the individual is a fundamental right and the protection of individuals – including from terrorist attack – is a fundamental responsibility of every government. If we can eliminate terrorism we create an environment in which human rights can be protected and promoted. This applies to our own country, and to countries where we are helping to fight international terrorism on the ground.

Another element of the relationship between human rights and the fight against terrorism lies in the fact that a lack of respect for human rights and fundamental freedoms can foster extremism and violent political opposition. Ultimately, the best defence against terrorism is a well-functioning national and international

³¹ From the Secretary-General’s speech on the presentation of the report entitled *Uniting against Terrorism: Recommendations for a Global Counter-Terrorism Strategy*, 2 May 2006.

legal order which provides peaceful means for everyone to express themselves and defend their own rights.

This leads on to the third element. The fight against terrorism sometimes demands new restrictions on individual rights, though they must always remain within the bounds of the limitation clauses enshrined in the various international human rights instruments. After all, the primary aim is to protect and uphold democracy and the rule of law. The Netherlands therefore takes the view that national and international anti-terrorism measures must always be compatible with international law, specifically human rights instruments and international humanitarian law. The rules laid down in the international human rights instruments apply in all circumstances, including in the fight against terrorism. The Netherlands will actively disseminate this view, both in a multilateral context and in its bilateral contacts. It will therefore explicitly condemn matters such as ‘extraordinary rendition’ and secret detention facilities, which are not compatible with international law.

But it will take more than this. The challenges to the international legal order are very real. To guarantee human rights standards, even in the fight against terrorism, it is important that we keep up the search for legal mechanisms that allow effective anti-terrorism measures that comply with absolute human rights standards. The Netherlands will contribute actively to this search.

3.2.1 Standards and compliance in a UN context

The fight against international terrorism is of course an international affair. The Netherlands will emphasize the importance of compliance with existing international agreements on fighting terrorism and ensure that human rights play the role they deserve. Where necessary, the Netherlands will contribute to the development of new standards in this area.

On 8 September 2006, the United Nations General Assembly adopted the UN Global Counter-Terrorism Strategy and an associated Action Plan. The Strategy highlights defence of human rights as one of the key elements of the UN’s anti-terrorism policy. It calls for respect for human rights and the rule of law to be guaranteed as the fundamental basis of the fight against terrorism. It also refers to relevant General Assembly and Security Council resolutions and calls for the ratification and implementation of the relevant conventions and protocols.

To encourage countries to actually apply this in their national anti-terrorism policies, international support in the form of capacity building is very important. The Netherlands provides political and financial support for the Counter-Terrorism Implementation Task Force (CTITF) established by the UN Secretary-General, to name but one example of its contribution. The emphasis is on increasing the coherence of activities within the UN system and further integration of human rights into the activities of the UN's functional organisations. The CTITF could, for example, encourage the Security Council's Counter-Terrorism Committee to integrate human rights into other policy areas, with the help of the human rights expert on the Counter-Terrorism Committee Executive Directorate. The Netherlands is in favour of institutionalising the CTITF, and with other EU member states will urge the Secretary-General to do so.

The Netherlands is also the biggest donor to the United Nations Office on Drugs and Crime's (UNODC) Terrorism Prevention Branch. This organisation provides technical assistance to states to promote ratification and implementation of the 16 international conventions and protocols related to preventing and fighting terrorism, all of which feature the safeguarding of human rights. The Netherlands focuses mainly on the EU-designated priority countries, which pose the greatest threat, and on Africa, which faces the greatest capacity problems. For instance, the Netherlands supports UNODC in its efforts to build capacity in the criminal justice system for the criminalisation and prosecution of terrorism in North and East Africa. Elsewhere in Africa, too, civil society initiatives for capacity building will receive financial support in 2007 and 2008. Compliance with human rights in counterterrorism activities is a key focus of all these efforts.

The Global Strategy will be debated each year at the General Assembly on the basis of a report by the Secretary-General on progress with its implementation. Two years after its adoption, the strategy will be evaluated. As part of an integrated strategy on counterterrorism the Netherlands will press for a balanced evaluation of all elements of the strategy, with a particular focus on the relationship between human rights and counterterrorism.

The Netherlands will also call for better implementation of Security Council resolutions providing for the protection of human rights in the context of counterterrorism measures. It is important when implementing the various sanctions regimes to ensure legal protection for individuals and organisations on the UN's terrorism list. Those who believe they should not appear on the list must be able to raise the matter with an independent body. In 2006 the Security

Council decided to establish a focal point at the UN secretariat to which individuals can submit a request to be removed from the sanctions list. Another resolution provided for an extension of member states' obligations, including the 'statement of case' and notification of those concerned. The Netherlands regards these resolutions as important steps towards improving the opportunities for delisting. It is of the utmost importance that, in its work, the Security Council respect internationally accepted human rights standards and international humanitarian law. The Netherlands wants to establish whether the focal point can serve as a basis for improved legal protection, possibly through the appointment of independent experts.

It is equally important for the relationship between counterterrorism and human rights to be raised in multilateral bodies concerned specifically with human rights, particularly the UN Human Rights Council. The focus here is on the Council's Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. In 2007 the Netherlands funded an expert meeting in support of the Special Rapporteur's activities, and will consider how it can further support these activities in future. The Netherlands aims to intensify its collaboration with the Special Rapporteur, including via its National Coordinator for Counterterrorism.

Finally, the Netherlands intends where possible to press for improvements to international counterterrorism standards, particularly in relation to human rights. This should take the form, among other things, of a comprehensive convention against terrorism. There are no fewer than 16 global conventions and protocols relating to counterterrorism. A single comprehensive convention would consolidate all these various norms, adding to them where necessary. From a human rights perspective, a comprehensive convention should reaffirm that states will adhere to the standards laid down in the international human rights instruments in their efforts to combat terrorism. It should also reaffirm that derogation within a strictly defined legal framework would allow certain standards to be suspended in exceptional circumstances. The principles of proportionality, non-discrimination and restricted duration would of course apply in such cases. The fight against terrorism must not become a licence for certain human rights to be suspended indefinitely. Although progress in the negotiations has so far been hampered by a lack of agreement on the scope of the proposed convention, the Netherlands will continue to press for it, along with its EU partners.³²

32 See also the Government's response to report no. 49 by the Advisory Council on International Affairs entitled "Counterterrorism from an international and European perspective" (Parliamentary Papers 2006-2007, 30800 V, no. 67, House of Representatives, 20 February 2007).

3.2.2 European Union

The relationship between counterterrorism and human rights is very important to the European Union. While terrorism poses a real threat to the Union itself, at the same time the EU has its own strong tradition of human rights. In all its contacts with third countries, the European Union therefore consistently and firmly expounds the message that human rights must be respected in the fight against terrorism. This ethos forms an integral part of all the EU's relevant activities, as in the various partnership agreements with third countries. These agreements include terrorism clauses that call for human rights to be respected in counterterrorism activities. In deeming them 'essential clauses', the EU is sending out a clear signal on this issue.

The Netherlands is also pressing for EU resources to be used to enhance the capacity of other countries to fight terrorism, with a specific focus on protecting human rights. Training for the police, prosecution service and judiciary is essential to ensure that the campaign against terrorism is just and lawful. The recently introduced Stability Instrument, which supports projects to improve internal and external security in third countries, will be used, among other things, for this purpose.

The issue of 'international law in the fight against terrorism' is regularly discussed in an EU context – between member states themselves, and also with the United States, covering issues such as Guantánamo Bay, criminal trials of terrorism suspects and the US Military Commissions Act. More general legal issues pertaining to international humanitarian law, criminal law and human rights are also discussed. The Netherlands sets great store by these contacts, and makes an active contribution to the discussions.

3.2.3 National initiatives

The Netherlands also undertakes national initiatives to help promote and protect human rights in counterterrorism activities.

One Dutch initiative involves promoting dialogue between international experts and policymakers. In April 2007, 25 experts on international humanitarian law, human rights and/or criminal law met at Oud Poelgeest Castle in Oegstgeest to discuss human rights and counterterrorism. The experts came from Northern and Southern Europe, the United States, the Arab world and Bangladesh, and

represented three different legal systems. The aim was to exchange ideas on what is possible under the law, and what restrictions exist when it comes to countering terrorism. The experts drew the conclusion that the three legal systems represented can play a relevant role in the debate on the role of international law in the fight against terrorism. At the same time, however, some overlap and gaps also exist.

The Netherlands will work closely with strategic partners, experts and international human rights organisations to continue this debate and find solutions to current problems facing the international legal system.³³ International law must address developments in the world around us. It must not remain static. International humanitarian law is based on a situation where there is conflict between states and, secondarily, on intrastate conflict. What we face nowadays, however, is non-state terrorist groups who have no regard for humanitarian law. The question of whether international humanitarian law is applicable in such situations is therefore relevant. In this connection, the possibility of amendments or additions to international humanitarian law cannot be ruled out.

Two current dilemmas are the scope of the right to self-defence (*jus ad bellum*) and the relationship between international humanitarian law and human rights (*jus in bello*). The former revolves around the question of what restrictions international law places on self-defence measures against terrorist groups or against states from which terrorist groups operate. The Netherlands will press at international level for the clarification of conditions under which self-defence against terrorist groups is lawful.

The relationship between humanitarian law and human rights is another relevant issue. In 2004 the International Court of Justice indicated that protection under human rights instruments does not cease in the event of armed conflict. The Court found that some rights fall solely under humanitarian law, some fall only under human rights, and others fall under both parts of international law. International humanitarian law – applicable in armed conflict – must be regarded as *lex specialis*, in the Court's opinion. In other words, it comprises specific rules tailored to situations of armed conflict. The Netherlands regards this as a useful concept for approaching this specific issue and will take an active part in the debate with the aim of clarifying which human rights norms are relevant in which situations involving armed conflict.

33 The report of this meeting was sent to the House on 25 June 2007 (Parliamentary Papers 2006-2007, 27925, no. 255, House of Representatives).

The need for an internationally accepted definition of terrorism remains undiminished. As we have said, negotiations on the matter are currently ongoing within the UN as part of the debate on a comprehensive terrorism convention. The Netherlands will work actively to expedite the adoption of such a convention. The Netherlands supports the establishment of universal jurisdiction in relation to terrorist crimes, and this will remain one of its goals in the negotiations on a comprehensive convention. It is after all a matter of ensuring that no safe haven exists for people suspected of committing terrorist acts. Once such a convention has been agreed, universal jurisdiction will be exercised in respect of terrorist crimes that have hitherto gone unpunished. In addition, the Netherlands will promote the prosecution of those suspected of terrorist attacks that already qualify as crimes under the Statute of the International Criminal Court, where the states concerned fail to prosecute.

Alongside the considerable financial contribution that the Netherlands makes in support of international capacity building efforts to help other countries counter terrorism in accordance with international law, it will also actively seek bilateral opportunities to provide such support. Resources are available to support worldwide projects that aim to promote respect for human rights and reinforcement of the rule of law in the fight against terrorism.

Strategic initiatives

- At international level and in its bilateral contacts the Netherlands will actively lobby for counterterrorist measures to assure the right to protection and safeguard democracy and the rule of law. Terrorism must be countered for the sake of human rights, to create conditions in which they can be respected.
- The second element of our message is that promoting and protecting human rights must be an integral part of any effective anti-terrorism strategy. Human rights must be protected to prevent extremism and violent political opposition. Thirdly, the Netherlands will argue that counterterrorism must always comply with human rights and, where relevant, international humanitarian law.
- The Netherlands will work to ensure that the European Union also puts forward this message, and that it is reflected in all relevant EU activities.

- In the negotiations on a comprehensive UN convention on terrorism, the Netherlands will call for early adoption of a definition of terrorism and the establishment of universal jurisdiction. The Netherlands will promote the prosecution of those suspected of terrorist attacks that are defined as offences in the Statute of the International Criminal Court, where the states concerned fail to prosecute.
- The Netherlands will work to ensure that international anti-terrorism measures comply with international law. The Netherlands will examine whether the focal point for delisting requests might serve as a basis for better legal protection, perhaps by bringing in independent experts.
- The Netherlands will help build other countries' capacity to promote respect for human rights and reinforcement of the rule of law in the fight against terrorism.
- The Netherlands will support the work of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in relation to counterterrorism, by stepping up the relationship with the Dutch National Coordinator for Counterterrorism.
- The dialogue with the United States on this issue will continue, both bilaterally and through the European Union.
- Given the importance of the debate on strengthening international law, there will be a follow-up to the expert meeting held at Oud Poelgeest Castle in April 2007. It will look specifically at questions surrounding the use of force and the right of self-defence against non-state actors operating internationally, and further examine the issue of how international humanitarian law relates to human rights in situations of armed conflict.

3.3 A responsibility for the international community

3.3.1 The concept of 'Responsibility to Protect'

In accepting the principle of 'Responsibility to Protect' (R2P) at the World Summit in September 2005 the UN took an important step on a matter of principle in the debate on the desirability of international intervention in the event of serious human rights violations. Though the concept is explicitly based on the primary responsibility of the state in question to protect the rights of its citizens, it does acknowledge that if the state is unable or unwilling to do so, the international community cannot simply watch from the sidelines. These are situations involving genocide, war crimes, ethnic cleansing and crimes against humanity.³⁴ The fact that all countries unanimously acknowledged both their own responsibility and that of the international community to protect human rights marks significant political progress, and will serve as a 'moral compass'.

3.3.2 Practical application

We cannot take it for granted that the compass will be used, however. Agreement on the wording of the R2P principle has not yet been translated into agreement on its practical application. The more countries cling to their national sovereignty, the greater their resistance, out of fear that R2P might be abused for purposes other than preventing human rights violations.

It will take a lot of work to incorporate R2P into international practice. International support for the principle among governments, opinion formers and the general public must be broadened, and misconceptions tackled, including the persistent notion that R2P is solely about military intervention. R2P is much broader, applying also to prevention of large-scale human rights violations. This, too, is first and foremost a responsibility for countries themselves, though the international community can provide help and encouragement. If prevention does not work, a response will be needed, by diplomatic, humanitarian or other peaceful means. Once peaceful means have been exhausted, and if the government is still failing to protect its people, in the most extreme cases military intervention will be an option.³⁵ Finally, R2P is also about reconstructing countries where major human rights violations have

³⁴ A/RES/60/1, paragraph 138-140.

³⁵ See for more details the government memorandum entitled 'Legal basis and mandate of missions involving Dutch military units', Parliamentary Papers 2006-2007, 29521, no. 41, House of Representatives).

occurred. The Netherlands will work actively to increase support, which should lead to an improved international 'reflex' in cases of serious human rights violations. The role of the International Criminal Court in preventing and punishing genocide, war crimes, ethnic cleansing and crimes against humanity must not be underestimated. During the opening week of the 62nd UN General Assembly in September 2007, the Netherlands organised a side event on this issue, involving a number of R2P experts. The Netherlands is also providing financial support for a Global Centre for the Responsibility to Protect, which will be an independent institute with the goal of promoting worldwide acceptance of the application of the R2P concept.

Besides broadening support for R2P, everyone concerned must be more rigorous in putting 'responsibility' into practice. If the 'R' is not further fleshed out, the 'P' is bound to fail. Again, that responsibility lies primarily with countries where large-scale human rights abuses are already occurring or threaten to occur. The members of the Security Council, particularly the five permanent members, also have a special responsibility to ensure that R2P becomes more than just a paper tiger. They, after all, can prevent international military action from being legitimised by using their veto. Finally, the rest of the international community must also feel a responsibility. The universal motto must be: in the face of genocide, war crimes, ethnic cleansing and crimes against humanity, doing nothing is simply not an option.

The instruments for R2P also require attention. Deciding to act is one thing, but how to act and what resources to use is quite another. It is not so much a matter of devising new measures, as of effectively deploying existing economic, political, diplomatic, humanitarian, legal and security measures and instruments.

Strategic initiatives

- The Netherlands will use the R2P concept, in both a national and an international context, to remind other countries where necessary of their responsibility to protect human rights.
- If the country in question is unable or unwilling to live up to this responsibility, the Netherlands will press for action by the international community. What form this should take will depend on the situation.

- The Netherlands will work actively to broaden international support for R2P, by financing the new Global Centre for the Responsibility to Protect, among other things.

3.4 Human rights and instability

3.4.1 Fragile states

It is illuminating to view the complex problems of fragile states from a human rights perspective. Human rights are above all about how a state treats its citizens. They set out the responsibilities of governments towards their people. The defining characteristic of a fragile state is that it is not fully capable of assuming this responsibility, or deliberately refuses to do so. This might be reflected in inadequate or partisan protection, exclusion of certain groups from political processes, the absence of an effective independent legal system, or an inability to provide basic socioeconomic services, all of which are violations of human rights. This creates a haven for terrorists and criminals where they can operate freely. Fragile states are therefore a threat not only to regional stability, but also to the international legal order.

The Netherlands will make particular efforts to promote stability and development in fragile states. Obviously, this policy will include an explicit focus on human rights. If the Netherlands is to help a state to reconstruct or build capacity, its relationship with its citizens must be as it should be from the very outset. The Netherlands therefore applies the OECD Principles for Good International Engagement in Fragile States and Situations as a guide for intervention in fragile states. These principles stipulate, among other things, that international involvement in reconstruction or capacity building must occur on several levels at the same time. Not only should the state be helped to perform its core tasks, it should also receive support to improve legitimacy and accountability.³⁶ A number of organisations in the Netherlands have a great deal of expertise in this field. This can be used to promote the development or reconstruction of the legal infrastructure in such states.

Particular attention needs to be focused on combating discrimination against certain groups in society, as this can foster renewed instability. The Netherlands

³⁶ The full text of the Principles for Good International Engagement in Fragile States and Situations can be found at www.oecd.org

will stress this point in its political dialogue with fragile states. The relationship between state and citizen, which needs to be developed in fragile states, should be based on the right principles from the outset – not on power, but on legitimacy. The goal is to ensure that, in the long term, all human rights are respected.

3.4.2 Security sector reform

One key aspect of Dutch policy on fragile states is the creation of a safe and stable situation where the monopoly on violence lies with the state, which uses it in such a way that the rights of citizens are respected. This must at the very least be based on the ‘non-derogable rights’ – rights which must be respected in all circumstances, even in a state of emergency or war.³⁷ These rights will form the core of any activities the Netherlands undertakes to assist the state in establishing a monopoly on violence. They will mainly involve Security Sector Reform (SSR) – developing democratic, effective, professional security structures to guarantee the safety and freedom of the people. Strictly speaking, SSR focuses on public sector organisations that have a public responsibility for security, ranging from the army and police to the judiciary and prison service.

The Netherlands supports training, the development of training, policy support, management support, planning or a combination of these tasks through the Stability Fund. There will be a particular focus on the attention given to human rights, the status of women and children and the treatment of refugees and displaced persons in the context of these activities. Where possible, specific activities to this end will be given support.

3.4.3 Small arms and arms exports

One factor that can seriously undermine the stability of a country is the illegal proliferation of small arms and light weapons. Even if there is no actual armed conflict, easy availability of such weapons contributes to a culture of violence and insecurity. Curbing the illegal spread of these weapons helps improve the human rights situation. The possible implications for the human rights situation must always be considered very carefully, even in the case of legal

³⁷ Article 4, paragraph 2 of the International Covenant on Civil and Political Rights states that certain rights are non-derogable: freedom of religion or belief, the right to recognition everywhere as a person before the law, protection from torture, slavery, servitude and cruel, inhuman or degrading treatment or punishment, protection from imprisonment merely on the ground of inability to fulfil a contractual obligation and the right not to be found guilty of any act that did not constitute a criminal offence at the time it was committed. The right to life is also a non-derogable right, albeit that international humanitarian law applies in wartime.

exports of military equipment. In recent years the Netherlands has actively lobbied for the development of standards and international agreements in this area, in both a UN and an EU context. Now it is above all a matter of proactively monitoring compliance with the agreements.

Under the Geneva Declaration on Armed Violence and Development, the Netherlands supports countries that address the small arms issue within their own development strategy, and want to act accordingly, particularly in the Horn of Africa and the Great Lakes region.³⁸ The idea is that disarmament and curbing the proliferation of small arms makes it possible for people to live with greater safety and dignity. This means that the Netherlands must convince governments that they should not take tough military action against such weapons but should tackle the problem by means of improved legislation, law enforcement and by taking account of the population's legitimate security and development aspirations. One way of doing this is to integrate national action plans designed to curb the spread of small arms into the country's overall development vision, by incorporating them into Poverty Reduction Strategy Papers.

The Netherlands carefully assesses each individual export licence application for military equipment on the basis of the criteria laid down in the EU Code of Conduct on Arms Exports, including the criteria relating to human rights and conflicts, and helped ensure that the human rights criterion was tightened up when the Code was reviewed. The revised Code of Conduct, which will be legally binding, has yet to be adopted. The Netherlands will lobby in favour of adoption.³⁹

Of course EU member states are not the only exporters of military equipment. Many countries outside the EU, even if they have adequate export controls, have much less regard for human rights issues and international humanitarian law in the export of arms. The Netherlands is therefore pressing for a global arms trade agreement – the Arms Trade Treaty (ATT). The treaty should set out minimum standards governing imports, exports and other transactions involving weapons. It should oblige states to adopt and apply national legislation aimed at preventing the transfer of weapons from directly or indirectly causing, prolonging or exacerbating conflict, or in any other way undermining human rights, security, stability or development. In 2008, a UN Group of Governmental Experts will examine the feasibility, scope and parameters of such a treaty. Given

38 The Geneva Declaration came about as the result of an initiative by some fifty countries, and aims to raise awareness and prompt measures to tackle the problem of armed violence and its impact on development.

39 The second of the eight criteria concerns 'respect of human rights in the country of final destination'. The third concerns the 'internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts'.

the reluctance of a number of influential countries to work towards an ATT, the Netherlands will continue its efforts to win support for the treaty.

Strategic initiatives

- The protection and promotion of human rights will become an integral part of country strategies on fragile states, one aim of which will be to improve the human rights situation.
- The Netherlands will actively promote respect for non-derogable rights as a minimum standard in fragile states, by explicitly referring to them in its SSR activities (including police and army training, technical assistance in setting up prisons, strengthening the legal system etc.), among other things. Where it acts as part of an international coalition, the Netherlands will press for this to be adopted as the common policy.
- Dutch support for SSR programmes will, where possible, involve actors also relevant to the human rights situation, including civil society organisations (NGOs, universities and the media) and parliamentary committees on defence and security services issues.
- As soon as the situation in a fragile state allows, activities will be undertaken to improve the human rights situation across the board. This should be based on the system for national human rights protection described in chapter 4.
- Issues concerning small arms and armed violence will be incorporated into development planning. The Netherlands will actively encourage the incorporation of national action plans to curb the proliferation of small arms into Poverty Reduction Strategy Papers.
- The Netherlands will lobby for the revised EU Code of Conduct on Arms Exports to be adopted as a legally binding Common Position, with the human rights criterion being strengthened by means of a reference to international humanitarian law.
- The Netherlands will actively seek support for a global Arms Trade Treaty, for example by making demarches and funding meetings (regional or otherwise).

3.5 Crisis management in practice

3.5.1 Military and civilian operations

The close links between human rights and security should be reflected in crisis management in the field. In recent years, there has been a sharp increase in the focus on human rights in such operations, and human rights feature in all mandates for crisis management operations – UN, NATO and EU – involving Dutch civilians and armed forces personnel.

The mandates of UN peace operations have become much broader and more complex over the past decade, and generally focus specifically on human rights issues. ‘Protection of citizens’, which is included in the mandates, has grown in significance. UN peace operations have generally been broadened in scope and are now more integrated. The civilian element (including human rights expertise) has grown sharply and has become more closely meshed with the military element of operations. The Netherlands supports this development, contributing to these operations itself.

Many aspects of NATO operations contribute either directly or indirectly to compliance with human rights. The Netherlands is currently contributing significantly to the International Security Assistance Force (ISAF) in Afghanistan. It has concluded a Memorandum of Understanding (MoU) with the Afghan government stipulating that detainees transferred by Dutch ISAF troops to the Afghan authorities will be treated in accordance with international standards (including those pertaining to human rights). The MoU also stipulates that the Afghanistan Independent Human Rights Commission (AIHRC), the International Committee of the Red Cross and Dutch representatives must have access to these detainees for monitoring purposes. Other ISAF partners have made similar arrangements with the Afghan government.

The EU is working towards better integration of its gender and human rights objectives into the European Security and Defence Policy (ESDP). These efforts are in fact part of a general trend towards better coherence between activities that take place as part of Community policy and the EU’s external relations. ESDP operations almost always involve a human rights department or experts, often in combination with gender issues. The missions are designed, among other things, to ensure that any legislation complies with international human rights standards, including those applying to women. The member states recently agreed to bring

together all relevant documents on gender and human rights, to move a step closer to embedding this issue in the ESDP. The Netherlands will press for a more user-friendly guide to be drawn up for personnel on ESDP operations in the field.

3.5.2 The UN Peacebuilding Commission

There has been a growing realisation at the UN that the deployment of UN peacekeeping forces must be seen in a broader context. Real peacebuilding takes more than blue helmets. At the UN Global Summit in 2005 it was decided that a Peacebuilding Commission (PBC) should be established with the job of supporting reconstruction in post-conflict countries. The idea is to keep these countries on the international agenda as long as there is a considerable risk that they will descend into violence and conflict again. Sierra Leone and Burundi are currently on the PBC's agenda, and one or two more countries are expected to be added soon. A Peacebuilding Fund, to which the Netherlands has contributed 15 million euros, has been set up to fund activities and projects.

The work of the PBC is shaped at country-specific meetings in New York, and at meetings in the capitals of the countries on the agenda. All stakeholders are represented: donors, PBC members, national and local authorities, international financial institutions and NGOs. An Integrated Peacebuilding Strategy (IPBS) is drawn up for each country to help identify the biggest obstacles to peacebuilding. They may be political, military, legal or social problems which must be tackled in parallel in order to achieve a lasting peace. Promoting and respecting human rights is part of this. In Burundi, for example, one priority is to strengthen the rule of law, including the establishment of an independent national human rights commission. In Sierra Leone it has been agreed that human rights will be included as a cross-cutting theme in all IPBS priorities.

3.5.3 National Action Plan for Security Council Resolution 1325

The Netherlands will focus particular attention on the position of women during and after conflict, not only because women are a vulnerable group requiring specific measures, but also because the Netherlands is also convinced that an effective way to resolve conflict and build a safe, stable and liveable world is to empower and involve women. The UN Security Council acknowledged this in 2000 in resolution 1325, which has since formed the basis for international action. The resolution covers several aspects of the issue of women, peace and security.⁴⁰

⁴⁰ S/RES/1325, 31 October 2000.

To boost the implementation of this resolution at national level, the Dutch government and civil society organisations signed a pact at Schokland on 30 June 2007 stating that a National Action Plan would be drawn up. This Plan, which should be published by the end of 2007, will set out points for action in a number of areas, including ‘protection and human rights’, covering codes of conduct for peace missions, measures for the rehabilitation and reintegration of victims of sexual violence and action to combat impunity for sexual violence.

To foster the implementation of resolution 1325, extra support will be provided for UNFPA in the promotion of sexual and reproductive health and rights in conflict situations.

Strategic initiatives

- The Netherlands will focus in all relevant fora on integrating human rights into crisis management operations.
- The Netherlands will help draft a user-friendly handbook on gender and human rights for ESDP missions.
- The Netherlands will continue to lobby actively for the work of the UN Peacebuilding Commission to focus sufficient attention on human rights.
- Across the entire spectrum of crisis management and reconstruction, the Netherlands will devote particular attention to improving the position of women.

3.6 A just peace

3.6.1 Tackling impunity

It is essential in promoting and protecting human rights that crimes do not go unpunished. Justice is important from a moral perspective. If offenders are not prosecuted, victims feel unsafe, and there is no deterrent for potential offenders. It is therefore very important both for the individual and for society that impunity be tackled and victims compensated. Indeed, allowing violations to go unpunished is a violation of human rights in itself. Victims of human rights

violations have a right to reparation.⁴¹ The basic principle is that victims should receive compensation – not only financial compensation, but also satisfaction and, above all, a guarantee from the government that their human rights will not be violated in future.

The right to reparation should in the first instance be put into effect by the victim's own government, which after all has a duty to protect its own people. To this end, the government must ensure that its legislation complies with international human rights instruments and that it has a good, independent legal infrastructure. The government should also devote extra attention to vulnerable groups to enable them to assert their rights.

The international community can be called upon to help, however, if the political situation makes it difficult to conduct a truly independent trial, for example, or if the country does not have the requisite capacity. The Netherlands will work to improve the legal infrastructure in other countries, including through the EU's neighbourhood and accession policy, and in developing countries. Activities geared towards promoting good governance include measures to strengthen the rule of law.

Where a country deliberately fails to tackle impunity, the international community has a responsibility to step in. Those who commit war crimes, crimes against humanity, genocide and ethnic cleansing are liable for their actions under international criminal law. It is important for the international legal order that those who have perpetrated gross violations on a large scale be prosecuted. In recent years the international community has done much to break down the culture of impunity (see also 1.2.4). Specifically, this has led to the establishment of a number of courts and tribunals. In 1993 and 1994, for example, two ad hoc tribunals were set up to try individuals suspected of serious crimes in the former Yugoslavia (ICTY) and Rwanda (ICTR), followed in 2002 by a special tribunal for Sierra Leone. The Statute of the International Criminal Court (ICC) entered into force on 1 July 2002. In 2006 the UN and the Cambodian government agreed to set up a Cambodia tribunal. An agreement between the UN and Lebanon on a special tribunal for Lebanon came into effect in 2007.

The Netherlands makes an important contribution to efforts to tackle impunity,

⁴¹ In December 2005 the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law. These principles are also known as the Bassiouni-Van Boven principles, after the two UN human rights experts who laid the basis for them.

for example by hosting a large number of international legal institutions in The Hague – the ‘legal capital of the world’ – and making a substantial financial contribution to their running costs. They include the International Criminal Court (ICC) and several of the ad hoc tribunals. The Lebanon tribunal is also due to be established here shortly. The Netherlands is also closely involved in the actual work of these institutions. As host country, it has a special responsibility to encourage third countries to cooperate with the institutions housed in The Hague. For example, the Netherlands regards Serbian cooperation with the ICTY as an important precondition for closer relations between the EU and Serbia. In its bilateral contacts with other countries, the Netherlands will press for cooperation with the ICC. Recently, for example, the Netherlands called the Sudanese government to account for the fact that an individual for whom the ICC has issued an arrest warrant has been appointed to the Sudanese human rights committee. The Netherlands has pressed for the surrender of this individual, who is suspected of committing war crimes in Darfur. In an EU context, too, the Netherlands will press for cooperation and the extradition of suspects.

3.6.2 Transitional justice

‘After a war, the silencing of arms is not enough. Peace means respecting all rights. You can’t respect one of them and violate the others. When a society doesn’t respect the rights of its citizens, it undermines peace and leads it back to war.’

(Maria Julia Hernandez, Salvadorian human rights defender)

Enduring peace cannot be achieved without justice. It is therefore essential that justice be done in the reconstruction phase of post-conflict situations, otherwise there is always a danger that violence will erupt once again.

However, the right to reparation is usually difficult to achieve in such situations. In many cases, the entire legal system will have to be rebuilt. Tackling impunity also means that human rights violators must be punished, even if they are politicians and civil servants. In grave situations, however, a large proportion of the administration may have been directly or indirectly involved in human rights violations. A comprehensive purge would further undermine the capacity of the government apparatus, already one of the most common and pressing problems in any post-conflict situation. This therefore poses a real dilemma in human rights terms. While victims have a right to reparation, and while tackling impunity is

essential to creating a peaceful and just society in the long term, citizens in a post-conflict situation also have a right to a stable and effective government to provide a framework in which human rights can be guaranteed. Without justice there cannot be lasting peace, but peace takes more than justice alone.

Those who are guilty of crimes against humanity as listed in the Statute of the ICC must always be tried. Such cases offend the sense of justice of not only the people of the country concerned but also the international community to such an extent that no other solution is possible.

Other measures can be devised for those who have committed crimes that do not fall in this 'highest category'. In practice, a balance is often struck between a trial, a public apology, reconciliation, compensation and forgiveness. However, the indisputable principle must be that justice should be done. The use of alternative methods should depend on the needs of the victims and the wider community. A recent OHCHR study of the perceptions of victims of the conflict in Northern Uganda showed that they themselves differentiate between different 'categories' of offenders and types of trial. Where offenders and victims in fact form part of the same community, there will be more support for an approach based on reconciliation and satisfaction than if the offenders are outsiders. If there is enough support, one might opt for traditional methods of reparation. The study showed that any preference for an amnesty will generally stem from pragmatic considerations.⁴² The 'gacaca' procedure used on a large scale in Rwanda in the aftermath of the conflict in 1994 is well known. It involves contrition, certain (less severe) punishments, followed by forgiveness. It is however important that these methods comply adequately with the 'right to reparation' in the sense that the truth must at any rate be established and the victims compensated. On no account may individuals who have been indicted by the International Criminal Court or one of the tribunals be protected from prosecution.

The Netherlands will press for any amnesty legislation adopted after a conflict to comply with international human rights standards. Recently, along with other countries and civil society organisations in Afghanistan, the Dutch persuaded the Afghan president to improve the country's planned amnesty scheme. The draft scheme – the 'National Reconciliation Charter' – had caused the international community concern. However, in March 2007 President Hamid Karzai guaranteed that he would not sign or countersign any legislation that

⁴² *Making Peace Our Own – Victims' perceptions of accountability, reconciliation and transitional justice in Northern Uganda*, OHCHR, August 2007.

was incompatible with international law or universally recognised human rights standards. So far he has kept his word, and a number of controversial articles have been removed from the most recent version of the Charter.

Strategic initiatives

- The Netherlands works on the principle that justice is essential for lasting peace. Those who have committed crimes against humanity as summarised in the Statute of the International Criminal Court must always be tried.
- The Netherlands will work to ensure that the national legal infrastructure of post-conflict countries is strengthened, and press for amnesty schemes to comply with international human rights standards.
- The Netherlands will make a substantial contribution to international efforts to tackle impunity, particularly by means of support – including funding – for the work of international courts and tribunals.
- The Netherlands will organise an international conference on impunity and transitional justice, together with the UN and NGOs, to identify possible solutions to the problems associated with justice being done in post-conflict countries, drawing on recent experiences such as those in Afghanistan.

4 The indivisibility of human rights

4.1 Introduction

‘Many ingredients go into making poverty, but factors like discrimination, unequal access to resources, and social and cultural stigmatisation have always characterized it. These “factors” have another name: the denial of human rights and human dignity.’

(Louise Arbour, High Commissioner for Human Rights, 10 December 2006)

It was President Franklin D. Roosevelt who placed freedom from want on a par with freedom of expression and religion and freedom from fear. Economic, social and cultural (ESC) rights are just as important for justice and human dignity as civil and political rights. These are not just lofty words. To a victim of sexual violence, access to good medical care is just as high a priority as bringing the offender to justice.

The equality – or indivisibility – of all rights is reflected in Dutch foreign policy in several ways. Development cooperation focuses on countries that are failing to achieve ESC rights and is aimed partly at helping their governments. This applies particularly to rights that relate to people’s basic needs, such as the rights to water, food, adequate housing and health care. It is however important for the development of a stable and healthy society that explicit attention be given to all ESC rights, including those relating to trade unions, social security and working conditions.

Negotiations are currently under way on the drafting of an optional protocol to the UN Covenant on Economic, Social and Cultural Rights which would set up a complaints mechanism. The Kingdom of the Netherlands is closely and constructively involved in the negotiations. This is important, among other things, for the effectiveness and credibility of its foreign policy.

The indivisibility of human rights is also reflected in the fact that ESC rights cannot be achieved without civil and political rights. There is a growing conviction that the promotion of human rights in *general* is closely related to sustainable development. This conviction has been confirmed by extensive empirical research. Studies by the World Bank and UNDP have concluded that violation of people's civil and political rights seriously hampers economic growth. Respect for civil and political rights has a major impact on people's ability to make ends meet, particularly rights pertaining to the government's democratic accountability.⁴³ Poor people need access to information, fair administration of justice, freedom of expression and association, and participation in decision-making processes in order to improve their lot. The fact that poverty involves more than just economic, social or cultural aspects is also reflected in the OECD/DAC's five dimensions. Poverty reduction must consider all dimensions, including the political. If there is insufficient capacity and opportunity – or rights – in this dimension, people's attempts to improve their situation will be thwarted.

It follows that investing in the development of a country where human rights are being systematically abused and where there is a lack of political will to improve the situation can never lead to the desired results. It would be better to withhold investment, though the holders of rights – the people of the country – must be taken into consideration. One must take care not to make them the victims of their government's attitude twice over.

This chapter makes a start on the further elaboration of two instruments that can be used to ensure that the above aspects of the indivisibility of human rights are better reflected in Dutch foreign policy. The first section presents an instrument that can be used to bring about structural improvements in the general human rights situation – both civil and political rights and ESC rights. The second section illustrates why the relationship between human rights and development must be reflected in Dutch efforts to achieve the Millennium Development Goals. Finally, the subject of corporate social responsibility is examined.

43 World Bank (2005), *Equity and Development. World Development Report 2006*, Washington, DC. UNDP (2005), *Human Development Report 2005 – International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, New York. Robert J. Barro (1997), *Determinants of Economic Growth: A Cross-Country Empirical Study*, MIT Press, Cambridge, Mass.

4.2 A national ‘infrastructure’ for human rights

The concept of a national system for human rights protection was developed at the UN. The current round of UN reforms has focused a great deal of attention on the effective promotion of compliance with human rights at country level, including in the context of development. The former Secretary-General published his second report on reform in 2002, entitled *Strengthening of the United Nations: an agenda for further change*.⁴⁴ The report refers to the things required to guarantee compliance with human rights within a country as a ‘national human rights protection mechanism’ – a national human rights ‘infrastructure’, as it were, based on international human rights standards. The UN’s key objective is to strengthen national systems for human rights protection. The Netherlands supports this objective and will seek to make a practical contribution through national interventions where possible.

A national system of human rights protection comprises all the checks and balances needed to ensure that governments fulfil their duty to respect, protect and uphold human rights: not only civil and political rights, but also economic, social and cultural rights. The precise details of the system will vary from country to country. Nevertheless, it is possible to distinguish four general elements that should form part of any national system for the protection of human rights.

The basis of any sound national human rights policy is for all legislation, including the constitution, to be brought in line with international human rights standards. States must ratify the international human rights instruments and, if necessary, adopt legislation implementing them. This legislation must be implemented in a transparent manner and any citizen whose rights are restricted by government decisions must have access to complaints and appeal procedures. The international human rights system offers more than just standards, however. In complying with these standards, it is important that countries work closely with the Office of the High Commissioner for Human Rights, which is highly experienced in providing technical assistance. They should also work as closely as possible with the UN treaty bodies and the Special Procedures of the UN Human Rights Council, which monitor compliance with human rights standards.

44 UN document A/57/387.

The second element concerns the presence of effective institutions to promote and protect human rights. The *government* bears primary responsibility for compliance with human rights. Draft legislation must be in line with human rights standards, sufficient resources must be earmarked and policy aimed at promoting human rights must be developed and implemented. This responsibility also applies in criminal matters to public services such as the police and the justice authorities. Besides ratifying international and regional human rights instruments, *parliament* has an important supervisory role. Compliance with human rights also requires courts that dispense justice. Independent courts are essential for the ‘right to remedy’ (including compensation) of citizens whose human rights have been unjustifiably restricted to be put into effect. Such judicial bodies must be easily accessible. Finally, national *human rights institutions*, such as a human rights commission and/or ombudsman, can play an important role. Their tasks include dealing with citizens’ complaints and educating the public about human rights.⁴⁵

The third element is national policy – both the substance of that policy and the way it comes about. Human rights and human rights principles such as participation, non-discrimination and accountability must be an integral part of policy. This is desirable from the point of view not only of legitimacy, but also of effectiveness and sustainability.

A national system of human rights protection will not work if the holders of rights do not have enough information about them. This applies to teachers, policymakers, lawyers, and also to children and other vulnerable groups.

The final element of any national system of human rights protection is a free, active and independent civil society that fights for human rights, and in which both men and women participate. This includes independent NGOs, human rights defenders, and also, for example, trade unions and other organisations that are particularly involved in achieving ESC rights such as the right to social security and to just and favourable conditions of work. Freedom of expression and association and independent media are essential in this respect.

45 The Paris Principles set out criteria and responsibilities for independent human rights institutions (A/RES/48/134, 20 December 1993).

Strategic initiatives

- The Netherlands will focus specific attention on strengthening national systems for human rights protection in third countries. A handbook will be drawn up for this purpose for use by Dutch embassies.
- The Netherlands will initiate (either individually or in an EU context) local (political) dialogue between Dutch embassies and governments to persuade them of the need to cooperate with the international human rights regime. This will include ratifying human rights instruments, reporting to treaty bodies, implementing recommendations issued by those bodies, willingness to admit special rapporteurs on the basis of ‘standing invitations’ and the presence of OHCHR.

4-3 Human rights and the Millennium Development Goals

4-3.1 Similarities and differences

Although the Millennium Development Goals (MDGs) do not explicitly refer to human rights, they came about in a context centred on human rights. The first paragraphs of the UN Millennium Declaration refer to fundamental values and principles, including freedom, equality and tolerance.⁴⁶ These are also the values underlying the Universal Declaration of Human Rights. The Secretary-General’s report *In Larger Freedom* reaffirmed human rights, security and development as the three pillars of the UN system. Finally, in the Final Document of the 2005 UN World Summit, the member states decided to further integrate human rights into the work of the entire UN system, including in individual countries.⁴⁷

There are therefore major similarities in terms of substance between the MDGs and the objectives of the human rights instruments. Both aim to eliminate hunger, improve access to education and health care, and improve the position of women, children and other vulnerable groups. All the MDGs also have an equivalent in the international human rights instruments, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women

⁴⁶ A/RES/55/2, 18 September 2000.

⁴⁷ A/60/RES/1

(CEDAW) and the International Convention on the Rights of the Child (CRC) There are also differences, however. While states have made a political undertaking in subscribing to the MDGs, they have undertaken a binding legal obligation in ratifying the human rights instruments. Specific benchmarks and indicators are essential to the MDGs, while the characteristics of the human rights instruments are non-discrimination and the obligation on states to 'achieve progressively the full realisation of rights'.

It is these differences in particular that make a combination of the MDGs and human rights within development cooperation policy so interesting. The power of the MDGs lies in their political nature and their measurable goals, but what they lack is explicit liability. Human rights are based above all on government accountability. Though human rights instruments do not include indicators, the ICESCR does oblige states to draw up an effective plan to realise rights, and the UN treaty bodies monitor progress with the plans. One can conclude that the benchmarks in the MDGs and the binding rights and obligations enshrined in the human rights instruments complement each other well, and can strengthen each other.

4.3.2 Synergy in practice

The human rights instruments, and particularly the ban on discrimination, could be used more than is now the case to give the poorest of the poor access to basic services and economic opportunities. The synergy between the MDGs and human rights could be boosted by strengthening national systems of human rights protection (see section 4.2). However, the Netherlands will also engage in targeted interventions by examining the strategies partner countries have adopted to achieve the MDGs and poverty reduction from a human rights perspective. The Netherlands will also use the same means to ensure in its bilateral development policy that international human rights standards are reflected in the national policies and budgetary process of partner countries. Non-discrimination and equality before the law, accountability, participation and information are the watchwords.

Strategic initiatives

- In its bilateral development policy the Netherlands will focus specifically on the relationship between human rights and the Millennium Development Goals.

4.4 Corporate social responsibility

The responsibilities of governments and the international community in relation to human rights and development are clear. The influence of non-state actors is however increasing. They too can use their influence to improve conditions in other countries and create an enabling environment for the protection and promotion of human rights. The role of international business is examined briefly below.

The influence of companies has grown enormously. The trend towards concentration in industry has produced large, internationally operating companies with thousands of employees spread throughout the world. Such companies can create an internal culture that provides a safe environment in which people can exercise their human rights and fundamental freedoms. Such 'refuges' can in turn have a beneficial effect on the general human rights situation in countries where the companies operate. In some cases, the internal practices of international companies can in fact have more impact on the local human rights situation than the traditional interstate human rights instruments. International companies can also influence policy in the countries where they operate. They have indeed proved willing to do so, depending on the local situation and the company's specific interests.⁴⁸ If respect for human rights becomes a more important consideration in companies' investment and trade decisions, this could boost the efforts of the governments concerned.

Recognition of the potential influence of the private sector in the field of human rights brings policies on international human rights and corporate social responsibility closer together. As stated above, the Ministry of Economic Affairs will submit a memorandum on this matter to parliament.

The Netherlands has undertaken various initiatives based upon the link between human rights and corporate social responsibility. By funding and participating in initiatives such as Global Compact, EITI (the Extractive Industries Transparency Initiative), the Voluntary Principles on Security and Human Rights and activities associated with the OECD Guidelines, the Netherlands already plays an important role in this area. It will continue and where necessary step up its involvement in such combined, international initiatives. Under its 'Decent

⁴⁸ Under the Voluntary Principles on Security and Human Rights, several companies in the oil, gas and mining sector are working closely with a number of governments and human rights NGOs to provide public and/or private security for their physical infrastructure, taking into account human rights.

Work Agenda' the ILO devotes a great deal of attention to the improvement of social rights worldwide. This year, the Netherlands has pledged extra funding specifically for this purpose. The UN Human Rights Council has appointed a Special Representative who has conducted a further study of human rights and transnational corporations.⁴⁹ The Netherlands funds some of his activities, particularly the regional consultations he organises. Finally, NGOs such as Amnesty International, IKV Pax Christi and Aim for Human Rights (formerly the Humanist Committee on Human Rights) have recently entered into important partnerships with the private sector.

Human rights policy will devote more attention in future to the role of international business and human rights. The Ministry of Foreign Affairs will work to strengthen the dialogue on this subject with the private sector. A private sector day on corporate social responsibility will for example be organised with representatives of interested NGOs.

Strategic initiatives

- The Netherlands will undertake initiatives designed to strengthen the dialogue with the private sector. A private sector day on corporate social responsibility and human rights will for example be organised together with representatives of interested NGOs. Dialogue will focus on further shaping the role of the private sector in promoting respect for human rights.
- The Netherlands will work with the UN Special Representative on human rights and transnational corporations and other business enterprises to identify specific activities to promote corporate social responsibility worldwide.

⁴⁹ The office of Special Representative on human rights and transnational corporations is currently held by John Ruggie.

5 The voice of human rights

5.1 Introduction

‘Few men are willing to brave the disapproval of their fellows, the censure of their colleagues, the wrath of their society. Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change a world which yields most painfully to change.’

(Robert F. Kennedy, 1966)

We can promote observance of human rights throughout the world by reminding countries of their international obligations, protesting against violations and offering assistance. However, for a society to change, pressure from outside is not enough. In the end, people have to stand up for their own rights, calling their own government to account.

This does not however mean that the international community must wait patiently for something to happen before taking action. There is always pressure from within, though it is not always equally apparent. In many poor societies, the vast majority of the population do not even know that their government has committed itself to international obligations, let alone have the capacity to demand these rights. In other cases, though the population may be aware, the attitude of the authorities makes it almost impossible for them to act on this knowledge. Fortunately, however, in every society there are people courageous enough to raise their voices, inform their fellow citizens and call their governments to account, despite the dangers this can entail. Human rights defenders are the voice and the conscience of a society. By supporting them we can help effect change from within.

The call for change often goes unheard because freedom of expression is absent. To ensure that the voice of human rights defenders really is heard – both by their

fellow citizens and by the government – it is essential that this freedom be guaranteed. Without media freedom human rights defenders are silenced, and without media diversity the public have no access to different views.

This chapter looks at the Netherlands' efforts to strengthen the 'voice of human rights' from within.

5.2 Human rights defenders

Human rights policy is made by and for people. People who stand up for their own rights – and those of others – have a special role to play in our human rights policy. The courage they show deserves support, both moral and practical. The Netherlands will actively assist these human rights defenders and their work.

5.2.1 Political attention

Dutch policy on protecting human rights defenders is currently informed largely by the guidelines on this subject adopted by the European Union in June 2004. During its Presidency of the EU in the second half of 2004, the Netherlands made major efforts to boost the implementation of these guidelines. This resulted in a handbook targeted mainly at the staff of EU embassies, giving them practical tips on how to protect human rights defenders. It looks at the various political and diplomatic instruments the EU can use to assist human rights defenders in trouble. They include demarches, declarations, prison visits and attending trials. The application of the EU guidelines – particularly by its own diplomatic missions – is a constant focus of attention for the Netherlands. The 2007 ambassadors' conference looked specifically at the fact that, with its extensive network of diplomatic missions, the Netherlands has a particular responsibility and should play a major role in the implementation of the guidelines. Furthermore, the Netherlands is a 'burden sharer' on this issue within the EU, overseeing the implementation of the guidelines on behalf of the Presidency. From this position it is for example able to ensure that, in its contacts with other regional organisations, the EU underlines the importance of regional instruments to assist human rights defenders. The embassies will be asked to organise meetings with human rights defenders, together with EU partners, to mark International Human Rights Day on 10 December, in an attempt to focus attention on this issue locally. To further improve its own efforts and those of the EU, the Netherlands will draw up an action plan on human rights defenders.

To ensure that political means are used to their greatest effect, it is important that we act in an EU capacity, for the simple reason that a message from 27 countries carries much more weight. In all its political contacts the Union should reserve the right to discuss individual cases, even if this is a sore point for the country in question. The Netherlands will press for arrangements to this effect to be included in the modalities for political dialogue, under association and trade agreements and in other contexts. This does not however mean that the Netherlands should leave things entirely to the EU Presidency. During bilateral talks and visits, too, attention must be drawn to the situation of human rights defenders and their organisations, irrespective of the country where they are active. Drawing political attention to a specific case can provide protection, which can sometimes mean the difference between life and death. Human rights defenders also say that international attention is important for them in retaining the hope of a better future. To show that the Netherlands is serious about protecting these individuals, the Minister of Foreign Affairs and the Minister for Development Cooperation will where relevant meet with human rights defenders during visits abroad. Meetings with human rights defenders are also a key element of the work of the Dutch Human Rights Ambassador.

5.2.2 Financial support

In many cases, political or diplomatic support alone is not enough. Capacity-building and the activities of local human rights organisations also require financial support. The Human Rights Fund was set up specifically for this purpose. The largest part of the available funding will be spent directly by the embassies to guarantee that the money goes to the most suitable organisations on the ground. Protection of human rights defenders will be an explicit priority. The money might for example be used to support lobbying and awareness-raising activities, or to engage legal counsel for human rights activists who have been arrested. Embassies will be encouraged to use these opportunities, possibly on the basis of the ‘policy documents’ that a number of diplomatic missions have drawn up in response to the Policy and Operations Evaluation Department’s evaluation of Dutch human rights policy.⁵⁰

⁵⁰ Six diplomatic missions (in the Russian Federation, Costa Rica, Zimbabwe, Iran, Sudan and China) have drafted a policy document on human rights, translating Dutch policy to the local situation. The documents identify the main problems related to human rights and set out an intervention strategy.

5.2.3 The ‘Human Rights Defenders Tulip’

Structural support for human rights defenders through the targeted deployment of political and financial instruments will, as we have said, form an essential part of Dutch policy. It is also important that we openly acknowledge the extraordinary courage displayed by human rights defenders as they fight for a better world. We must not forget that human rights are the work of people.

The Dutch Minister of Foreign Affairs will present a special annual award – the Human Rights Defenders Tulip – to an individual who has shown exceptional moral courage in protecting and promoting the rights of his or her fellow citizens. The award will honour these people, who fight a difficult battle, often at great personal risk, lifting them out of anonymity in order to give them extra protection. Candidates may be nominated by embassies, human rights organisations and journalists. The award will be presented for the first time in 2008, the year in which the Universal Declaration of Human Rights celebrates its sixtieth anniversary.⁵¹

⁵¹ More information on the award and the procedure for nomination can be found at www.minbuza.nl.

Strategic initiatives

- To honour the work of human rights defenders the Minister of Foreign Affairs will present the Human Rights Defenders Tulip every year to an individual who has shown exceptional moral courage in protecting and promoting human rights.
- The Minister of Foreign Affairs and the Minister for Development Cooperation will, where relevant, meet human rights defenders during their official visits abroad.
- As ‘burden sharer’, the Netherlands will monitor the implementation of the EU guidelines on human rights defenders, and make an active contribution to this process through its own network of diplomatic missions.
- The Netherlands will draw up a ‘plan of action on human rights defenders’ to further improve support for the work of human rights defenders (both nationally and in an EU context).
- The Human Rights Fund will be used to build the capacity of human rights organisations and promote activities. Resources from the Fund will also be used to protect the work of human rights defenders.
- On International Human Rights Day (10 December) Dutch embassies will highlight the position of human rights defenders by holding meetings with them.

5.3 Freedom of expression

Our society would not be free, democratic or developed without the right to freedom of expression. The Netherlands champions freedom of expression, as it is essential for peaceful democracy, freedom of the individual and individual and collective development. This is in keeping with the Dutch tradition of free debate between different ideological movements. This is the country where, in the seventeenth century, Baruch Spinoza published his treatise on freedom of thought and expression which paved the way for our current views on freedom of expression.

Freedom of expression is enshrined in a large number of international legal instruments, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. A ban on censorship and an open information policy on the part of the government are also essential to this freedom. It is vital for human rights defenders to be able to speak and write freely, in order to promote all human rights. Governments may therefore restrict the freedom of expression only to a very limited extent. Any restrictions must be laid down by law and susceptible to judicial review and in all cases must comply with international human rights standards.

In many countries, the fight to be able to speak and write freely is not yet over. The Netherlands believes it is very important to support this fight. Freedom of expression can act as a catalyst in bringing about respect for other human rights. All human rights benefit greatly when all citizens, particularly human rights defenders, have a clear and audible voice. Democracy also provides the best guarantee of observance of human rights, and freedom of expression is essential for democracy.

The UN has a Special Rapporteur on Freedom of Expression, and the OSCE has a Representative on Freedom of the Media. The Netherlands regards these mechanisms as highly important for the protection of freedom of expression. Resolutions that actually support the right to free expression always receive full Dutch support. After all, dialogue, debate, mutual respect and individual freedom are the way to progress and development.

5.3.1 Media diversity

Free media are essential for freedom of expression to have a catalytic effect as described above and for the voice of human rights to be heard. The Netherlands will therefore also support activities and organisations that work to expand the diversity of the media in countries where they are very one-sided. People have a right to hear more than one view on the national and international political situation. Diversity in the media is an important precondition for healthy public debate. In countries where press freedom is under pressure, the Netherlands will work actively to maintain or restore freedom and diversity. Media diversity is an explicit objective of the new Human Rights Fund.

In the run-up to elections, in particular, press freedom is vital to the democratic process. People must be able to make an informed choice. Dutch embassies will

therefore report on the situation regarding the media and journalists in the period prior to elections and, if necessary, enter into discussion with the authorities, after consultation with EU partners if appropriate.

Strategic initiatives

- The Netherlands will urge the UN Human Rights Council to give more thought to the issue of freedom of expression.
- In the run-up to elections, the Netherlands will focus extra attention on restrictions on freedom of expression and press freedom, and if necessary take action to highlight problems.
- The Netherlands will support media diversity in countries where the media is very one-sided, and where there is a need for alternative sources of news besides those of the government or media organisations allied to the government.
- In order to raise standards of free journalism, the Netherlands will contribute to training for journalists.

www.minbuza.nl

Ministry of Foreign Affairs of the Netherlands
Postbus 20061
2500 EB The Hague
The Netherlands

November 2007