ADVISORY LETTER

RESPONSE TO THE 2007 HUMAN RIGHTS STRATEGY

No. 12, November 2007

ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS
ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN

AIV

Members of the Advisory Council on International Affairs

Chair	F. Korthals Altes
Vice-chair	Professor F.H.J.J. Andriessen
Members	A.L. ter Beek
	Professor G. van Benthem van den Bergh
	Professor W.J.M. van Genugten
	H. Kruijssen
	Ms P.C. Plooij-van Gorsel
	Professor A. de Ruijter
	Professor A. van Staden
	Ms H.M. Verrijn Stuart
Executive secretary	T.D.J. Oostenbrink

P.O. Box 20061
2500 EB The Hague
The Netherlands

Telephone + 31 (0)70 348 5108/6060
Fax + 31 (0)70 348 6256
e-mail aiv@minbuza.nl
www.aiv-advice.nl

Members of the Human Rights Committee

Chair	Professor W.J.M. van Genugten
Vice-chair	Ms H.M. Verrijn Stuart
Members	Dr K.C.J.M. Arts
	Professor Th.C. van Boven
	T. Etty
	Professor R. Fernhout
	Professor C. Flinterman
	Professor J.E. Goldschmidt
	Ms C. Hak
	R. Herrmann
	T.P. Hofstee
	Professor M.T. Kamminga
	F. Kuitenbrouwer
	Dr B.M. Oomen
	Professor N.J. Schrijver
	Professor W.M.E. Thomassen
	Ms J.M. Verspaget
Executive secretary	T.D.J. Oostenbrink

Response to the 2007 Human Rights Strategy

1. Foreword

On 6 November the government presented the policy document 'Human dignity for all: a human rights strategy for foreign policy'. The AIV decided to issue an unsolicited advisory letter in response to the new policy, just as it has done with previous human rights policy documents, most recently in 2001.[1] The AIV's commentary will touch on the main themes of the Strategy.

This advisory letter was prepared by the AIV's Human Rights Committee, whose members are: Dr K.C.J.M. Arts, Professor T.C. van Boven, T. Etty, Professor R. Fernhout, Professor C. Flinterman, Professor W.J.M. van Genugten (chair), Professor J.E. Goldschmidt, C. Hak, R. Herrmann, T.P. Hofstee, Professor M.T. Kamminga, F. Kuitenbrouwer, Dr B.M. Oomen, Professor N.J. Schrijver, Professor W.M.E. Thomassen, H.M. Verrijn Stuart and J.M. Verspaget. The executive secretary was T.D.J. Oostenbrink (secretary to the AIV), assisted by S. Hardus, a trainee.

The AIV finalised this advisory report on 22 November 2007.

2. Important points of agreement

The AIV read the Human Rights Strategy with appreciation. In the document the government has managed to connect broad ideas with concrete goals and instruments for realising them. The AIV supports much of the Strategy's substance, and there is no need to address those issues here.

Before presenting its thoughts and proposals on how the Strategy might be further enhanced, (sections 3 and 4) the AIV would like to highlight and comment on the following topics:

- The emphasis on *moral* obligation as the basis for defending human rights. The Strategy posits, while alluding to instruments such as the Universal Declaration of Human Rights, that human rights are fundamental values that we strive for 'not only for ourselves, but for others too' and that it is 'strong moral conviction that drives us to pursue a more active human rights policy' (p. xi).* This suggests an engaged, principled attitude. At the same time, the notion of morality repeatedly invoked in the document is not that of the 'wagging finger' sometimes associated with the Dutch. Rather, the morality envisioned by the strategy is explicitly linked to Dutch interests, including security and the economy.
- The connection between this moral obligation and *current national and international law*. Time and again the Strategy refers back to the Dutch constitutional obligation to promote development of the international legal order (article 90), and the duty to comply with conventions on human rights, international criminal law, international humanitarian law and international law in general. The document positions itself in the best tradition of Dutch foreign policy, as previous human rights memoranda have done since 1979.

1 See AIV, Comments on the 2001 Memorandum on Human Rights Policy, advisory report no. 23, The Hague, September 2001. This report was issued at the request of the House of Representatives of the States General.

* Page numbers refer to translated English text.

- The notion that *pressures* like globalisation, terrorism, and counterterrorism measures, the changing nature of conflict, cultural relativism, international organised crime and the uncertainty generated by scarce energy resources and climate change are adversely impacting human rights *at the very time* when more action and greater vigilance are needed to safeguard them. At the same time, the government correctly claims that human rights violations often have deep roots and that instilling respect for human rights 'often requires great perseverance' (p. 7). Attention is given to both acute situations and the need for systemic, sustainable change, particularly where human rights interact with peace, security and development. The AIV will address both of these subjects.
- The notion that a state that sees itself as an authority and seeks international *credibility* must be prepared to be critical of its allies and 'equally prepared to examine [its] own record' (p. viii). 'We must also be able to show that we make every effort in our own society to ensure that human rights are respected' (p. 4). It is important then to put human rights on the agenda 'for talks not only with Sudan, Iran and Sri Lanka, but also with the United States, China and the Russian Federation' (p. 27). Otherwise, both these elements could give other states an excuse for a lackadaisical attitude to human rights. The AIV will return to the matter of 'the allies'.
- The fact that the government is seeking ways to continue fulfilling *its pioneering role* within the EU while joining coalitions *with countries outside the EU*. The basic assumption is that, thanks to closer cooperation, the European Union 'has become a more important actor on the international stage', that 'joint initiatives [have] more weight' than initiatives by individual member states and that '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' (p. 11). This assumption is justified because it is in line with standing treaty obligations and, for the most part, supported by prevailing practice in recent decades. Equally justified is the openness to the possibility and desirability of letting our individual voice be heard and, where necessary, carving our own path, 'either reiterating the same message or emphasising certain aspects of it' (p. 27). On a similar note the AIV underscores the government's view that it is preferable to actively engage with third countries, 'particularly in Africa, Asia and Latin America' (p. 13), more than we have in the past, in part to dispel the impression that the EU is a closed community. Further to this, the government makes a number of proposals that are worthy of support. However, the government should bear in mind that it cannot begrudge other EU member states what it claims for itself.
- The fact that a *selection* has been made of specific themes and rights − capital punishment, torture, human rights and religion − and specific vulnerable groups − women, children and homosexuals. With regard to the status of homosexuals, reference is made to member states of the Council of Europe (p. 54) without mentioning that many of these are EU member states as well. The Dutch should introduce initiatives within the EU, too. Additionally, considering the document's title, 'Human dignity for all', making racial discrimination a priority would have been an obvious choice, not least with regard to groups like the Roma and Sinti and other national minorities all over the world, as well as migrants, refugees and asylum seekers. In this connection it bears mentioning that refugee policy is part of international (and national) human rights policy. The AIV believes that, since it is widely accepted that civil and political rights are indivisible from economic, social and cultural rights (ESC rights), there are strong arguments for including one or more ESC rights in the selection, in part to send a positive signal to developing countries. That being said, the AIV sees that the subject of ESC rights has been integrated into several of the selected rights and priority groups. In discussing women's rights, for example, the document makes reference to health and education rights, and the section on children examines the phenomenon of child labour

extensively. Although some of the choices could have been different, the AIV respects the government's decision and fully recognises the need to take account of feasibility and efficiency when making choices, lest the policy collapse under the weight of its own priorities. As it is, the document contains quite a long list of priorities.

- The fact that each topic is developed and, in most cases, *translated into concrete measures* ('strategic effort'), making the policy assessable and showing the government's willingness to submit to evaluation before and after. In addition, the best instrument and actor for the job – the minister(s), the missions or the human rights ambassador – is indicated for each theme. This makes the strategy measurable. From this point on, the emphasis will be on the further implementation of the strategy, with a view to enabling parliament and the NGOs to determine whether and to what extent a specific strategic effort actually produces results. Several of the items mentioned under the heading of 'strategic effort' – such as the Netherlands' pledge to 'focus specifically on the relationship between human rights and the Millennium Development Goals' (p. 84 in its bilateral development policy) – are formulated in broad terms.
- The emphasis on the idea that fighting for human rights is *people's work*, undertaken by human rights defenders and UN rapporteurs, such as Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, who was recently arrested in Pakistan, and Hina Jilani, the United Nations Special Representative of the Secretary-General on Human Rights Defenders. The personalities who lend colour – or not, as the case may be – to posts such as the UN High Commissioner for Human Rights or the OSCE High Commissioner on National Minorities also have a role to play.

3. Debating the Strategy

This being said, there are a number of issues from the Strategy that the AIV would like to address further. The topics and approaches selected for discussion are those with strategic interfaces, which could help define the position of human rights in the Dutch government's foreign policy.

3.1 Universality

The government states that the universality of human rights is more broadly accepted than it was before the end of the Cold War. Notwithstanding the remarks above about the current threats to human rights, the AIV sees a number of positive trends, too, such as 'China's cautious move towards human rights'[2] the fact that since the Cold War the number of states that have ratified international conventions has grown spectacularly, that states which had previously refused to submit to monitoring are now opening up to inspection and that more and more supervisory procedures are being carried out.

The AIV wonders whether the observations on international trends should make mention of the erosion of the Netherlands' authority as a champion of human rights due to domestic political developments. To many foreign observers, the Netherlands is no longer a beacon of enlightened humanitarian thinking or a bulwark of tolerance towards minorities. Another major problem affecting international relations since 11 September 2001, where human rights are concerned (in conjunction with other issues), is the United States' attitude towards the international legal order, including human rights. This attitude has cast a dark shadow across many areas and has brought considerable pressure to bear on international human rights cooperation. This point can also be formulated in more positive terms: the struggle against terrorism shows how important it is for Western states to continually

2 See AIV, China in the balance: towards a mature relationship, advisory report no. 55, The Hague, April 2007.

reflect on the position of human rights in national and international relations.

The government correctly argues that the second World Conference on Human Rights (1993) established that while differences in historical, cultural and religious backgrounds between states must be borne in mind, they must never be used to justify human rights violations (p. 4-5). What is more, the Final Report of the conference says that the significance of 'national and regional particularities' may not be ignored. The government argues that universality remains the fundamental principle, but that 'this is not a position that should be defended from behind a barricade'. On the contrary: 'it will require lively debate, employing the latest arguments' (p. 4). In the AIV's view, the government is again right to claim that 'cultural relativism with regard to human rights is incompatible with individual equality, wherever you are in the world' and 'hiding behind cultural or religious differences to claim that human rights are not applicable is incompatible with the principle of universality' (p. 5). But this raises the question: what will become of that 'lively debate', unless by 'debate' the government alludes to the need for one party to explain the concept of human rights to the other. All things considered, it is unclear where the Dutch government draws the line between the assertion of universality and the justifiable reference to diverse national particularities on the other. This concerns the notion that universality does not necessarily imply uniformity, as set out in an AIV advisory report on the subject.[3]

The Strategy document sets out an interesting case. The government states that 'within the UN, Islamic countries argue forcefully for protection of religions as such' and that 'from a human rights point of view (...) this is neither correct nor desirable' (p. 37). The case is illustrated with a reference to the tensions over the Danish cartoons. At the time the Netherlands focused on 'de-escalating the tension and on protecting freedom of expression' (p. 42). However, the government adds, 'neither freedom of expression nor the right to practise one's own religion or belief is unrestricted', and 'anyone who exercises free speech has a responsibility to treat others with respect and not to hurt them unnecessarily' (p. 42).[4]

The AIV wonders what is meant by those last words. In the debate surrounding the Danish cartoons it was emphasised that freedom of expression ends where incitement to violence or discrimination begins. Does the government wish to constrict freedom of expression further than that?

If countries like Sudan and China are willing to enter into a debate with the Netherlands on examples like the one mentioned here, invoking 'historical, cultural or religious backgrounds' and 'national and regional particularities', they should be heartily encouraged to do so, but where would the debate end? Sudan and China would surely agree that everyone has 'responsibility under the law' (p. 42), but this would not guarantee the absolute and individual freedom of religion that the Netherlands advocates. The same applies to the principle that '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

3 See AIV, Universality of human rights and cultural diversity, advisory report no. 4, The Hague, June 1998 and the government's response of 30 October 1998.

4 This is in line with article 10 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which states that exercising rights such as freedom of expression carries with it 'duties and responsibilities', and with the established case law of the European Court of Human Rights.

another is justified' (p. 42). This is more of a prescriptive observation than an opinion on whether the model could work in countries that are less oriented towards the rule of law, such as Sudan and China.

Still, dialogue is the optimal way to approach the issue of universality of human rights. This approach explicitly acknowledges the dynamic, negotiated and heterogeneous nature of both culture and religion. As a result, human rights and culture/religion are no longer incompatible monoliths, but rather the starting points for a discussion for which a number of parameters have already been set. When helping to draft the Universal Declaration of Human Rights, Eleanor Roosevelt drew on the Confucian, Buddhist, Islamic, African and Jewish philosophical traditions, and sought advice from people like Mahatma Gandhi. Thus understanding a given context or culture and having insight into the relevant power relations stimulates efforts to establish connections with reform movements and progressive institutions and helps advance the cause of human rights. Consider human rights education for tribal elders or projects in which the sharia is analysed to find ways of improving the status of women and homosexuals. The Netherlands has a great deal of legal-ethnographic knowledge and experience that could be used to create more effective policy in this area. With reference to this, the AIV would note the importance of making an active effort to expedite the implementation of the resolution on human rights education adopted by the UN Human Rights Council in September 2007, not least because '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' (p. 39).

The dialogue approach that the AIV advocates would delve deeper and select channels other than the traditional international forums (multilateral and bilateral). It remains to be seen how much scope there is for the Dutch government to tackle the theme of universality, within the framework of foreign policy, via open debate and dialogue and not from behind the bulwark of the certainties of international law. The AIV recognises the need to propagate universality through debate and topical arguments, but also realises that this path has the potential to turn into a political quagmire, certainly if the states involved lack legal institutions that could test and prevent deviations from universality, and invocations of non-uniformity.

3.2 Indivisibility of rights

While the government advocates the indivisibility of the various categories of human rights, its choice of priority themes has given the AIV the impression that civil and political rights dominate its foreign policy. Having said that, in several places the document emphasises that '*every* right is equally relevant to the dignity and personal development of the individual' (p. 6) and that 'economic, social and cultural (ESC) rights are just as important for justice and human dignity as civil and political rights' (p. 79). This last point is illustrated by a powerful example: 'to a victim of sexual violence, access to good medical care is just as high a priority as bringing the offender to justice' (p. 79). The government also emphasises (pp. xv and elsewhere) that civil and political rights are imperative to making progress on ESC rights. By the same token, in the AIV's opinion, ESC rights (e.g. the right to food or adequate health care) are indispensable to exercising civil and political rights effectively.

Various issues are relevant to the explanation of the indivisibility of rights and the emphasis on the singular importance of ESC rights. Some of these issues are highlighted below.

First, the AIV would examine the discussion of the relationship between the Millennium Development Goals (MDGs) and ESC rights. The Human Rights Strategy makes some very

strong points on this issue, with regard to the substantive similarities, the objectives and the fact that each of the MDGs has an equivalent in the international human rights instruments (p. 83). The document also explores the differences between the two: political undertaking versus binding legal obligation, benchmarks and indicators (MDGs) versus the duty of non-discrimination and the obligation to achieve progressively the full realisation of ESC rights (Covenant on ESC Rights). The government then states that it is justified in concluding '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' (p. 84).

While this approach is defensible, the AIV would point out that international law, and the moral and political obligations that underpin it, provide scope for developing more rigorous ideas concerning the nature of the MDGs. Take, for example, the interaction between several of the MDGs and the extraterritorial effect of the obligations ensuing from the UN Charter in combination with the ESC Covenant, or the debate in the WTO about access to cheaper medicines, or the implementation of the Right to Development, formulated in 1986. A more in-depth discussion of this point would go beyond the scope of this advisory letter, but the conclusion would certainly be that it is possible to ground each of the MDGs[5] more solidly in human rights without undermining their primarily political nature. To a significant degree, the MDGs represent political translations of, and lend a sense of urgency to, international human rights obligations.

Secondly, in respect of the indivisibility of categories of rights, the AIV would stress the need to 'descend' to the grassroots level, because ESC rights often correspond to the most immediate needs of people in partner countries. Facilitating legal empowerment and access to the law is a way of coupling human rights and poverty reduction that goes unmentioned in the Strategy. In the past, the Netherlands acquired a great deal of experience supporting paralegals ('barefoot lawyers') and local legal advice centres through relatively inexpensive programmes that often reach a huge population and empower people to exercise their rights. This kind of bottom-up perspective, involving the development and support of a rights-based approach, can also help improve the status of women. It is important to identify the agents of change in a given context and provide them with strategic support. This requires an active search on the part of the embassies and the will to determine where the emphasis should placed in each country, within the parameters that have been set. An agent of change could be a women's organisation that works to create access to water, a movement seeking to bring the issue of homosexuality out into the open or an indigenous population that initiates discussion on access to natural resources. In addition to public support, these groups often welcome material assistance, information and help in establishing contacts with similar movements. Human rights policy (including the development of good governance) is particularly knowledge intensive. The civil servants and organisations involved in its implementation therefore require specific training.

For many countries, the observance of human rights norms requires a cultural transformation. A climate has to be created in which human rights can flourish. If people have access to information, they may find it easier to invoke their rights, such as equality before the law, outside the courts and official bodies. Information can be disseminated by radio or by providing accessible translations of relevant instruments; the Netherlands has

5 Such as education, gender equality, child mortality, maternal health, combating the spread of fatal disease and 'even' MDG 7 on environmental sustainability, which includes access to clean drinking water and a higher living standard for the world's 100 million slum dwellers, and MDG 8 on international cooperation.

a great deal of experience in this area, too.

Third, the MDGs and ESC rights can be drawn closer together by strengthening monitoring procedures for ESC rights. The Strategy states that the Netherlands is closely and constructively involved in the negotiations on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, and that this is 'important, among other things, for the effectiveness and credibility of its foreign policy' (p. 79). The AIV applauds the progress that is being made, but would note that the Netherlands has, thus far, adopted a somewhat conservative position on this Protocol. In the AIV's view, an active role is appropriate. After the Protocol comes into force, the Supervisory Committee could focus attention on the concrete application of various standards in the Covenant, as laid down in successive General Comments. ESC rights should be applied in accordance with the adage 'no right without a remedy'.

The government can learn lessons from the initial experiences with the Protocol to the European Social Charter Providing for a System of Collective Complaints. This Protocol enables international organisations of employers and trade unions and other international non-governmental organisations that are on a special list to submit complaints regarding a failure to comply with the Charter. In addition to the employers' organisations and trade unions from the contracting states, there were over a hundred NGOs on the list at the end of 2007; they have submitted 44 complaints thus far. The initial experiences suggest that this is an efficient method of dealing with large-scale problems.

3.3 Human rights, peace and stability

The section on human rights, peace and stability identifies several clear-cut connections, while in practice these links tend to be more problematic. By way of illustration, a number of themes are addressed below.

The first theme is the relationship between human rights and counterterrorism. The AIV will limit its comments regarding the passages on terrorism to a reference to two recent advisory reports on this issue. They expressed concerns (particularly with regard to torture and cruel, inhuman and degrading treatment) that deserve the government's full, ongoing attention.[6] Of particular interest is the matter of 'derogation within a strictly defined legal framework' (p. 61). In the AIV's opinion, the government should have stated more explicitly that certain fundamental rights, such as protection from torture and cruel, inhuman and degrading treatment or punishment, may not be derogated from under any circumstances, even in wartime (in the treatment and interrogation of prisoners for instance).[7] In addition, it is important to elaborate on the issue of the restrictions that international law places on self-defence measures against terrorist groups (p. 63). The language of the government's pledge to press for the international clarification of conditions is too passive and says too little about the substance of the Netherlands' contribution.[8]

6 See AIV, Counterterrorism in a European and international perspective, advisory letter no. 11, The Hague, December 2005 and AIV, Counterterrorism in a European and international perspective, advisory report no. 49, The Hague, September 2006.

7 See, *inter alia*, J.H. Burgers, *Geen deuren open laten staan naar marteling!*, NJCM-Bulletin, volume 32, number 7, November 2007, pp. 958-967.

8 Further to this issue, please refer to the Letter to Parliament regarding the final report of the international expert meeting on human rights and counterterrorism of 22 June 2007.

Another theme linking human rights to peace and stability is the emerging field of transitional justice. In the Strategy, the government contrasts peace and justice rather sharply with the prosecution and punishment of offenders. The AIV would point out that this dichotomy does not necessarily exist in all cases. The passages on transitional justice (section 3.6.2) support this. The Netherlands could assume a pioneering role in this area too. Its seat of government, The Hague, has been dubbed the Legal Capital of the World for hosting many international courts and tribunals, and the Netherlands has acquired extensive relevant experience in countries like South Africa, Rwanda, Guatemala and Afghanistan. The AIV supports the government's emphasis on tackling impunity, but would also stress that to foster peace and stability it is important to determine which mechanisms of transitional justice are appropriate and, again, to endeavour to align policy with the local context.

Transitional justice should not be viewed in isolation, but rather linked to the realisation of all human rights. If all our attention, energy and resources are focused on the past while the present is still plagued by ongoing injustice, the mechanisms of transitional justice will miss the mark too. Courts, for example, need to be able to do their 'ordinary' work, and public information about transitional justice can be linked to human rights education in general. The AIV also supports the notion expressed in the Strategy that the views and interests of the victims must be vindicated in the pursuit of justice by establishing the truth and recognising the right to financial and other reparation (restoration of rights) (p. 76 and elsewhere). The AIV will soon begin drafting an advisory report on this issue with the Advisory Committee on Issues of Public International Law (CAVV).

To conclude this section on human rights, peace and stability, the AIV would express its regret that the passage on small arms and arms exports (pp. 69-71) does not address a restriction or a full ban on cluster munitions. The connection here with human rights is obvious, and there are many initiatives in progress. The Netherlands should make its position clear on this issue.

3.4 The consistency of government policy

The Strategy neglects the economic dimension and the use of economic instruments and actors to achieve full realisation of human rights. It does, however, refer to the collaboration between the High Commissioner for Human Rights and the World Bank, and addresses in detail the issue of child labour, expressing the desire 'to make education available and to raise living standards in order to create the conditions necessary for child labour to be eliminated' (p. 51). The Strategy also refers to a dialogue between the Ministry of Foreign Affairs and the international business community with regard to the private sector's role in human rights (p. 85), but substance and clarity are lacking. No doubt, this is largely due to the fact that the government intends to issue a new policy memorandum on Corporate Social Responsibility (CSR) soon. This is understandable and the AIV assumes that the CSR memorandum will address the thorny issues that crop up when companies themselves contribute to or bear responsibility for human rights violations.

Questions remain, though, regarding how a coordinated and coherent foreign policy, including the economic dimensions, will be shaped in future. The Strategy calls for the UN system and other international organisations, such as the International Financial Institutions, to incorporate human rights across the board, but the document is curiously silent about the domestic side of the equation. For example, how will the Ministries of Economic Affairs and Finance coordinate Dutch policy with the World Bank, the IMF and the regional development banks? The work of ministries like Justice and Social Affairs & Employment also involves various aspects of international human rights policy.

Furthermore, the fact that the Netherlands has not yet followed through on its pledge to establish a national human rights institute can be regarded as an example of a lack of consistency in government policy.

In a sense, a consistent government policy begins with the Ministry of Foreign Affairs. The Strategy correctly notes that 'the entire Ministry will also have to make more effort on human rights' (p. 28). On another subject, the Minister for Development Cooperation recently presented his policy framework to the House of Representatives,[9] and although it overlaps with human rights in many areas – the MDGs, good governance, equal rights and opportunities for women and girls, sexual and reproductive rights, just to mention a few – it was not mentioned in the Human Rights Strategy. The reverse is also true.

4. Putting the Human Rights Strategy into practice

As stated above, the AIV read the Human Rights Strategy with appreciation. The real challenge is to translate the intentions it contains into action, which will clearly be an arduous task in many respects.

The government is correct in its analysis that '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' and that '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' (p. xvi-xvii). That policy can be applied to states, such as China, the Russian Federation and Saudi Arabia, with which the Netherlands has good relations but which are not among its closest allies. The question is how the government will balance its interests and whether it will be able to live up to its intentions at all times or at least to a degree that is acceptable to parliament. The question may sound rhetorical, but it is not meant to be. Barring evidence to the contrary, the AIV will assume that the Human Rights Strategy represents the government's desire to take a new step forward in this perennially challenging sphere.

Another question that arises is how much enthusiasm and opportunity there will be to call the Netherlands' closest allies to account for their human rights conduct. The AIV has referred to this matter before. The Strategy mentions the United States, but there are other allies that will soon lose patience if the Netherlands becomes overly critical. For example, the paper states that 'during its first year the [Human Rights] Council spent a disproportionate amount of time discussing the situation in the Middle East, and the discussions were usually biased' (p. 16). Nevertheless, bilateral contacts with Israel and other Middle East states can – and, according to the strategy paper, should – be used to talk about serious violations of human rights, including ESC rights, and international humanitarian law in the region.

How can the government best use the positions it takes in the international organisations of which it is a member to implement its policy? They are all needed to help shape the discrete components of the Dutch government's human rights agenda, but they are not disconnected from the wide-ranging backgrounds of the members, from a large dose of bureaucracy and from competitive manoeuvring. The latter is true of the relationship between the EU and the Council of Europe, despite the thought-provoking Juncker report on

9 Policy letter from the Minister for Development Cooperation, entitled 'Our Common Concern', 16 October 2007.

the subject, entitled *A Sole Ambition for the European Continent*.[10] The AIV has already observed that with respect to the Council of Europe the Human Rights Strategy focuses much attention on the dedicated human rights organs, a good deal less on the Parliamentary Assembly and none at all on the Committee of Ministers, even though these two bodies are among the few with a mandate that covers the human rights situation in countries such as the Russian Federation.[11]

Another pertinent question is to what extent the government intends to bypass national governments, and do business directly with local authorities and agencies, as recommended in this response, in states where gross violations of human rights occur and systematic improvements cannot be expected in the short term. In certain circumstances, this would be the mark of a bold human rights policy.

The same applies to the Responsibility to Protect. As the government rightly asserts, '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' (p. 67). But the government also states that 'it will take a great deal of political will to develop and apply this concept, as illustrated by the situation in Darfur' (p. 3). The Strategy promulgates a number of highly useful ideas (pp. 66-67), but also shows that the government and the international community as a whole are still searching.

5. Conclusion

The main objective of the Human Rights Strategy policy document is to set out a unified foreign policy on human rights for the Dutch government as a whole. This requires coordination within the government as well as debate between conflicting views on, for example, how best to serve national economic and security interests. For now it is unclear whether that debate will always lead to straightforward conclusions that are in keeping with the Human Rights Strategy. In the AIV's view it is not an option to ask the government to provide, in advance, a precise description of the policy at national or regional level, complete with an assessment of the economic factors at play. That would require the government to reveal not only its strategy but also the result it intends to achieve, and that is not usually the best course of action in inter-state relations. It is, however, very important that the government has designed a carefully considered framework within which a comparative assessment can be made of the various interests involved.

10 Presented to the Council of Europe on 11 April 2006.

11 See also AIV, The Council of Europe: less can be more, report no. 33, The Hague, October 2003 and AIV, The Parliamentary Assembly of the Council of Europe, report no. 40, The Hague, February 2005.

Previous reports published by the Advisory Council on International Affairs

1 AN INCLUSIVE EUROPE, *October 1997*

2 CONVENTIONAL ARMS CONTROL: urgent need, limited opportunities, *April 1998*

3 CAPITAL PUNISHMENT AND HUMAN RIGHTS: recent developments, *April 1998*

4 UNIVERSALITY OF HUMAN RIGHTS AND CULTURAL DIVERSITY, *June 1998*

5 AN INCLUSIVE EUROPE II, *November 1998*

6 HUMANITARIAN AID: redefining the limits, *November 1998*

7 COMMENTS ON THE CRITERIA FOR STRUCTURAL BILATERAL AID, *November 1998*

8 ASYLUM INFORMATION AND THE EUROPEAN UNION*, July 1999*

9 TOWARDS CALMER WATERS: a report on relations between Turkey and the European Union*, July 1999*

10 DEVELOPMENTS IN THE INTERNATIONAL SECURITY SITUATION IN THE 1990s: from unsafe security to unsecured safety, *September 1999*

11 THE FUNCTIONING OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, *September 1999*

12 THE IGC AND BEYOND: TOWARDS A EUROPEAN UNION OF THIRTY MEMBER STATES, *January 2000*

13 HUMANITARIAN INTERVENTION, *April 2000**

14 KEY LESSONS FROM THE FINANCIAL CRISES OF 1997 AND 1998, *April 2000*

15 A EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS?, *May 2000*

16 DEFENCE RESEARCH AND PARLIAMENTARY SCRUTINY, *December 2000*

17 AFRICA'S STRUGGLE: security, stability and development, *January 2001*

18 VIOLENCE AGAINST WOMEN: LEGAL DEVELOPMENTS, *February 2001*

19 A MULTI-TIERED EUROPE: the relationship between the European Union and subnational authorities, *May 2001*

20 EUROPEAN MILITARY-INDUSTRIAL COOPERATION, *May 2001*

21 REGISTRATION OF COMMUNITIES BASED ON RELIGION OR BELIEF, *June 2001*

22 THE WORLD CONFERENCE AGAINST RACISM AND THE RIGHT TO REPARATION, *June 2001*

23 COMMENTARY ON THE 2001 MEMORANDUM ON HUMAN RIGHTS POLICY, *September 2001*

24 A CONVENTION, OR CONVENTIONAL PREPARATIONS? The European Union and the ICG 2004, *November 2001*

25 INTEGRATION OF GENDER EQUALITY: a matter of responsibility, commitment and quality, *January 2002*

26 THE NETHERLANDS AND THE ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE IN 2003: role and direction, *May 2002*

27 BRIDGING THE GAP BETWEEN CITIZENS AND BRUSSELS: towards greater legitimacy and effectiveness for the European Union, *May 2002*

28 AN ANALYSIS OF THE US MISSILE DEFENCE PLANS: pros and cons of striving for invulnerability, *August 2002*

29 PRO-POOR GROWTH IN THE BILATERAL PARTNER COUNTRIES IN SUB-SAHARAN AFRICA: an analysis of poverty reduction strategies, *January 2003*

30 A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION, *April 2003*

31 MILITARY COOPERATION IN EUROPE: possibilities and limitations, *April 2003*

32 BRIDGING THE GAP BETWEEN CITIZENS AND BRUSSELS: towards greater legitimacy and effectiveness for the European Union, *April 2003*

33 THE COUNCIL OF EUROPE: less can be more, *October 2003*

34 THE NETHERLANDS AND CRISIS MANAGEMENT: three issues of current interest, *March 2004*

35 FAILING STATES: a global responsibility, *May 2004**

36 PRE-EMPTIVE ACTION, *July 2004**

37 TURKEY: towards membership of the European Union, *July 2004*

38 THE UNITED NATIONS AND HUMAN RIGHTS, *September 2004*

39 SERVICES LIBERALISATION AND DEVELOPING COUNTRIES: does liberalisation produce deprivation?, *September 2004*

40 THE PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, *February 2005*

41 REFORMING THE UNITED NATIONS: A closer look at the Annan report, *May 2005*

42 THE INFLUENCE OF CULTURE AND RELIGION ON DEVELOPMENT: Stimulus or stagnation?, *June 2005*

43 MIGRATION AND DEVELOPMENT COOPERATION: coherence between two policy areas, *June 2005*

44 THE EUROPEAN UNION'S NEW EASTERN NEIGHBOURS: *July 2005*

45 THE NETHERLANDS IN A CHANGING EU, NATO AND UN, *July 2005*

46 ENERGISED FOREIGN POLICY: security of energy supply as a new key objective, *December 2005***

47 THE NUCLEAR NON-PROLIFERATION REGIME: The importance of an integrated and multilateral approach, *January 2006*

48 SOCIETY AND THE ARMED FORCES, *April 2006*

49 COUNTERTERRORISM FROM AN INTERNATIONAL AND EUROPEAN PERSPECTIVE, *September 2006*

50 PRIVATE SECTOR DEVELOPMENT AND POVERTY REDUCTION, *October 2006*

51 THE ROLE OF NGOs AND THE PRIVATE SECTOR IN INTERNATIONAL RELATIONS, *October 2006*

52 EUROPE A PRIORITY!, *November 2006*

53 THE BENELUX: THE BENEFITS AND NECESSITY OF ENHANCED COOPERATION, *February 2007*

54 THE OECD OF THE FUTURE, *March 2007*

55 CHINA IN THE BALANCE: towards a mature relationship, *April 2007*

56 DEPLOYMENT OF THE ARMED FORCES: interaction between national and international decision-making, *May 2007*

57 THE UN HUMAN RIGHTS TREATY SYSTEM: strengthening the system step by step in a politically charged context, *July 2007*

Advisory letters issued by the Advisory Council on International Affairs

1 Advisory letter THE ENLARGEMENT OF THE EUROPEAN UNION, *December 1997*
2 Advisory letter THE UN COMMITTEE AGAINST TORTURE, *July 1999*
3 Advisory letter THE CHARTER OF FUNDAMENTAL RIGHTS, *November 2000*
4 Advisory letter ON THE FUTURE OF THE EUROPEAN UNION, *November 2001*
5 Advisory letter THE DUTCH PRESIDENCY OF THE EU IN 2004, *May 2003***
6 Advisory letter THE RESULTS OF THE CONVENTION ON THE FUTURE OF EUROPE, *August 2003*
7 Advisory letter FROM INTERNAL TO EXTERNAL BORDERS. Recommendations for developing a common European asylum and immigration policy by 2009, *March 2004*
8 Advisory letter THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES: from Deadlock to Breakthrough?, *September 2004*
9 Advisory letter OBSERVATIONS ON THE SACHS REPORT: How do we attain the Millennium Development Goals?, *April 2005*
10 Advisory letter THE EUROPEAN UNION AND ITS RELATIONS WITH THE DUTCH CITIZENS, *December 2005*
11 Advisory letter COUNTERTERRORISM IN A EUROPEAN AND INTERNATIONAL PERSPECTIVE: interim report on the prohibition of torture, *December 2005*

* Issued jointly by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV).
** Joint report by the Advisory Council on International Affairs (AIV) and the General Energy Council.
*** Joint report by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Aliens Affairs (ACVZ).