

In conclusion, it may be said that looking back, Kooijmans managed to get quickly and easily remarkably settled in his new job as Minister for Foreign Affairs. His policy appeared to be somewhat more Europe-oriented compared to that of his predecessor Van den Broek, who was an outspoken 'Atlantic'. Apart from that aspect, however, it was not much different in substance - certainly not with regard to the problems in the former Yugoslavia; the message was perhaps brought in a somewhat more friendly manner and in more expressive language ("I prefer a 14 carat gold success to a 24 carat gold nothing").

The civil servants in the Ministry of Foreign Affairs were generally pleased with his performance ("everything went like clockwork"). Apart from certain relatively minor matters, his policy also found broad support in Parliament. The press was moreover generally kindly disposed towards him, referring to him as "friendly", "tactful", "intelligent", "expert in international law, especially human rights", "inspiring", "balanced", and, at the same time, "not a soft guy".

Indeed, in many respects a privileged man!

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2. PETER KOOIJMANS AND HUMAN RIGHTS

2.1. "Human rights: a challenge you cannot refuse"¹

Human rights constitute a challenge that Peter Kooijmans never refused or will refuse, both in his academic and government activities. For a long time he has been in the forefront of those who have struggled for the promotion and protection on human rights for everyone, everywhere in the world. As he said himself: "I myself would not have devoted so much of my time to the cause of human rights [...] if I had not believed it to be a just cause and

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1. Statement by Dr. P.H. Kooijmans, Minister for Foreign Affairs of the Kingdom of the Netherlands, 50th session of the United Nations Commission on Human Rights, Geneva, 10 February 1994, reprinted in *Verslag van de Nederlandse delegatie naar de 50e zitting van de VN-Commissie voor de Rechten van de Mens*, Genève, 31 januari - 11 maart 1994, Appendix A.

worthy task.²² The issue of human rights first became a major concern for him when he was State Secretary for Foreign Affairs (1973-1977), when he had the Dutch foreign policy within the United Nations (including human rights questions) in his portfolio. It was during that period that the United Nations was gradually changing its course, by shifting the emphasis from standard setting in the field of human rights to supervision over the implementation of international human rights norms. He was then working in the shadow of Max van der Stoep, Minister for Foreign Affairs, who was himself an outspoken protagonist of international human rights. It was Max van der Stoep who, after he had again become Minister for Foreign Affairs during the shortlived Van Agt III cabinet (1981-1982), requested Peter Kooijmans to succeed him as Chairman of the Netherlands' delegation to the United Nations Commission on Human Rights, the main political organ of the United Nations in the field of human rights. With his usual sense for realism, Kooijmans once described this Commission as "a crooked stick to make straight strokes."²³

He used this 'stick' with deliberate skill and force and with great political wisdom. His integrity in this respect was recognized when, in 1985, he was appointed the first UN Special Rapporteur on Torture.

In light of the limited space available here, I can only highlight a few activities of Peter Kooijmans in the field of the United Nations promotion and protection of human rights. His scholarly background coloured these activities; at the same time his diplomatic activities enriched his scholarly work. I will briefly dwell upon his academic work in my final observations.

2.2. UN Commission on Human Rights

Kooijmans chaired the Netherlands delegation to the United Nations Commission on Human Rights from 1982 to 1985, and again from 1991 to 1992. In 1983, he was elected as Vice Chairman of the Commission, and in 1984 he was elected Chairman. As Chairman of the Netherlands' delegation he was, of course, under instructions of the government, but these instructions were, except for a few issues such as East-Timor, usually very wide:

2. *Id.*

3. P.H. Kooijmans, *De VN-Commissie voor de Rechten van de Mens: Een Kromme Stok voor Rechte Slagen?*, *Staatkundig Jaarboek 1983-1984*, Zwolle, 1983, at 177.

the delegation was permitted to act as may be required. This offered a unique opportunity for the Netherlands' delegation to help shape Dutch human rights policy. Kooijmans has used this opportunity in a most creative way: his guiding star in this respect was how to make the United Nations Commission on Human Rights more effective in stopping violations of human rights. This concern was based on his firm conviction that there is

a minimum standard of decency and humanity by which all [...] governments [...] are bound, not only because they are parties to the International Covenants of Human Rights, not only because they may have accepted the Universal Declaration of Human Rights as a balanced statement of principles, but, first and foremost, because our human minds have been endowed with reason and with the capacity for moral judgement.⁴

It is this firm belief that runs as a thread through the human rights activities of Kooijmans, as may be clarified by his statement before the UN Commission on Human Rights in 1994 (he then was Minister for Foreign Affairs):

We must use the basis provided by the internationally agreed norms and the accepted legitimacy of international involvement and supervision to increase international efforts for the implementation of human rights.⁵

A few concrete examples may suffice.⁶ The Netherlands' delegation played a crucial role in the 1982 and 1983 adoption of a resolution exposing serious violations of human rights in Poland and requesting the Secretary-General or a person designated by him to make a thorough study of the Polish human rights situation. When the Polish representative objected to this resolution as an interference with the internal affairs of Poland, and asked whether this was the way "the Dutch are thanking for hundreds of soldiers who died on their soil when liberating Holland from German occupation," Kooijmans very aptly remarked to the latter point that "it had not yet come to my mind to see it in this light, but never the Polish representative may have been nearer to the truth."⁷ The first point raised by the Polish

4. Statement by Professor P.H. Kooijmans on 5 March 1982, Verslag over de 38e Zitting van de Commissie der Verenigde Naties voor de Rechten van de Mens, Genève, 1 februari - 12 maart 1982, Appendix 16.

5. *Supra* note 1.

6. For a more extensive survey and assessment of the role of the Netherlands in the United Nations Commission on Human Rights, see M. Castermans & C. Holleman, *Het Nederlands Mensenrechtenbeleid in de Verenigde Naties* (1992), Chapters IV and V.

7. Statement by Professor P.H. Kooijmans on 8 March 1983, Verslag over 39e Zitting van de

representative - that human rights fall within the exclusive competence of sovereign states - has time and again on various occasions been rejected by Kooijmans as, from a legal viewpoint, completely and totally unfounded and incorrect. Kooijmans would not allow diplomacy to corrupt his scholarly views.

Another prime example of Kooijmans' commitment to strengthening the implementation of international human rights norms was his position on torture. It was during his chairmanship of the Commission in 1984 that the Draft-Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁸ was transmitted to the General Assembly for early adoption (another Dutchman, Herman Burgers, had played a leading role in drafting that document). A year later, Kooijmans, as outgoing chairman, suggested that the Commission appoint a special thematic rapporteur on torture, arguing that "we should not close our eyes to the fact that torture is still a phenomenon of daily occurrence and that conventions alone are not sufficient to put an end to this crime."⁹ His suggestion was followed with remarkable speed: on 13 March 1985, the Commission adopted resolution 1985/33 on the appointment of a Special Rapporteur on Torture, requesting the Chairman of the Commission to appoint an individual of recognized international standing as special rapporteur. The adoption of this resolution was certainly a tribute to the undisputed integrity, moral leadership, and commitment of Kooijmans.

2.3. Special Rapporteur on Torture

It came, therefore, as no surprise that Peter Kooijmans was appointed the first United Nations Rapporteur on Torture. In that capacity, he submitted his first report to the United Nations Commission on Human Rights in 1986.¹⁰ This report was called "a model first step in what promises to be a very effective United Nations approach to a serious human rights problem."¹¹ Kooijmans interpreted his mandate in light of his clear conviction

Commissie voor de Rechten van de Mens, Genève, 31 januari - 11 maart 1983, Appendix 16.

8. Commission on Human Rights Res. 1984/21, 6 March 1984, Annex.

9. Opening address by Professor Peter Kooijmans, Chairman of the 40th Session of the Commission on Human Rights on 4 February 1985, Verslag over de 41e Zitting van de Commissie der Verenigde Naties voor de Rechten van de Mens, Genève, 4 februari - 15 maart 1985, Appendix 2.

10. UN Doc. E/CN.4/1986/15.

11. D. Weissbrodt, *The Three "Theme" Special Rapporteurs of the UN Commission on Human*

that torture is the plague, a man-made plague, of the twentieth century, and that torture destroys the individual personality of human beings and leads to dehumanization. He engaged in consultation with governments, NGOs and individuals. He also started sending urgent appeals to governments to prevent the occurrence of torture. Over the years, he also increasingly made visits to countries in various parts of the world; a well known example is his visit to Indonesia and East Timor in 1991 at the time of the killings in Dili (the capital of East Timor). In a detailed, special report on this visit, Kooijmans recommended, *inter alia*, that the government of Indonesia should repeal the Anti-Subversion Law.¹² In general, his annual reports contain an increasing number of specific recommendations, such as the limitation of *in communicado* detention, the need for a code of conduct for government officials, and the need for a system of periodic visits by a committee of experts to places of detention or imprisonment, as a preventive measure.¹³

Kooijmans was the Special Rapporteur on Torture for seven years, from 1986 until 1992. His mandate, which was first restricted to one year, has been time and again renewed; the current mandate of the Special Rapporteur is three years. In 1986, Kooijmans stated in an interview that “progress is very slow, but if a person should have told me in 1975 that in 1986 there would be 10 special rapporteurs, I would have asked him whether he had gone crazy.”¹⁴ In 1997, the Special Rapporteur on Torture has become an indispensable part of the United Nations system of supervision over the implementation of human rights. This can only be accredited to the impartial, but highly committed way in which Kooijmans fulfilled and consolidated his mandate as Special Rapporteur.

2.4. Final Remarks

Kooijmans is a realist motivated by ideals, or as he once put it by “der Begriff” of human rights, i.e., the core element of human rights, “respect for human dignity, with the other side of the coin being the right to self-

Rights, 80 *American Journal of International Law* 685 (1986), at 693.

12. Doc. E/CN.4/1992/17/Add.1, 8 January 1992, para. 80f.

13. E. van Ruyven, “Thematische” *VN-Rapporteurs Rapporteren*, 18 *NJCM Bulletin* 1013 (1993) provides an interesting analysis of the recommendations of special ‘thematic’ rapporteurs.

14. Interview with Prof. Kooijmans, Special Rapporteur on Torture for the United Nations Commission on Human Rights, *SIM Newsletter* No 16 (1986), at 3.

development, of individual self-determination.”¹⁵ From that perspective, he emphasized the imperative need for clarity in theoretical conceptions in the creation of new rules of international human rights law. He, therefore, rejects the idea of a third generation of human rights, such as the right to peace. The introduction of new categories of human rights unavoidably has the effect of excusing the non-observance of earlier categories. This is, as he puts it, “to the detriment of those who in the both first and last place should be the focus of the human rights debate: individual human beings.”¹⁶

This is not the place to take issue with Kooijmans on the issue of third generation human rights. It is more important to emphasize that the focus on the individual human being, the victims of human rights violations, has been at the core of Kooijmans’ activities in the field of human rights. “Think of the victims, think of our noble aims, and the task will be a challenge you cannot refuse,” he said as Minister for Foreign Affairs of the Netherlands during the 50th session of the United Nations Commission of Human Rights.¹⁷ It is not an easy task. Kooijmans once compared the progress made by the United Nations in the field of human rights with a snail on a tarpot; if one looks at it from day to day one hardly sees any movement, but if one looks back over greater intervals, there is certainly a lot of progress.¹⁸ Kooijmans has played an important role in this progress. He takes the promotion and protection of human rights seriously, thereby also setting an important example for many others, including myself. As judge of the International Court of Justice, he will undoubtedly continue his work in this field, albeit in a different setting. I wish him well in this demanding task.

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15. P.H. Kooijmans, *Human Rights - Universal Panacea? Some reflections on the so-called human rights of the third generation*, 28 *Netherlands International Law Review* 316 (1990), at 321.

16. *Id.*, at 329.

17. See *supra*, note 1.

18. P.H. Kooijmans, *Foltering - een onuitroeibaar kwaad?*, 42 *Arts Aequi* 36 (1993), at 45.

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