

Judge Peter Kooijmans

Editorial Note: In November 1996, Peter Kooijmans was elected Judge in the International Court of Justice. Kooijmans, who previously held many other prestigious functions, has also from the inception of the *Journal* been the Chairman of the Board of the *Leiden Journal of International Law Foundation*. As such, he has given the *Journal* guidance and inspiration throughout the years. Therefore, the Board of Editors of the *Journal* has seized this opportunity to highlight certain aspects of the intriguing career of a man who has inspired many of us, as well as others in our field.

1. PETER KOOIJMANS: MINISTER FOR FOREIGN AFFAIRS

In a small note which Peter Kooijmans wrote to me in answer to a letter in which I congratulated him with his election as Judge in the International Court of Justice - the first Netherlands Judge in the Court after World War II apart from Professor Riphagen who only served as a Judge *ad hoc* in the *Barcelona Traction, Light and Power Company Ltd.* case - he stated that he considered himself to be a privileged man. Privileged, because the new position would allow him to continue to remain active in the field of international law considerably beyond the retirement age of 65 which applies to professors of international law and most other people in The Netherlands. Privileged, I would like to add, also in another respect. Very rarely it will be given to one person in his lifetime to fulfil so many different honourable positions in the field of international law and international relations at such a high level of responsibility as has been the case with Peter Kooijmans: Professor of public international law, United Nations Special Rapporteur on Torture, State Secretary (*Staatssecretaris*) for Foreign Affairs, in particular disarmament matters (1973-1977), Minister for Foreign Affairs and, finally, Judge in the International Court of Justice.

I have been asked to write a few words here on only one part of Kooijmans's career: i.e. the Ministry of Foreign Affairs. Probably not only because Kooijmans was my promotor when I wrote my Ph.D. thesis, but rather because of my present function in the Ministry as Deputy Legal Adviser. Although quite honourable, the task bestowed on me is not an easy one. While the functions of teaching, reporting, or even judging problems of international law have a lot in common, the link between those functions and that of the ministerial conduct of foreign affairs is much less close. While it is to be hoped that the conduct of foreign affairs will take place on the basis of, or, at least, within the context of international law, its

scope, content, and objectives are of course not identical.

While the teacher, rapporteur, or judge of international law operates *à titre personnel* and at best with a few colleagues and collaborators and a small bureau, the Minister for Foreign Affairs has to operate within the bounds of government and party policy, is accountable to Parliament, directs, and is guided and supported by, a whole government department consisting of about 3,650 people working in The Netherlands or at embassies, permanent missions, or consulates abroad, has to travel regularly and is highly exposed to publicity and criticism. An honourable, exciting, and eventful, but at the same time also extremely strenuous and responsible job.

While Van den Broek's resignation as Minister for Foreign Affairs and departure to Brussels as a member of the EU Commission in December 1992 came quite unexpectedly, the almost immediate appointment of Kooijmans as his successor was an even greater surprise. A pleasant surprise certainly for the Office of the Legal Adviser, not only because of the friendly personal ties which already existed between those working in that Office and the new Minister, but also because of the fact that as a professor of international law, the new Minister would easily understand the relevance of the international law dimension of international affairs and would need very little guidance on that point.

Kooijmans served as Minister for Foreign Affairs only for a fairly short period of time, i.e. from the moment of his swearing-in by Queen Beatrix on 4 January 1993 till the transfer of his portfolio to his successor Mr. Hans van Mierlo on 22 August 1994.

Originally generally considered only as a temporary cabinet member - he probably also regarded himself in this way - to bridge the gap between Van den Broek's departure and the parliamentary elections in May 1994, Kooijmans soon got settled into the new job and evidently with increasing *gusto*.

Assurances that he would soon and happily return to his chair at the Law Faculty of Leiden University when his ministerial term would be over eventually came to be followed by statements ("never say never again") that he might be willing to serve another term as Minister for Foreign Affairs "if his wife agreed to it".

It was not to be, not because - as far as I know - his wife forbade him, or because his Christian Democratic Party would be opposed to it, but simply because that party lost considerably in the May 1994 parliamentary

elections and, more importantly, for the first time since World War II did not participate in the new government coalition. Exit Kooijmans as Minister for Foreign Affairs and - after serving several months as member of the outgoing Cabinet - his return to Leiden University as Professor of international law in September 1994, albeit, as we know now, not for very long.

Although his period as Minister was relatively short, Kooijmans has nonetheless been confronted with an enormous diversity of matters.

Efforts to solve the many problems arising from the solution of Yugoslavia and, in particular, to bring about a peaceful solution in the civil war in Bosnia-Herzegovina have taken a primary and most demanding place. On several occasions Kooijmans made it clear that this was the dossier he felt most involved in.

In favour of a more forceful United Nations (UN) and European Union (EU) involvement in Bosnia-Herzegovina, Kooijmans had to face not only hesitation on the part of the UN and other EU partners to effectively enforce compliance with the 'no-fly zone' established by the UN Security Council over Bosnia or to allow NATO to carry out air strikes to protect the safe areas proclaimed by it, but also the fact that other EU partners were not as much determined to contribute to UN forces in Bosnia to protect the safe areas as The Netherlands was.

Although wondering whether the international community should enforce a weapons embargo in respect of a country which it was unable to give effective international protection, Kooijmans nevertheless remained firmly opposed against any abolishment of the UN weapon embargo for Bosnia, believing that lifting the embargo would lead to wholesale slaughter and be entirely incompatible with the UN mission in Bosnia.

It is well known that Kooijmans was also most critical about the draft peace plan developed by Owen and Stoltenberg in August 1993 which divided Bosnia-Herzegovina into three separate areas for Croats (18%), Muslims (30%), and Serbs (52%). That plan no doubt violated certain basic principles formulated earlier by the EU as fundamental for an acceptable peace arrangement for Bosnia-Herzegovina, i.e. the requirement that all refugees should be able to return to their original homes and that any acquisition of land through force was to be rejected. Kooijmans also expressed great reservations with regard to the viability of the plan. However, while Kooijmans's criticism may be regarded as well-founded, it was also clear that other EU partners did not see any possibility for an alternative and in this respect displayed more realism.

At the European level Kooijmans was further involved in certain other difficult affairs, such as the crisis in the EU caused by the French opposition to the EU-US agreement on export of agricultural products, the serious disagreement between the EU partners with regard to the decision-making procedure in the EU Council of Ministers after the expansion of the EU with certain new members (Austria, Finland, Sweden, and Norway; in the end, the latter country did not join the EU), and, not in the least, the dramatic developments surrounding the succession of the EU Commission Chairman Delors.

A quite sensitive dossier in the bilateral sphere with which Kooijmans had to deal intensively as Minister concerned the troublesome relationship with Surinam, a former part of the Kingdom of The Netherlands, which gained independence in 1975. Having in principle agreed to provide substantial financial assistance to Surinam in order to promote its socio-economic development, The Netherlands - and Kooijmans as its Minister for Foreign Affairs - made the actual transfer of the funds dependent on certain stringent economic reform measures in Surinam and on objective international monitoring of the expenditure of the funds, conditions which Surinam felt unable, or was reluctant, to meet. Indeed, a difficult and complex situation considering the extremely difficult socio-economic state of affairs in Surinam, the more so as at the same time, The Netherlands had a great interest in supporting the democratically elected Surinam government. This interest was also made clear when Kooijmans promised - if necessary military - Netherlands support for that government in its effort to reorganize the Surinam army and replace its leadership.

As Minister Kooijmans remained faithful to the cause of human rights. Not only in The Hague, speaking, for instance, with the visiting President of Uzbekistan or commenting on a proposed amnesty in El Salvador for those who committed violations of human rights during the Salvadorian civil war, but also as head of the Netherlands delegation to the Conference on Human Rights in Vienna in June 1993 and during his official visits to Beijing and Jakarta, emphasizing the universality of human rights. He was also only too glad to comply with the wish of the Dutch Parliament to summon the newly appointed Ambassador of Iran to express to him the "continuous indignation and concern" of the Netherlands Government about the reconfirmation by the spiritual leaders of Iran of the *fatwa* against Salman Rushdie "contrary to international law and the generally recognized human right of freedom of expression". Rushdie himself was

later reported to have been received by Kooijmans and Parliament during a secret visit.

Kooijmans' relationship with Parliament was, in general, very good, especially with regard to the policy to be followed concerning the problems in the former Yugoslavia. It was only with regard to matters of relatively minor importance that some friction arose with (one of the government parties in) Parliament. One of those instances was Kooijmans's decision right at the beginning of his Ministry to postpone a planned visit to Israel by the Minister of Justice (Mr. Hirsch Ballin, also a Christian Democratic Party minister), who - apart from other matters - intended to express the Dutch concern about the Israeli deportation of more than 400 Palestines belonging to the extremist Hamas organization to the border area in southern Lebanon. Kooijmans considered that a postponement of that visit was appropriate as a signal of disapproval of the Israeli measure, thereby at the same time confirming the primacy of his own ministry to deal with the matter.

Another matter causing some friction with (some of the government parties in) Parliament related to the refusal of a visa to Mr. "Poncke" Princen to visit The Netherlands. Princen, of Indonesian nationality and a well-known human rights activist in Indonesia, is a former Dutch national who in 1948 deserted from The Netherlands 'police force' during its operations against Indonesian independence fighters and joined the Indonesian liberation army. The visa was refused out of respect for the feelings of the Netherlands veterans (and/or their relatives) who had participated in the 'police actions' in Indonesia and because the government felt that it could not guarantee the safety of Princen during his stay in The Netherlands. Kooijmans had, however, already met Princen once before in Indonesia in his previous capacity of UN Special Rapporteur on Torture, and made it clear in Parliament some months after the refusal of the visa that he did not intend to avoid meeting Princen again during a planned official visit to Indonesia where - much to the dismay of those parliamentarians who had favoured the refusal of the visa - he was expected to have a meeting with Indonesian human rights groups of which Princen would be one of the representatives.

Another matter of a much less political and humanitarian importance on which (certain government parties in) Parliament and the Minister did not see eye to eye related to the planned closing (for financial reasons) of a consulate general in Frankfurt on the Main.

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!

*Johan G. Lammers**

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.