

Mr Jozias J. van Aartsen
Minister of Foreign Affairs
Postbus 20061
2500 EB The Hague

13 July 1999

Our ref. AIV-066/99

Dear Mr Van Aartsen,

In the discussion that the Human Rights Committee of the Advisory Council on International Affairs (AIV) had with you on 10 February 1999, the possibility was mentioned of communicating ideas and thoughts that we have at the Advisory Council and its Committees in the form of unsolicited advisory reports. You indicated that you were in favour of short-term recommendations on ad hoc issues. The AIV would therefore like to take this opportunity to let you know about a point that is a source of serious concern for us.

On earlier occasions the AIV, and even more so the former Advisory Committee on Human Rights and Foreign Policy, pointed out the great importance of international monitoring of observance of human rights agreements. The Dutch government has often explicitly stressed the importance of international monitoring, and called on other states to comply with decisions, judgments and requests from international treaty bodies and legal institutions such as the International Court of Justice.

Recent developments in the international community reveal a growing inclination to disregard such judgments. We refer to such occurrences as the decisions by North Korea, Trinidad and Tobago, Jamaica and Guyana to denounce international human rights agreements or protocols to these agreements, and the refusal by the United States to abide by three different judgments by the International Court of Justice.

This is the more general context in which the AIV learned of the Dutch government's recent decision not to comply with a request from the Committee that monitors observance of the international Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT). While cases should be judged on their individual merits, and a distinction should of course be made between failing to respect a judgment of the International Court of Justice and declining a request from a treaty body, the AIV considers it right to bring several points to your attention.

The AIV will refrain from expressing an opinion on the facts of the specific case and instead focus its attention on the Dutch government's negative response to the interim measure that the CAT enjoined on the Netherlands: suspending the asylum seeker's expulsion pending proceedings before the Committee. The Committee has the power to direct such requests to States Parties under article 108 of its Rules of Procedure.¹ It does not ask for suspension as a general rule, but only in cases where it considers the request reasonable.

In view of its close involvement in the conclusion of the Convention against Torture, the Netherlands plays an exemplary role in implementing the Convention. For this reason alone, it ought to honour such requests from the Committee. The AIV believes that the position the Netherlands has taken, if it were to act as a precedent, would seriously undermine the international right of petition. In our view, the Dutch government, as appears from its reply to the CAT, is deliberately running the risk of violating article 3 of the Convention against Torture. Such a position erodes the credibility of Dutch human rights policy at national and international level. The AIV understands the government's – underlying, though not explicitly expressed – fear that asylum seekers will increasingly resort to international complaints procedures, as in this case. But we do not believe that such a development should lead the Dutch government to deny requests from treaty bodies like the CAT.

Yours sincerely,

(signed)

Professor Ruud F.M. Lubbers
Chairman Advisory Council on International Affairs

Cc: State Secretary for Justice

¹ Rule 108, para. 9 reads as follows: 'In the course of the consideration of the question of the admissibility of a communication, the Committee or the Working Group or a special rapporteur designated under rule 106, paragraph 3, may request the State party to take steps to avoid a possible irreparable damage to the person or persons who claim to be victim(s) of the alleged violation.'