

**CAPITAL PUNISHMENT AND HUMAN RIGHTS
RECENT DEVELOPMENTS**

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Members of the Advisory Council on International Affairs

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Foreword

On 14 January 1998 the Minister for Foreign Affairs, the Minister of Defence and the Minister for Development Cooperation asked the Advisory Council on International Affairs to produce an advisory report on capital punishment. The preparatory work on the report was the responsibility of the Human Rights Committee of the Advisory Council. This Committee consists of Professor P.R. Baehr, Dr C.E. von Benda-Beckmann-Droogleever Fortuijn (vice-chair), Professor Th.C. van Boven, Dr M.C. Castermans-Holleman, T. ETTY, Professor R. Fernhout, Professor C. Flinterman (chairman), Professor W.J.M. van Genugten, L.Y. Gonçalves-Ho Kang You, C. Hak, M. Koers-van der Linden, F. Kuitenbrouwer, Dr G.A. van der List, G. Ringnalda and Professor E. van Thijn. The advisory officials to the Human Rights Committee, A.H. Gosses, K.S. Adhin and A.P. Wegerif (Ministry of Foreign Affairs), and T.D.J. Oostenbrink (secretary of the Committee) and F.A.W.J. van Esch (trainee) assisted in the drafting of this report.

In preparing its recommendations, the Committee interviewed a number of experts to ascertain their views on capital punishment. They included M. Rooker, C. Roorda, H. van Putten and R. van der Wal of Amnesty International's thematic group on capital punishment, and R. Herrmann, member of the former Advisory Committee on Human Rights and Foreign Policy. The Advisory Council is indebted to all those consulted for their contribution to this report.

The Advisory Council finalised this advisory report on 26 March 1998. The central question it was meant to answer, i.e. 'whether capital punishment should be regarded as a human rights violation, and if so, what consequences this might have for the Netherlands' attitude to countries that continue to retain the death penalty as part of their legal system?' is impossible to answer unequivocally, as this concise report will make clear. In its considerations, the Advisory Council took as its point of departure the government's policy document of 1990, reporting on a number of developments that have happened since then in section 2. It will become clear from these developments that there is no question of the existence of a universal international ban on the implementation of the death penalty. Section 3 discusses cases in which the death sentence may be regarded as a human rights violation under international law. Section 4 looks at certain other developments in this context, and section 5 formulates a number of policy recommendations. The letter requesting the advisory report is included in an Annexe.

1 Introduction

In commissioning this report, the Ministers of Foreign Affairs, Defence and Development Cooperation asked one key question: 'Should capital punishment be regarded as a human rights violation, and if so, what are the possible implications for the Dutch attitude to countries that retain capital punishment in their legal systems?'

The advisory report accordingly confines itself to answering this question. The report will not address issues such as the acceptability or effectiveness of the death penalty as an instrument in the dispensation of criminal justice. The Dutch position, as laid down in a policy paper of 22 March 1990¹, in which the Government declares itself to be a firm opponent of capital punishment wherever it is carried out, remains unchanged. This position is based primarily on considerations relating to the irreversibility of the death penalty and the affront to human dignity that it represents.

2 Developments since 1990

When the Netherlands determined its position on the death sentence in March 1990, there was nothing in the nature of a ban with universal application (although there was a regional, European ban) in any provision of international law. Since then there have been a number of significant developments:

- In July 1991 the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), aimed at the abolition of the death penalty, entered into effect. This Protocol has since been ratified by 31 states, including the Netherlands, and signed by four others.²
- The Optional Protocol of 8 June 1990 to the American Convention on Human Rights on the abolition of the death penalty has since been ratified by four states and signed by three; this Protocol is in force between the states that are party to it.³
- The Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) on the abolition of the death penalty has now been ratified by 27 states, including the Netherlands, and signed by five.⁴
- All the present member states of the European Union, with the exception of the United Kingdom, are party to both the Second Optional Protocol to the ICCPR and the Sixth Protocol to the ECHR.⁵
- On 4 October 1994 the Parliamentary Assembly of the Council of Europe adopted recommendation 1246, which states that 'the death penalty has no legitimate place in the penal systems of modern civilised societies, and that its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights.' On 28 June 1996 the Assembly adopted Resolution 1097, which likewise expresses the Assembly's opposition to the death penalty.⁶

1 Policy Paper to Parlement, Lower House 1989-1990, 21 518, no. 1.

2 Figures as of 1 January 1998; source: UN Doc. ST/HR/4/Rev. 16.

3 Figures as of 1 January 1998; source, Amnesty International (Netherlands section).

4 Ibid.

5 In Belgium, as a result of the recent total abolition of the death penalty in national legislation (1996) ratification proceedings are still pending.

- New members of the Council of Europe are required to sign the Sixth Protocol within a year of joining and to ratify it within three years. They are expected to observe a moratorium from the moment of accession.⁷
- Thus with the exception of the United States, the death penalty has been *de facto* abolished in the Western industrialised countries.
- The statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda exclude the possibility of imposing the death penalty. Furthermore, the discussions on the soon to be established International Criminal Court are tending in the same direction.⁸
- A steadily increasing number of countries are abolishing the death penalty. 102 countries have abolished it either *de jure* or *de facto*. It still exists in 90 countries, although the number of countries that actually executes prisoners in a given year is considerably smaller.⁹

Also of importance are the following points:

- the considerations and recommendations on the death penalty by the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions in his report of 24 December 1996 to the 35th session of the UN Commission on Human Rights,¹⁰ and
- Resolution 1997/12 of 3 April 1997 on the death penalty of the UN Commission on Human Rights.¹¹

In his report, the Special Rapporteur calls upon states that have not yet ratified the ICCPR and in particular the Second Optional Protocol to do so. He also urges states to adjust their national legislation on this issue in line with international standards, and recommends certain specific procedural safeguards. Finally, he urgently calls upon those states in which the death penalty still exists 'to deploy every effort that could lead to its abolition, the desirability of which has repeatedly been affirmed by the General Assembly'.

6 See Report of the 25th session of the Parliamentary Assembly of the Council of Europe, doc. EREC1246.WP, 1403-4/10/94-5-E of 4 October 1994 and the report of the 24th session, 1996, doc. EREC1097.WP, 1403-28/6/96-7-E of 28 June 1996.

7 A fragile and still *de facto* moratorium - fragile because it is heavily dependent on the person of the President - is apparently being observed in the Russian Federation. On the other hand, a moratorium in Ukraine is not being respected *de facto*. The Committee on Legal Affairs and Human Rights of the Council of Europe urges both these states to introduce a *de jure* moratorium; see the report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe of 19 December 1997, AS/Mon(1997)33, p. 9.

8 Resolutions 808 (1993) of 22 February 1993 and 955 (1994) of 8 November 1994 of the UN Security Council.

9 Sources: UN Doc. E/CN.4/1998/82 of 16 January 1998 and Facts and Figures on the Death Penalty, AI Index ACT/50/13/97, October 1997.

10 E/CN.4/1997/60, par. 73-91 and 116-118. At the request of the UN Commission on Human Rights, the Special Rapporteur also has the task of 'monitoring the implementation of existing standards or safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the ICCPR, as well as the Second Optional Protocol thereto'.

11 E/CN.4/1997/L.11/Add. 1, pp. 18 ff. This resolution was adopted with 27 votes in favour, 11 against and 14 abstentions.

In its recent resolution the UN Commission on Human Rights adds a clause urging states that have not yet abolished the death penalty to reduce the number of offenses for which it can be imposed. The Commission also urges these states to consider introducing a moratorium 'with a view to completely abolishing the death penalty'.

Alongside these positive developments leading to the abolition or limitation of the death penalty, however, there are also some negative developments to report. In 1996 executions took place in 39 countries, while death sentences were imposed in a total of 76 countries. The number of executions increased from 2,029 in 1990 to 5,139 in 1996. A small number of countries are responsible for the vast majority of executions. In 1996, 94% of all executions took place in four countries: China (4,367), Ukraine (167), the Russian Federation (140) and Iran (110).¹² Moreover, a number of countries have reintroduced the death penalty or increased the number of offenses for which it can be imposed. These included Bahrain, Burundi, Cameroon, El Salvador, the Philippines, Guatemala, Libya and the United States. Another negative development was Jamaica's withdrawal as a party to the First Optional Protocol to the ICCPR. The objective of this withdrawal was to make it possible to carry out death sentences imposed. Since then, the Republic of Trinidad and Tobago has announced that it intends to do the same. Then there are the countries, as already noted, which impose death sentences but do not actually carry them out. In 1996 this applied for example to Japan, Turkey and Zambia. Finally there are countries that are known to execute people but about which no hard facts are available. This currently applies to Iraq, Nigeria and Saudi Arabia.

	No. of countries that have abolished the death penalty	No. of countries that have the death penalty for special crimes (i.e. in wartime)	No. of countries that have had the death penalty <i>de jure</i> but not <i>de facto</i> for the past 10 years	No. of countries that actually carry out executions	No. of registered executions
1990	44	17	25	26	2,029
1997	61	14	27	39 (1996)	5,139 (1996)

12 Source: Facts and Figures on the Death Penalty, AI Index ACT 50/05/97 and 50/13/97.

3 Capital punishment as a human rights violation

We are very far from achieving a universal ban on capital punishment. Yet there are certain situations in which the death penalty should be looked upon as a violation of universally accepted international norms.

Under international law, capital punishment may not be imposed on minors. Article 6, paragraph 5 of the International Covenant on Civil and Political Rights (ICCPR) states that the death penalty shall not be imposed for crimes committed by persons below eighteen years of age. This principle is also enshrined in Article 37a of the Convention on the Rights of the Child, which states: 'Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age'. Furthermore, the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty ('the Safeguards')¹³ likewise state that persons who were under eighteen years of age at the time of committing a crime may not be sentenced to death for that offence.¹⁴ Also, capital punishment may not be imposed on pregnant women (Article 6, paragraph 5 of the ICCPR) nor on persons suffering from a psychiatric disorder (Safeguards). Given the adoption without a vote of the resolution in which the Safeguards are enshrined, this can be seen as having considerable significance, in a legal as well as a general sense.

*It follows from the above that where the death sentence is imposed on minors, pregnant women or persons with a psychiatric disorder, at odds with internationally accepted norms, it constitutes a human rights violation.*¹⁵

Aside from this, Article 6 of the ICCPR lays down certain restrictions and minimum requirements to be met where the implementation of the death penalty is concerned, while principles relating to a fair trial are enshrined in Article 14 of the ICCPR. Furthermore, the Safeguards stipulates that the death penalty may only be carried out:

- when the guilt of the person concerned is based on clear and convincing evidence;
- on the basis of a fair trial in accordance with Article 14 of the ICCPR, including adequate legal assistance;
- on the basis of judicial proceedings in which there has at all times been the right of appeal;
- when all legal remedies have been exhausted.

Hence where a death sentence is carried out in circumstances that are not in accordance with these internationally accepted procedural norms, this constitutes a human rights violation.

13 See paragraph 3 of UN ECOSOC Resolution 1984/50 of 25 May 1984, which was adopted without a vote by the UN General Assembly in Resolution 39/118 of 14 December 1984.

14 Since 1990, at least six countries have executed prisoners who were under 18 years of age at the time of committing the crime: Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen. Source: *Juveniles and the Death Penalty: Executions worldwide since 1985*, AI Index: ACT 50/05/95.

15 Incidental reservations to Article 6 of the ICCPR, such as those entered by Thailand and the United States, are incompatible with the object and purpose of the treaty norm, and therefore do not detract from the universality of the norm.

Furthermore, the UN Human Rights Committee emphasises in its commentary on Article 6 that the phrase 'most serious crimes' should be interpreted restrictively: '[the] death penalty should be a quite exceptional measure'.¹⁶ Paragraph 1 of the Safeguards adds that 'capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences'.

Where the death penalty is imposed for less serious crimes – economic or drug offenses, for instance¹⁷ – this therefore constitutes a violation of Article 6 of the ICCPR.

According to the current state of international law, it is not possible to interpret the prohibition of cruel, inhuman or degrading treatment or punishment enshrined in Article 5 of the Universal Declaration on Human Rights (UDHR), Article 7 of the ICCPR and Article 3 of the European Convention on Human Rights (ECHR) as constituting a universal ban on capital punishment. This does not mean, however, that attendant circumstances cannot produce a violation of Article 7 of the ICCPR or Article 3 of the ECHR. In the words of the European Court of Human Rights, 'The manner in which [a death penalty] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3'.¹⁸

Thus not only on the grounds of personal circumstances, or because of the disproportionality of the punishment in relation to the crime, but also on the grounds of attendant circumstances, such as the manner in which the sentence is imposed or executed, the conditions of detention and the time spent awaiting execution, the death penalty may constitute a human rights violation.

16 HRI/GEN/1/Rev. 2 of 29 March 1996.

17 In the words of the Special Rapporteur, in his report E/CN.4/1997/60 of 24 December 1996, paragraph 91.

18 European Court of Human Rights, 7 July 1989 (Soering), RV 1998, 94 (paragraph 104). See footnote 10. The Special Rapporteur mentions in his report, on pages 23-24, that the Privy Council of the United Kingdom, as the highest judicial tribunal for the member states of the Commonwealth, considers that five years awaiting execution constitutes a cruel and inhuman punishment. In certain circumstances, a shorter period of time may be deemed a cruel and inhuman punishment (in a case on the Bahamas, three and a half years was regarded as such).

4 The abolition of capital punishment as a programme

Although there is far from being a universal ban on capital punishment under international law, applicable in all circumstances, considerable efforts are being made to achieve universal recognition of a ban on carrying out the death penalty.¹⁹ In the expanding Council of Europe there is already such a ban, and worldwide there is a definite trend in that direction.

Human rights are not a static phenomenon. New rights are constantly evolving, often from existing ones. An example from history is the abolition of slavery. This developed gradually from the recognition of other rights such as the right to liberty and equality before the law, and is now a fundamental, internationally accepted right. The abolition of capital punishment appears to be going through a similar development. The Preamble to the Second Optional Protocol to the ICCPR rightly places the abolition of the death sentence in the context of 'the progressive development of human rights'. The right to life,²⁰ and sometimes the prohibition of torture, inhuman or degrading treatment or punishment,²¹ is often taken as the point of departure for a general ban on implementing the death penalty.

The limited ban on the death penalty in article 6 of the ICCPR is likewise generally interpreted programmatically, in the sense that the complete abolition of the death penalty should be the ultimate goal. The Human Rights Committee states in its commentary on article 6 of the ICCPR that 'while it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the 'most serious crimes' [...]. The article also refers generally to abolition in terms which strongly suggest (para. 2 and 6) that abolition is desirable'. The Committee goes on to conclude 'that all measures of abolition should be considered as a progress in the enjoyment of the right to life'.²² The UN General Assembly likewise pronounced emphatically in resolution 2857 (XXVI) that 'the main objective to be pursued is that of progressively restricting the number of offenses for

19 Cf. the Preamble to the Sixth Protocol to the ECHR.

20 For instance in the Preamble to the Second Optional Protocol to the ICCPR: 'Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life.' The report of 26 September 1995 on the death penalty that the Secretary-General submitted to the Economic and Social Council notes that several countries, including the Netherlands, have signed a statement declaring 'that capital punishment could not be reconciled with observance of the fundamental right to life and that it was a duty of government to ascertain the full protection of life by not taking it even in the name of the law' (UN Doc. E/1985/43, p. 22).

21 See e.g. article 37a of the Convention on the Rights of the Child, in which the ban on the death sentence follows immediately upon the ban on torture or other cruel, inhuman or degrading treatment or punishment. Likewise, the European Court of Human Rights acknowledges in section 103 of its judgment of 7 July 1989 in the Soering case (RV 1998, 94) the possibility of an 'evolutive interpretation' of the ban on torture or inhuman or degrading treatment or punishment. The Council of Europe opted, however, with the Sixth Protocol, 'for a normal method of amendment of the text in order to introduce a new obligation to abolish capital punishment'.

22 HRI/GEN/1/Rev.2 of 29 March 1996.

which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries'.²³

It may be inferred from the above that states that either extend the number of offenses for which the death penalty can be imposed or reintroduce the death penalty, whether de facto or de jure, are acting contrary to the development of international law in this regard.

5 Policy recommendations

In ratifying the Sixth Protocol to the ECHR and the Second Protocol to the ICCPR, the Netherlands endorsed the view that the death penalty should be regarded as a human rights violation in all circumstances. This view is not yet shared by all States. However, under current international public law, the death penalty should be regarded as a human rights violation in certain situations (see above section on capital punishment as a human rights violation). The Dutch policy should be geared towards gaining support for a universal ban on capital punishment. On this basis, the Advisory Council makes the following recommendations to the Netherlands Government:

International

- An active policy should be pursued to ensure the accession of more states to the Second Optional Protocol to the ICCPR. To the extent that accession to human rights conventions plays a role in bilateral relations, accession to the Second Optional Protocol should also be broached explicitly to states that have abolished the death penalty, whether *de facto* or *de jure*, but are not yet party to the Second Optional Protocol.
- States that have abolished the death penalty or have announced a moratorium on capital punishment should be given positive attention and - where necessary - support.
- A diplomatic *démarche* should be standard procedure whenever the death penalty is reintroduced, whether *de facto* or *de jure*, and also in the case of an extension of the number of offenses punishable by death.²⁴
- Active efforts should be made to exclude the possibility that the International Criminal Court soon to be established will be able to sentence convicted persons to death.²⁵

OSCE

- On the basis of paragraph 17.7 of the 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, the states parties to the OSCE

23 A/pv.2027 of 20 December 1971. This Resolution was adopted by 59 votes for, 1 against and 54 abstentions.

24 No *démarches* were, regrettably, made in 1994, whether unilaterally or in the context of CFSP, when the death penalty was reintroduced in the Philippines and in the state of New York. The Philippines' announcement in 1998 that it intended to start actually carrying out the death sentences that were passed, however, did elicit a response.

25 This permanent International Criminal Court will be competent to try *inter alia* persons accused of genocide, other crimes against humanity and serious violations of humanitarian law. The negotiations on the International Criminal Court are now in their final phase. The aim is to complete the decision-making process in 1998, to which end a Diplomatic Conference is scheduled for June-July 1998 in Rome.

will 'exchange information [...] on the question of the abolition of the death penalty and keep that question under consideration'. This paragraph provides scope to raise the issue of the abolition of the death penalty within the OSCE on a regular basis; the government should continue to use this opportunity to urge the complete abolition of the death penalty in those OSCE countries where it still exists. Aside from this, the question of the death penalty should be explicitly incorporated into the mandate of OSCE missions and the Advisory and Monitoring Groups.

Council of Europe

- The Council of Europe's activities aimed at strengthening the moratorium on the death penalty in member states where capital punishment still exists *de jure* should be given strong support.
- The accession conditions for membership of the Council of Europe relating to the signing and ratification of the Sixth Protocol to the ECHR should be upheld unconditionally.
- Diplomatic initiatives should be undertaken to promote the United Kingdom's accession to the Sixth Protocol to the ECHR (and the Second Optional Protocol to the ICCPR), partly in order to boost the Council of Europe's credibility in relation to the death penalty vis-à-vis new member states.

European Union

- Active efforts must be made to promote the incorporation of the Sixth Protocol to the ECHR (and the Second Optional Protocol to the ICCPR) into the *acquis communautaire* in the field of human rights, with a view to the negotiations with candidate member states. Here as in the case of the Council of Europe, the EU's credibility will be considerably strengthened if the United Kingdom gives up its special position in this connection.
- A policy framework should be drafted for démarches in the framework of CFSP. A previous attempt to establish more clearly defined criteria for the EU's responses to events relating to the death penalty foundered because of the United Kingdom's unwillingness to cooperate. The United Kingdom appears to be more willing than in the past to agree to EU measures. This creates scope for a more coordinated policy in this area.

Policy framework

- As already noted, the policy framework should preferably be set up and implemented in the framework of the EU. Where it is impossible to reach agreement within the EU as a whole, it should be possible to make démarches on behalf of a smaller group of like-minded states; otherwise they should be made bilaterally. In the policy framework to be set up, a clear distinction should be made between general and individual responses.
- It seems right that the EU or its member states, in relevant international forums such as the UN Commission on Human Rights, should consistently express criticism of states that still have capital punishment in their legal systems, and which, contrary to the international effort to achieve complete abolition of the death penalty, are not using it with any less frequency than before. Criteria should be drafted to determine when, and in what circumstances, a general response of this kind is opportune.
- A general démarche is the best option where the death penalty is reintroduced or the list of offenses punishable by death is extended.
- Individual démarches should in any case be made if capital punishment is applied in such a way, in the context of the current state of international public law (as described above), as to constitute a human rights violation. This applies to violations of international norms concerning categories of persons exempt from the death penalty, to the

application of the death penalty in violation of internationally accepted procedural norms, to the imposition of the death penalty for less serious offenses, and to unacceptably long periods spent on 'death row'.²⁶

- Both general and individual démarches should place particular emphasis on the fact that in international legal norms, the fundamental right to life is the most important of all; the death penalty is at this stage still an exception, but its application must be vigorously curbed, the ultimate aim being its complete elimination worldwide.

²⁶ The judgment of the European Court of Human Rights in the Soering case could serve as a guideline here. See European Court of Human Rights, judgment of 7 July 1989.

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Annexe

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Date: 14 January 1998 Ext.: 070-3484864

Ref.: DMD/BC-003/98

Re: Request for an advisory report on the death penalty

Dear Professor Lubbers,

During the Lower House debate on the Ministry of Foreign Affairs budget in December 1997, Mr Valk, Member of Parliament, urged the government to exert itself internationally to have the death penalty classified as a human rights violation. At the same time he asked the Government to request the advice of the Advisory Council. This request was granted, and we should therefore be appreciative if your Advisory Council would issue its recommendations on the matter. We should like to formulate this request as follows.

As you will know, the position of the Netherlands Government is set forth in its policy document of 22 March 1990 (Lower House, 1989-1990 session, 21 518, no.1), in which the Government declares itself to be a firm opponent of capital punishment wherever it is carried out. This position is based largely on the fact of the irreversibility of the death sentence and the affront to human dignity that it represents. As there is no universal ban on capital punishment under international law, the Government's efforts are geared towards limiting the application of the death penalty, with the ultimate aim of worldwide abolition. It was pointed out during the debate that this is in fact the current trend worldwide as expressed, for instance, in the entry into force, in July 1991, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which is aimed at abolition, and the adoption of the resolution 'Question of death penalty' by the UN Human Rights Commission meeting of March/April 1997. In addition, as a result of the enlargement of the Council of Europe, more countries have committed themselves to abolishing the death penalty. Although, as already noted, there is no international ban on capital punishment, the Government is of the opinion that by adopting a pragmatic approach it will be possible to stop the death penalty being carried out. Classifying part of a country's legal system as a human rights violation is not a step that can be taken lightly. It is important to reflect carefully on all the aspects involved. What should the Netherlands' position be, for instance, vis-à-vis a country that is guilty of a structural violation of human rights by virtue of its continuing to apply the death penalty?

It may be added that discussions are currently taking place in an EU framework about the EU's attitude to the death penalty. This is in part related to the change of position adopted by the UK, which is displaying a greater willingness than before to agree to measures at EU level. At the time, the UK abstained from voting on the above-mentioned resolution in the UN Commission on Human Rights. Now, an effort is being made to establish more well-defined criteria for EU responses to questions involving capital punishment.

We should like your advice as to whether the death penalty should be classified as a human rights violation and, if so, what consequences this might have for the Netherlands' attitude to countries that continue to retain the death penalty as part of their legal system. Our preference would be for

a concise advisory report that can help focus the Government's ideas on this subject. A report of this kind could perhaps be completed quite soon, if possible by mid-March 1998.

[signed]

H.A.F.M.O. van Mierlo
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J.C. Voorhoeve
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