

# THEO VAN BOVEN

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*Professor van Boven has been, amongst others, director of the United Nations' Division for Human Rights, UN Special Rapporteur on the Right to Reparation to Victims of Gross Violations of Human Rights, UN Special Rapporteur on Torture, a member of the International Commission of Jurists and has been the first registrar of the International Criminal Tribunal for the former Yugoslavia.*

*Often you are mentioned and praised as one of the three main defenders of Human Rights within the Netherlands, together with Max van der Stoel and Peter Kooijmans. What do you think of the current Dutch human rights policy? Our foreign affairs minister, Maxime Verhagen, recently stated that he is of the opinion that the Dutch human rights policy is very good.*

Indeed, Minister Verhagen claims that he put the Dutch human rights policy on track. That neglects the fact that his predecessors, amongst them van der Stoel and Kooijmans, have also contributed greatly to the current Dutch policy. Verhagen has articulated the Dutch human rights policy in a memorandum, which includes many good items, but it continues and builds upon a firm base which was already laid out by his predecessors.

Yet there are some points of critique. In the first place there seems to be lacking a good connection between national and foreign human rights policy. There are some good initiatives abroad, yet national consequences are not always

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dealt with. Especially when looking to policies concerning refugees, immigrants, and asylum. Another point of critique is that the foreign human rights-policy is not integrated enough with economical and financial matters. This has its consequences for the ministry of foreign affairs, but also for the ministries of education and economic affairs and also the treasury. There is, however, a human rights ambassador, who does a wonderful job, but I believe he has too few possibilities to promote to the foreign affairs human rights policy and embed it with the policies of the specialized ministries of welfare, economic affairs and the treasury. This has never been the case, but here is room for improvement.

*So you would like to suggest that the different positions on human rights, depending on the various ministries, should better be integrated. For example with the visit of Dutch Minister de Jager recently to China or the visit of Dutch Minister van der Hoeven to Eastern Russia?*

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Yes indeed, for example the Dutch positions within the IMF and the World Bank. Within these economic forums, human rights policy should be more visible. For example, the export policy regarding weapons, which is a part of the ministry of economic affairs, is interconnected. In earlier times, the export of weapons to Chile was extensively monitored by human rights policy makers. Currently, the Dutch position is mainly focused on exporting, and the Netherlands' general stand on the export of weapons is not fully integrated with the human rights policy.

The third point I wanted to make in connection to the first question, is that, in contrast to earlier times, the Dutch human rights policies are far more embedded in European policies. That means that, in my opinion, the Dutch shelter behind the backs of European policymakers with regard to the human rights policy towards, for example, the Middle East.

Yet I do not mean to sound grim, there are a lot of good things going on. It just could be more streamlined. Something which the Netherlands is very opinionated about is its stand on GLBT-rights, which is a reflection of the Dutch society, and it is being put forward by the ministry of foreign affairs.

*The Dutch police actions in Indonesia ("politioenele acties") is currently a major issue within Dutch human rights circles. Specifically the military actions in 1948 in Ragawede, Java. These actions have led, so many years later and after a condemnation by the United Nations at that time, to a lawsuit. How do you feel about that?*

It is good that this has been raised. There still are survivors of the mass-killings that were committed at Ragawede, and also at other places throughout Indonesia. It is just that we deal with this issue, especially taking into consideration the Dutch pretence of fully backing and proclaiming human rights. Sadly, this is only a small gesture.

I would like to raise two points with regard to this lawsuit. First is that the main argument the Netherlands puts forward is that the crimes' statute of limitations have expired. This lawsuit deals with very serious war crimes, and it is widely believed that crimes like these cannot "expire." This argument is not convincing to me.

The second point I would like to raise is that the Netherlands does not like to pay. The Netherlands is reluctant to apologize because we do not want to connect financial consequences to this.

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are trying to circumvent our responsibilities, considering the Dutch pretensions on human rights.

*How do you explain this line of conduct?*

A partial explanation is that we want to spare the Dutch war veterans, combined with the fact that the military sees these police actions as being in the distant past, and that we should proceed with looking to the future.

Another partial explanation is that the Indonesian government has not made this a big issue. It is important that we bear in mind that human rights is more than government policy, but it also deals with victims and their next of kin.

*Why did Indonesia not call attention to these violations of human rights?*

As an example I would like to mention the "comfort women." These were Korean, Chinese, Filipene, Dutch as well as Indonesian women that were being prostituted for the Japanese army. Yet Indonesia does not want to jeopardize its good relations with Japan. So certain governmental interests seem to be so important that they prevail over human rights.

*A part of transitional justice is dealing with crimes committed during the conflict. But how do you see an even balance between victims on one side and diplomatic relations, peace and justice on the other side? In a previous interview you mentioned that peace cannot exist without justice and justice is an essential criterion for human rights and fundamental freedoms. How can this be reconciled with diplomatic relations and, for example, the International Criminal Court and International Tribunals? What is the optimal balance?*

This is of course very difficult to say. Important, in my view, is that you cannot speak of a durable peace without pursuing justice. It is important that you combine peace, justice, and reconciliation.

*How do you see the role of the international community? In East-Timor, the United Nations set up an interim-government and established a truth and reconciliation commission, but in Cambodia it took decades.*

These are of course very different cases. East-Timor is, in part, a case between East-Timor and Indonesia, and is thus an inter-state case. Yet in

Cambodia it was a national case, but of course with influential international components. I noticed these components when I was the director of the Human Rights Office at the United Nations. The Cambodia question was at stake and we realized that although it was a national case, the international interests were large. There were, for example, great tensions between Cambodia and Vietnam. Vietnam was a communist country supported by Russia. Cambodia, ruled by the Khmer Rouge, was supported by China. The United States, in this particular case, sided with China. All these countries had an interest not to deal with the genocide that had taken place in Cambodia. And therefore the UN did not make a lot of progress. What I am trying to say is that even in national cases, international components are very important, whether it be components dealing with neighboring countries or (one of the) Great Powers.

In relation to transitional justice, as mentioned in the previous question, the establishment of a truth and reconciliation commission is highly recommended. Yet it should, in the first place, also be a national process. It cannot be imposed by foreign powers. Reconciliation is a process that is connected to several conditions. One of those is truth-finding, the right to the truth about what has happened.

In South Africa the term truth commission was used instead of truth and reconciliation commission. Reconciliation is a difficult term. It perhaps also has a religious connotation. Reconciliation has to grow within a country and a community. There have been various truth and/or reconciliation commissions throughout the world. Some were a mere palliative, for example in El Salvador, where the government gave immediate amnesty to those government officials connected to the conflict, and others, like in South Africa, were more successful. In Cambodia a hybrid tribunal was established. All in all there have been about thirty commissions.

Do you think that the UN can have a more active role in establishing truth and reconciliation commissions? There are enough countries where, without ignoring that reconciliation is a national process, establishing a truth and reconciliation commission is too much to handle. These countries do not have the means, sometimes financially, but also in actual people to man the posts. Should the UN respond to these cases? Maybe the UN should be more active. But let us not forget that the UN, in particular at the human

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rights department, has a rule of law unit, which deals with these cases. This unit has developed tools, both for establishing and operating truth and reconciliation commissions. The UN has fifty field offices throughout the world.

One of these offices, in Uganda, has played a very active role in promoting and fostering the establishment of a truth and reconciliation commission. The UN has contacted victims' associations, and has dealt with damages and reparations for victims.

The main difficulty is that although the UN can make tools, these are not adaptable for every country. There cannot be one standard model. There are common grounds between the different countries but each founding of a truth and reconciliation commission is different.

*And the role of the International Criminal Court? What if a people does not act itself when there is some form of "aut dedere aut judicare?" Should there be some sort of intervention by the ICC? And if so, at what moment?*

There are several possibilities for the ICC to be actively dealing with a case, an example is Uganda that itself came to the ICC. The difficulty with Uganda is that the president of Uganda, Museveni, came to the ICC, thus implying that he came on behalf of the victims. But often victims can also be perpetrators, and vice versa. There is not one side in these conflicts.

Another role for the ICC, since the Rome Declaration of 1998, is that the prosecutor can bring cases before the ICC.

Of course it is wishful thinking that the ICC has some sort of deterrent effect. I don't believe the ICC has such an impact on leaders that they think by them themselves, "Let's not do that, otherwise the ICC will come and get me for these crimes against humanity."

It is also debatable whether the ICC has a preventive function. I am not so sure about that. For example Mladić and Karadžić were already indicted before Srebrenica. The ICC did not function as a deterrent. Yet we must not be too gloomy; there is some progress. Several (former) heads of state, with all their immunities, have been tried or prosecuted; Habré of Chad, Fujimori of Peru, Milosevic of Serbia, Houssein of Iraq and Pinochet of Chile. The fact that these former heads of state have been prosecuted can, in my opinion, be seen as (an albeit small) gain for the ICC.

*Do you think that the ICC pays enough attention to the role of the victim?*

Well, that is somewhat beyond my reach. We have to bear in mind that the Statute of the ICC gives more far-reaching rights to victims than, for example, the Yugoslavia and Rwanda Tribunals. Within the Statute a procedure for victim participation is enclosed. Participation in itself gives some form of satisfaction for the victims. But it also brings with it some difficulties; who are the victims, how do we realize their participation, are all the different groups of victims represented? And after establishing the groups of victims and hearing the case before the ICC, the difficulty of damages and reparations will appear. But all in all it is appropriate that the role of the victim is enlarged.

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*Five years ago your principles, the van Boven-principles for victims, were introduced. Do you think these are implemented sufficiently?*

When implementing parts of the guidelines, no reference is made to the guidelines. Therefore it is difficult to determine whether or not the guidelines have been implemented sufficiently. I do know that the guidelines have had an impact within Latin-America, on the jurisprudence of the Inter-American Court and on the Statute of the ICC, in particular Article 75.

What has happened exactly with regard to the guidelines throughout the world these past five years is beyond my vision. I only notice that there are often citations and references to the guidelines in various documents.

*What did you have envisioned for your principles while writing them?*

That the principles would be taken into account within new policy and legislation. I believe the principles have had an impact on transitional justice models and tools of the UN. Of course, I hoped that the guidelines would be adopted by the General Assembly of the UN, and then after a process of 15 years it was wonderful that they eventually were adopted, despite the possible risks of non-adoption or a lack of standing within the UN Member States.

*You mentioned before that you were somewhat disappointed with the Netherlands with regard to their stand on the police actions in Indonesia. Do you feel that there might be a necessity for an international court for*

*human rights to deal with these cases that are not dealt with by the countries themselves, or victims' associations that can directly call upon such a court?*

The advantage of a court is that it can come to verdicts that are legally binding. Courts dealing with human rights are thus far only on a regional level. There are plans for an International Court, but these are not concrete enough in order to establish such a court. It should be placed on the international agenda.

*Establishing an international court brings with it several difficulties. Amongst others a common standard of rules, and within this standard of rules, also questions about the universality of human rights shall be included. But how does this relate to, for example, traditional social structures?*

There are basic human rights that have a universal base. These are codified within the large international treaties like the Convention on the Rights of the Child, The Convention on the Rights of Women; treaties that have been ratified by more than one hundred and seventy countries. The basic norms are there, you now just have to create the possibilities to enforce them.

*There are also countries that have made certain reservations, for example several Islamic countries hold that a treaty may not be contradictory to Shari'a. One could ask what the strength is of a treaty when reservations are made.*

To deal with these issues several treaty committees are established who debate on these questions. An international court would be stronger on one side because its verdicts are legally binding. But these are focused on one specific case, while within a treaty committee there is an entire procedure per country combined with questions and answers, which is, although not binding, quite influential. Countries are asked to justify their actions before this committee. Preferably both institutions, the treaty committees and the international court, should work side by side: the court for individual complaints and the committee for long-term planning. On the other side we do have to see if countries are willing to cooperate. A lot of countries have difficulties with the optional complaint procedures that exist within several treaties. We should be pragmatic and work toward the most feasible internationally recognized institutions. ■