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NOTE VERBALE

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The Permanent Mission of the Netherlands to the Organization for Security and Co-operation in Europe presents its compliments to all Missions and Delegations to the OSCE in Vienna and to the Conflict Prevention Centre and has the honour to transmit herewith the Netherlands' response to the Questionnaire on the Code of Conduct on Politico-Military Aspects 2011.

The Permanent Mission of the Kingdom of the Netherlands to the Organization for Security and Co-operation Europe avails itself of this opportunity to renew to the Delegations of participating States and to the Conflict Prevention Centre of the OSCE the assurances of its highest consideration.

Vienna, 10 June 2011

To: All OSCE Delegations and Missions
The Conflict Prevention Centre
Vienna

**QUESTIONNAIRE ON THE CODE OF CONDUCT ON
POLITICO-MILITARY ASPECTS OF SECURITY**

ENGLISH only

NETHERLANDS RETURN

Section I: Inter-State elements

1. Account of measures to prevent and combat terrorism

1.1 To which agreements and arrangements (universal, regional, subregional and bilateral) related to preventing and combating terrorism is your State a party?

See Annex

1.2 What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?

The Ministry of the Interior and Kingdom Affairs and the Ministry of Security and Justice report on progress made to Parliament on a regular basis.

1.3 What are the roles and missions of military, paramilitary and security forces and the police in preventing and combating terrorism in your State?

In cases where terrorist activities threaten or have already violated the integrity of national or Alliance territory, the armed forces can be called upon. The provision of Dutch troops on the basis of Article 5 of the North Atlantic Treaty and Article 51 of the United Nations Charter in response to the terrorist attacks on the United States is a case in point. Other measures, such as those related to the security and protection of Dutch territory, can also be seen in this context.

The promotion of the international rule of law and stability has an important place in the fight against and the prevention of terrorism. So-called failed states and rogue countries can serve as refuges and bases of operations for terrorist organisations. The crisis-management capabilities of the Dutch armed forces can make an important contribution to the promotion of stability in weak or foundering states. In combating terrorism the Defence organisation closely cooperates with other ministries and the National Coordinator Counterterrorism (NCTb). The Defence organisation carries out specific activities in support of civilian authorities such as providing intelligence, protection and security. The Royal Marechaussee and the Defence Intelligence and Security Service play a prominent role in this area. On the basis of the Police Act and the Disasters and Major Accidents Act, civil authorities are able to call upon Defence as a structural partner for military support in case of a terrorist attack.

Combatting terrorism is one of the main tasks of the National Investigation Unit of the Dutch Police Force (KLPD). This Unit provides the Dutch police force with high quality technical, legal and strategic support related to combating organized crime and terrorism.

2. Stationing of armed forces on foreign territory

2.1 Provide information on stationing of your States armed forces on the territory of other participating States in accordance with freely negotiated agreements as well as in accordance with international law.

The Netherlands is a party to *the Agreement by the Parties to the North Atlantic Treaty Organisation on the Status of their Forces (1951)* and the supplements thereto. The Netherlands is also party to a number of treaties with Germany and Belgium.

3. Implementation of other international commitments related to the Code of Conduct

3.1 Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence- and security-building as an element of indivisible security are implemented in good faith.

The Netherlands is party to and has implemented all international Treaties and Conventions in the field of arms control, disarmament and confidence and security building measures and regularly reports thereof to the UNODA and OSCE.

3.2 Provide information on how your State pursues arms control, disarmament and confidence- and security-building measures with a view to enhancing security and stability in the OSCE area.

In the field of conventional arms control, the Netherlands is party to the Wassenaar Arrangement and the EU Common Position on Arms Exports 2008/944/CFSP and takes part in the Council Working Group COARM to promote harmonization of export controls between EU partners. The Netherlands is also active in outreach programmes to promote the Arms Trade Treaty. In 2011 as chair of the Nuclear Suppliers Group, the Netherlands will host the plenary meeting in June 2011. In December 2011 the Netherlands will chair the BTWC Review Conference in Geneva. The Netherlands is also party to the Treaty on Open Skies and the Treaty on Conventional Armed Forces in Europe (CFE Treaty)

Section II: Intra-State elements

1. National planning and decision-making process

1.1 What is the national planning and decision-making process in determining/approving military posture and defence expenditures in your State?

Determining priorities in national defence planning requires a common understanding of the relationship between ambitions, tasks, capabilities and means. In order to improve this understanding a methodology has been developed, that reflects jointness and NATO and EU priorities. This methodology is the leading principle for the national planning system, called the Policy-Plan-Budget Cycle.

The Policy-Plan-Budget procedure contains a four year and an annual cycle. The Policy Directive is the leading strategic document issued by the Dutch government at the beginning of a four year government term. The Policy Directive provides political and policy input for the Defence Plan. The Defence Plan presents a more detailed picture of the four year plan. This Plan explains the relationship between the policy, the planned expenditures and capability development versus activities, personnel and equipment. This document serves as the basis for the annual budget plan. The Chief of Defence, as the corporate planner, formulates this integrated proposal to be submitted to the Minister of Defence.

1.2 How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?

According to article 97 (1) of the Constitution of the Netherlands the armed forces of the Netherlands exist to defend and protect the interest of the Netherlands and promote the international legal order.

2. Existing structures and processes

2.1 What are the constitutionally established procedures for ensuring democratic political control of military, paramilitary and internal security forces, intelligence services and the police?

The Constitution states that the Government has the supreme authority over the armed forces. Its security and defence policy is subject to parliamentary control. Civilian guards employed by the ministry of Defence are considered paramilitaries, and as part of the Ministry of Defence are subject to

the same political control. The Netherlands' intelligence services, one of which is military in nature, are subject to legal restraints and parliamentary control as well.

Dutch law entrusts the General Intelligence and Security Service (AIVD) with a number of tasks. They are described in Article 6, Clause 2, subclauses a-e of the Intelligence and Security Services Act 2002 (Wet op de inlichtingen- en veiligheidsdiensten, Wiv 2002). In carrying out those tasks, the service may make use of special investigative powers, which are also set out in the legislation. The Minister of the Interior and Kingdom Relations bears responsibility for the proper performance of the AIVD's tasks. The AIVD performs its tasks in the interests of national security. As defined in the Wiv 2002, this comprises protection of the democratic legal order, national security or other important interests of the Dutch state.

The Minister of the Interior and Kingdom Relations is ultimately responsible for the proper functioning of the AIVD. The service reports to the minister, who in turn is accountable to the Lower House of Parliament. The minister fulfils this obligation in public as much as possible and, where this is not possible for reasons of confidentiality, to the Intelligence and Security Services Committee (Commissie voor de Inlichtingen- en Veiligheidsdiensten, CIVD) of the Lower House.

2.2 How is the fulfilment of these procedures ensured, and which constitutionally established authorities/institutions are responsible for exercising these procedures?

The Minister of Defence is politically responsible to Parliament for the implementation of the outlined policy priorities and the operational objectives set. The Parliament has the competence for allocating funds for the annual budget of the Ministry of Defence and the armed forces.

The organisational structure of the police is laid down in the Police law of 1993. It divides the responsibility for the regionally organised police and its actions between the Minister of Security and Justice and the Minister of Internal Affairs.

The fulfilment of the procedures for ensuring democratic political control of the AIVD is ensured by the before mentioned Intelligence and Security Services Committee of the Lower House. In addition, an independent body -the Intelligence and Security Services Supervisory Committee (CTIVD) - oversees compliance with the Intelligence and Security Services Act 2002 (Wiv 2002) and the Security Screening Act (Wvo) by the AIVD and the MIVD.

Article 34 of the Wiv 2002 requires that, five years after the completion of certain investigations involving its special powers, the AIVD review whether the subjects can be notified that they were investigated. The service has not issued any such notifications since this requirement entered force on 29 May 2007, five years after the enactment of the Wiv 2002.

Under freedom of information rules, anyone is entitled to submit a request to inspect information the AIVD may hold about them.

Each person is entitled to file a complaint with the National Ombudsman on the actions or the alleged actions of the relevant Ministers, the heads of the services, the co-ordinator and the persons working for the services and for the co-ordinator, with respect to a natural person or legal entity in the implementation of this act or the Security Investigations Act.

2.3 What are the roles and missions of military, paramilitary and security forces, and how does your State control that such forces act solely within the constitutional framework?

The Constitution describes three principal missions for the armed forces:

- the defence of national and allied territory, including the Caribbean parts of the Kingdom;
- promoting the international rule of law and stability;
- supporting and assisting civilian authorities in maintaining law and order, providing disaster relief and humanitarian aid, on a national as well as an international scale.

See also 2.1 and 2.2. The overall control for ensuring the armed forces act solely within the constitutional framework lies with Parliament. The Minister of Defence is politically responsible to Parliament and has to inform Parliament on any relevant development related to the armed forces, in accordance with procedures laid down in the Constitution.

The General Intelligence and Security Service (AIVD) safeguards the national security of the Netherlands by identifying threats, political developments and risks which are not immediately visible in a timely manner. To this end, it conducts investigations both inside and outside the country. Where necessary, the AIVD shares information so that partners and other interested parties can take appropriate measures. The AIVD identifies risks and advises and mobilises third parties. If necessary, it actively works to reduce risks itself. The service thus has a clear position in the network of official organisations dedicated to the protection of national and international security.

3. Procedures related to different forces personnel

3.1 What kind of procedures for recruitment and call-up of personnel for service in your military, paramilitary and internal security forces does your State have?

The Netherlands has suspended military conscription in 1997 and the legislation has been changed accordingly. However, if the military necessity were to arise, conscription can be resumed and reservists can be drafted. On a voluntary basis reservists can be deployed in peace support operations.

3.2 What kind of exemptions or alternatives to military service does your State have?

Since the Netherlands has suspended military conscription, offering alternatives to compulsory military service is no longer applicable.

3.3 What are the legal and administrative procedures to protect the rights of all forces personnel as well as conscripts?

The military disciplinary rules are almost entirely shaped after civil law and do not infringe upon the civil rights of the military personnel. Only during military operations in times of war or in peace support operations, these civil rights can be limited. The Inspector General for the armed forces serves as Ombudsman for all personnel.

4. Implementation of other political norms, principles, decisions and international humanitarian law

4.1 How does your State ensure that International Humanitarian Law and Law of War are made widely available, e.g., through military training programmes and regulations?

International humanitarian law is instructed to all military personnel, as well as other relevant international conventions and commitments, for instance those within the framework of the United Nations or the North Atlantic Treaty Organisation. Particular attention to this subject is given in the Soldiers and Officers Handbooks. Further, the principal rules of international humanitarian law are summarised on easy-to-carry personal instruction cards distributed to each individual soldier.

4.2 What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?

The training of all military personnel contains classes on both humanitarian law and penal law. Additionally, attention is given to this subject in the training prior to any deployment.

4.3 How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity?

The legal framework for the use of the armed forces in domestic operations contains a number of checks and balances. Furthermore, any such deployment is conducted under the authority of the civil authorities. Additionally, attention is given to human rights in the training prior to any international deployment.

4.4 What has been done to provide for the individual service member's exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?

Individual service members have the same rights as other citizens, which may only be limited by law and out of operational concerns. Personnel are allowed to organise themselves into unions and have recourse to legal means if they consider themselves unfairly treated. Furthermore, a system of integrity advisors is present throughout the military.

Political neutrality is ensured through the civilian control of the military.

For the policy of the Dutch armed forces on gendermainstreaming, see annex II.

4.5 How does your State ensure that its defence policy and doctrine are consistent with international law?

Under the obligations derived from art. 36 of the 1st Additional Protocol to the Geneva conventions, states are obligated to ensure that their means and methods of warfare are in accordance with international law. The Netherlands has an advisory committee on conventional use of force and international law which ensures such adherence. Furthermore, legal advisors are present at different levels of command to advise commanders on international law.

Section III: Public access and contact information

1. Public access

1.1 How is the public informed about the provisions of the Code of Conduct?

The Code of Conduct is not explicitly mentioned, but the way it is implemented in the Netherlands Armed Forces is made public through means as described in 1.3.

1.2 What additional information related to the Code of Conduct, e.g., replies to the Questionnaire on the Code of Conduct, is made publicly available in your State?

Through the NL MoD's Directorate of Public Information press and individual citizens are free to request all information regarding the Netherlands Armed Forces.

1.3 How does your State ensure public access to information related to your State's armed forces?

The Government informs the public in an active way on matters related to the armed forces, using all possible means for this purpose, for instance websites (<http://www.defensie.nl/>), audio-visual materials, briefings and publications. Besides this active way, there is ample opportunity for the press and the public to put forward questions related to the armed forces. They can also request an inspection of any non-classified defence document. In addition, media can embed with virtually all units deployed on any mission, limited in their reporting only in operational and personal security matters, to protect the troops, the mission and the journalists themselves. To stimulate this embedded journalism, the NL

MOD regularly organises press trips to areas of operations where Dutch troops are deployed. The public access to information related to the armed forces is based on the Netherlands Act on Public Access to the Government information of 31 October 1991.

2. Contact information

2.1 Provide information on the national point of contact for the implementation of the Code of Conduct.

Ministry of Foreign Affairs
Security Policy Department
Security and Defence Policy Division
Mr. Rein Dekkers
P.O. Box 20061
2500 EB The Hague
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ANNEX I
to Question 1 of the Information exchange on
the Code of Conduct on politico-military aspects of security

1(a): List of international agreements, including all United Nations conventions and protocols related to terrorism, to which the participating State is a party

- 1) Convention on Offences and Certain Other Acts Committed on Board Aircraft
14 September 1963, Tokyo (entry into force for the Netherlands: 12 February 1970)
- 2) Convention for the Suppression of Unlawful Seizure of Aircraft
16 December 1970, The Hague (entry into force for the Netherlands: 26 September 1973)
- 3) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
23 September 1971 (entry into force for the Netherlands: 26 September 1973)
- 4) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons,
including Diplomatic Agents, 14 December 1973, New York (entry into force for the Netherlands: 5 January
1989)
- 5) International Convention against the Taking of Hostages, 17 December 1979, New York
(entry into force for the Netherlands: 5 January 1989)
- 6) Convention on the Physical Protection of Nuclear Materials, 3 March 1980, Vienna
(entry into force for the Netherlands: 6 October 1991)
- 7) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation,
Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,
23 September 1971, Montreal, 24 February 1988, Montreal
(entry into force for the Netherlands: 10 August 1995)
- 8) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation,
10 March 1988, Rome (entry into force for the Netherlands: 3 June 1992)
- 9) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental
Shelf, 10 March 1988, Rome (entry into force for the Netherlands: 3 June 1992)
- 10) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1 March 1991, Montreal
(entry into force for the Netherlands: 3 July 1998)
- 11) International Convention for the Suppression of Terrorist Bombings, 15 December 1997, New York (entry
into force for the Netherlands: 9 March 2002)
- 12) International Convention for the Suppression of the Financing of Terrorism, 9 December 1999, New York
(entry into force for the Netherlands: 10 April 2003)

1 (b): Accession to and participation in other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities;

- 1 European Convention on the Suppression of Terrorism, 27 January 1977, Strasbourg
(entry into force for the Netherlands: 19 July 1985)
- 2 Agreement concerning the application of the European Convention on the Suppression of Terrorism among
the member States of the European Community, 4 December 1979, Dublin (accepted by the Netherlands,
treaty not yet entered into force)

ANNEX II

Gender mainstreaming and the Dutch armed forces

Organisation

The Dutch armed forces are a voluntary professional organisation. Dutch servicewomen are integrated into the units and serve under the same rules and regulations as men. Requirements in terms of training standards, performance levels and discipline are equal. Servicemen and women have the same obligation to serve in the event of mobilisation.

Deployments (i.e. peacebuilding operations, peacekeeping operations etc.)

Female military personnel have the same opportunities to develop their career as male military personnel (except in the Marine Corps and the Submarine Service). Dutch servicewomen have participated in various mission areas all over the world in support of Peace Support Operations and other humanitarian operations. The operations mostly last 4 to 6 months. According to regulations, “the military personnel of the armed forces, both men and women, serve under the obligation to be fit for duty abroad. Deployment is not on a voluntary basis. Women with one or more children under the age of five are not deployed abroad, unless operational reasons make it absolutely necessary.

The UN Security Council adopted Resolution 1325 on ‘Women, Peace and Security’ in October 2000. On the one hand, the resolution calls for the role of women to be increased in the planning, preparation, decision-making and execution with regard to peace missions, and on the other hand for more attention to be paid to the effects on women of conflicts and peace operations. The resolution provides a general framework for the integration of gender aspects into policy surrounding international peace and security. The government’s point of view in respect of ‘gender mainstreaming¹’ was established in 2001. Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes in such a way that the perspective of gender equality is integrated into all policy.

Preconditions in this regard are as follows:

- commitment at the senior level;
- explicit gender policy with clear objectives and responsibilities;
- availability of gender expertise, and
- availability of resources and instruments.

UN Resolution 1325 and the government’s viewpoint on gender mainstreaming ensured that equal opportunities policy was given new impetus in the form of gender policy.

In 2002, A civil service working group assessed whether there was a need for new policy in order to properly implement the resolution. The working group concluded that attention was being paid in many areas to women and gender issues and that work was necessary at unit level only with a view to the further embedding of the theme of gender in Foreign and Defence policy. These conclusions were submitted to the House of Representatives in a joint report on 26 March 2003; the report contained the following points for the Ministry of Defence:

1. gender needs to be embedded in training and instruction;
2. the gender perspective needs to be integrated into peace operations;
3. gender mainstreaming;
4. a well-balanced composition of male/female Defence employees needs to be achieved; this is to include deployments.

The above conclusions led to a change of direction. First of all, the focus was shifted from the equal opportunities process in personnel policy to gender in the core business of the Defence organisation, namely crisis management operations. The four above mentioned points became the subprojects in our policies. Another shift of focus was that from policy development to policy implementation.

In December 2008 the Ministries of Foreign Affairs and Defence organised a symposium about gender in operations on the first anniversary of the Dutch National Action Plan 1325. The most important promises from

¹ Government Viewpoint on Gender Mainstreaming, a strategy of quality improvement, Ministry of Social Affairs and Employment, June 2001.

the Ministry of Defence were that gender should become a structural part of missions (preparation, deployment and evaluation). Other assurances that were given:

1. Additional Gender Expertise is needed
2. Gender experts need to be sent on missions more often
3. More female interpreters are needed (especially in Afghanistan)
4. Follow up-meeting will be held in December 2009

Since this first symposium on gender in operations, the Ministry of Defence and Foreign Affairs combined their efforts and a yearly symposium has been organised. Besides these symposia the two ministries work together on specific gender training for their key leaders. In 2012 a joint initiative from Spain and Netherlands will be implemented. In June this year an EU certified course will be held in Madrid. Main goal of the course is to increase the gender capacity for international missions, civilian as well as military. Middle management who will be deployed is invited to join this course.

When assessing the objective of deployments, the gender perspective is emphatically included in the considerations. This means that attention is paid to the effects of a Dutch deployment on women and men in the unit to be deployed, as well as on local women and men. Attention is also paid to involve women in the process of peace-promoting activities and reconstruction, and to ensure that women and girls are protected from sexual violence and acts of war.

In order to properly harmonise policy and practical solutions, various working conferences have been organised, involving military personnel from the operational staffs of all armed forces, in close cooperation with the Ministry of Foreign Affairs. One of the aims of such conferences is to give concrete interpretation of Resolution 1325 in respect of the deployment to Iraq, by consciously employing female military personnel in, for example, house-to-house searches and roadblocks. In practice, this appeared to have an extremely favourable influence on relations with the local population.

During the reconnaissance for the Provincial Reconstruction Team (PRT) operation in Afghanistan, gender aspects were included as an item, and a specific briefing on gender was given during the formation and activation orders. The conclusions of the above findings must be disseminated within the armed forces. There is a need for a (standard) checklist that can be used during the reconnaissance and preparations for an operation.

In order to give further shape to this checklist, a pilot project was set up in which a gender expert looked at the issue of crisis management operations, by actually joining such an operation on a temporary basis. The gender expert came up with concrete advice indicating how the integration of gender aspects can improve the quality and effectiveness of an operation. By the end of 2007 the gender checklist was approved and is now in use. Whenever a new mission is planned gender is always taken into account.

Gender Advisor

In October 2009 NATO started with a post for (the first official) a Gender Advisor at ISAF Joint Command (IJC). The Dutch armed forces volunteered to fill this post and started to send their first gender advisor in October 2009, allowing to gain field experience and knowledge on which to further build upon. The Netherlands will continue to fill this post. In 2010 The Netherlands deployed two officers to EUFOR mission ALTHEA in Bosnia Herzegovina who were assigned as Gender Focal Points. This completely different mission adds valuable field experience.

Conclusion

The Dutch Ministry of Defence stays actively involved in embedding the subject of gender in different – cultural and structural – ways, both inside and outside the Defence organisation. The commitment to gender by the leading officials within the Ministry of Defence as ambassadors will stay and allows gender to establish a structural and permanent embedding of gender policy. There is a willingness to propagate the benefits and necessity of gender policy and to direct management decisions towards it. These aspects and the arrangement of regular meetings make it possible to both broaden the support base and shape international cooperation on gender issues.