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Chapter 3

The Rejection of Framework Liberalism: Debating the Framework Convention for the Protection of National Minorities
Introduction: Shifting attitudes in the Netherlands

The next few chapters will focus on a number of debates occupying the Dutch Parliament between the year 2000 and 2013. All these debates have special bearing on moral communities, integration, and tolerance, and offer insight into how liberalism is conceived of in the Netherlands, and of the interplay between framework liberalism and liberal culturalism in that understanding. The current chapter will introduce and analyze the debate on the approval bill for the Council of Europe’s Framework Convention for the Protection of National Minorities. This convention was drafted in 1994 and entered into force in 1998, but had yet to be ratified by the Netherlands in 2000. Spanning four eventful years at the start of the new millennium, the debate of this bill in the Second and First Chambers of Dutch Parliament offers a vivid illustration of changing perceptions with regard to minority integration and identity in the Netherlands. Also, it offers a good introduction to the various parties and positions in the debate.

It is sometimes said that the Netherlands 'lost its innocence' sometime during the early years of the new millennium. If this is indeed the case, when the Framework Convention’s approval bill first went to Parliament’s Second Chamber on March 15, 2000, the Netherlands had yet to lose that innocence. As described in the previous chapter, it was only after 9/11 and the appearance of Fortuyn that issues pertaining to immigration, integration and moral communities more generally became politically salient in the Netherlands. This is reflected in the early debates of the approval bill. For almost all the parties contributing to those debates, the Framework Convention’s goal of protecting national minorities is not particularly relevant for the Netherlands. It is for the sake of the minorities in the recently independent countries of Eastern and Central Europe especially that the convention is attributed importance. It is primarily to set an example for those countries, then, that the Netherlands wishes to ratify the convention.

It is for the sake of setting an example, also, that the Second Chamber, in 2000, wishes to extend the protection of the convention to as broad a group of minorities in the Netherlands as possible; not only to the Frisians, the age-old inhabitants of the northern Dutch province of Frysland, but also to all the more recently arrived groups: Roma and Sinti-gypsies having settled here over the past centuries; more recent arrivals from the ex-colonies and overseas territories in the East- and West-Indies; and finally
the youngest category of newcomers, labor migrants from predominantly Mediterranean countries and their children. All these later arrivals, officially known as the ‘target groups of integration policy’, are to be brought under the ambit of the convention. As we will see below, neither the Dutch government nor most of the parties in the Second Chamber see much inconsistency in pursuing the integration of these minorities while at the same time obliging the state to offer them the protection of the Framework Convention. This is not, it should be noted, because parties are of the opinion that integration is best pursued through the protection of minority identities (though this argument is forwarded in the debate by GroenLinks and the PvdA). It is primarily because parties simply don’t regard the protection of minority identity to be much of a problem in the Netherlands, one way or the other, at the turn of the millennium.

Four years later, in 2004, all this has changed dramatically. After the terrorist attacks of September 11, 2001 and the subsequent murders of politician Pim Fortuyn in 2002 and filmmaker and columnist Theo van Gogh four weeks before the debate’s final term in the First Chamber on November 30, 2004, the Netherlands has entered into a period of soul-searching and redefinition. The political landscape has changed substantially, and integration and immigration are both subject to intense public and political debate. These changes are reflected in the changed attitudes with respect to the bill on the Framework Convention. Instead of seeking as broad an application of the convention as possible, the Government in 2004, now with the support of nearly every party in the First Chamber, wishes exactly the converse: to limit the application of the convention to as narrow a group of minorities as possible. Ultimately this results in the ratified convention’s being applied only to a single minority: the Frisians.

As this chapter will show, this decision and the parliamentary debates preceding it can be interpreted as a marked denial of the applicability of a procedural morality akin to that of framework liberalism to Dutch society as a whole.
The Framework Convention, the Frisians, and the target groups of integration policy

In 1994, considering that ‘the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace’, and also that ‘a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity’ the Committee of Ministers of the Council of Europe agreed on the text of the Framework Convention for the Protection of National Minorities.¹ The Framework Convention (to be referred to henceforth as ‘the convention’) was opened to ratification in the following year. When the required number of signatories had ratified the convention it entered into force, on February 1, 1998.² At that time, the Netherlands had yet to ratify the treaty.

Though the states of Europe were thus agreed that the national minorities of other states warranted protection – in no small measure, presumably, because the former-Yugoslavia was currently engaged in one such ‘upheaval in European history’ – with regard to their own national minorities states were not so eager to be subjected to the scrutiny of their neighbors. This hesitance was reflected in the failure of the drafters to reach agreement on the definition of the convention’s single most important category: the ‘national minority’ of its title. Failing such agreement the drafters decided to leave the matter of what constituted a national minority and therefore of who would ultimately enjoy the protection of the convention to each individual signee to decide for himself.³

¹From the preamble of the convention (hereinafter FCNM 1995): FCNM 1995: 3; see also the explanatory memorandum accompanying the bill: Explanatory Memorandum (Memorie van Toelichting), Kamerstukken II, 26389, nr. 3: 1. See for the convention: http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H%2895%2910.FCNM_ExplanReport_en.pdf.
²The convention formulates obligations of states rather than rights of minorities and their members. Also, the convention acknowledges a wide margin of appreciation on the part of states in meeting these obligations. The convention aims to protect individual members of national minorities, rather than national minorities as collective bodies. The convention does not have direct effect, i.e. inhabitants of ratifying countries are not supposed to be able to make a direct appeal to the convention’s articles in a court of law. See Kamerstukken II, 26389, nr. 3: 1-2.
³Kamerstukken II, 26389, nr. 3: 3.
The Dutch Cabinet drafting the approval bill for the convention in 1999 was the second of two consecutive ‘purple’ coalitions governing the Netherlands from 1994 to 2002. Headed by Prime Minister Wim Kok, of the social-democratic PvdA, these consecutive governments, consisting further of members of the conservative liberal VVD and the progressive liberal D66, mixed leftist welfare statism with liberal market ideology in a Dutch variation on the then current international trend generally known as ‘the third way’. Taking into consideration that it was under the purple governments that the Netherlands pioneered its civic integration policies, which are generally seen as anticipating the ‘retreat from multiculturalism’, it may come as a surprise that the government, given the freedom by the convention to interpret ‘national minority’ as broadly or narrowly as it wished, nevertheless opted for as broad an interpretation of the term as possible. Besides covering the Frisians, the territorially bounded and linguistically distinct nation inhabiting the northern province of ‘Fryslân’, the term, and therefore the convention, were also to apply to all ‘legal residents of the Netherlands belonging to the target categories of integration policy’, i.e., the civic integration policies mentioned above. According to the explanatory memorandum accompanying the approval bill, the convention can be regarded as 'the legal complement' to said policy, of which 'the leading principle' is that:

'integration is a two-sided process to which both autochthons and members of ethnic groups must contribute. It is expected that autochthons are open to the participation in society by members of ethnic groups, that they give them sufficient room to do so, and that they respect their norms and values. On the other hand it is expected of members of ethnic groups that they endeavor to participate in that society and to contribute to it, and that they respect the norms and values of the 'majority'.'

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4 See supra, chapter 2, 76. See also: Joppke 2007b: 334.
5 Kamerstukken II, 26389, nr. 3: 2.
6 Kamerstukken II, 26389, nr. 3: 2. ('legaal in Nederland verblijvende personen die behoren tot de doelgroepen van het integratiebeleid')
7 Kamerstukken II, 26389, nr. 3: 2. ('Het leidend beginsel van dat beleid is, dat integratie een tweezijdig proces is waaraan zowel door autochtonen als leden van etnische groepen een bijdrage dient te worden geleverd. Van de autochtonen mag worden verwacht dat zij openstaan voor deelname aan de samenleving door leden van etnische groepen, dat zij hen daartoe de ruimte bieden en dat zij hun normen en waarden respecteren. Aan de andere kant mag van leden van etnische groepen worden verwacht, dat zij zich inspannen om aan die samenleving deel te nemen en daaraan een bijdrage te leveren en dat zij de normen en waarden van de «meerderheid» respecteren.')
According to the government the convention offers ‘international legal instruments’ with which to substantiate this two-sided process. Illustrative hereof, according to the memorandum, are art. 4 of the convention, prohibiting discrimination of members of minorities; art. 5, compelling treaty parties to encourage the maintenance and development of the identity of members of national minorities and, in the words of the government, to combat assimilation; and art. 20, explicating the duty of members of minorities to respect the national laws and the rights of others, ‘in particular those of persons belonging to the majority or to other national minorities’. While these and the other norms of the convention are at present met by the Netherlands, states the government in the memorandum, ratifying the treaty serves as a guarantee that in future the Netherlands will not fall below the threshold formulated in the treaty.

The parallels between the Framework Convention and the 1980s minorities policy discussed in the previous chapter, with its implicit commitment to framework liberalism, are evident. Both are premised on the possibility of maintaining a diversity of moral communities within a single polity, within legal limits, and both emphasize the necessity of non-discrimination and mutual respect to that end. That notwithstanding, in its intended application of the convention the Dutch Government implicitly acknowledges that some moral communities are more easily maintained than others. For though the Government supports a broad definition of ‘national minorities’, going so far even as to say that it regards the adjective ‘national’ in ‘national minorities’ to be redundant, it makes a marked distinction between territorially isolated minorities on the one hand and minorities that are dispersed among the majority on the other. Only the Frisians, the majority population in the province of Fryslân, will receive the convention’s full protection, including, notably, articles 10.2, 11.3, and 14.2. These articles concern the use of minority languages between

8 Kamerstukken II, 26389, nr. 3: 2.
9 Kamerstukken II, 26389, nr. 3: 2-3. See also the convention (art. 4: ‘any discrimination based on belonging to a national minority shall be prohibited’; art. 5.1: to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage’; art. 5.2: ‘the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation’; art. 20: ‘any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities’; FCNM 1995: 3, 7.
10 Kamerstukken II, 26389, nr. 3: 3.
11 Kamerstukken II, 26389, nr. 3: 4. The memorandum states that these articles only apply
members of minorities and the administration (10.2), the language used to display traditional local names, street names and other topographical indications (11.3), and the use of minority languages in education (14.2) respectively.\textsuperscript{12}

It is not because the Frisian identity is in more danger than other minority identities in the Netherlands that the Frisians can make exclusive use of these provisions, however. Because the Frisians form a local majority in Fryslân, where the Frisian language is, next to Dutch, an official language, their identity and culture are by default much more secure than those of other minorities in the Netherlands, and in Fryslân for that matter. It is rather because these provisions match the already established practice concerning the use of the Frisian language in Fryslân that they can be applied there. This is in part a practical matter; according all linguistic minorities in the Netherlands similar rights would entail enormous costs. It is also a normative matter, however. The Frisian right to a degree of cultural and linguistic autonomy is firmly established in the Netherlands, and has roots going back as far as the 12\textsuperscript{th} century.\textsuperscript{13} Throughout the middle ages, the (proto-Dutch) \textit{Hollanders} regularly fought the Frisians, attempting to subject the Frisians to their authority. Ultimately it was the Holy Roman Emperor Charles V who subordinated the Frisians, first to his rule in 1524 and subsequently to that of the centralized administration of the Dutch provinces in 1548.\textsuperscript{14} It was arguably through the centuries-long violent interaction with the \textit{Hollanders} that the Frisians established themselves as firmly belonging, first to the territory of Fryslân, and later, as Fryslân, to the Netherlands, however. This process is illustrative of how the moral commons that is central to the account of framework liberalism, including in this case the right to a degree of territorial and cultural autonomy, can emerge from the interaction between moral communities.\textsuperscript{15} At the same time, it may very well be precisely the territorial concentration of the Frisians in Fryslân that facilitates the continuous normative commitment

\textsuperscript{12} See Convention; FCNM 1995: 4-6.

\textsuperscript{13} The period 1200-1500 is referred to, in Frisian lore, as the period of ‘Frisian liberty’, during which the Frisians had no sovereign ruler, despite repeated attempts by Holland especially to subject them to its rule. For an historical exploration of the myth and reality of Frisian Liberty, see Van Buijtenen 1953.

\textsuperscript{14} See, for a detailed account of the political process which resulted in Charles V’s title over Fryslân, Theissen 1907: chapter 2. For an account of the unification of the Low Countries in 1548, see Blom & Lamberts 2006: 118-120.

\textsuperscript{15} See \textit{supra}, 39-40.
to the maintenance of their identity and culture. For, in the case of the non-Frisian minorities falling under the convention, the debates show increasing doubts as to the compatibility of such a commitment with the necessities of integration.

One must bear in mind, also, that the Frisians, in contrast to most of the other minorities falling under the convention’s intended scope in the Netherlands, are not a visible minority, and that the Frisian cultural identity has distinct overlaps with the Dutch majority identity. On the whole, while the Frisians are historically and linguistically distinct from the rest of the Netherlands, ethnically and culturally they are largely indistinguishable from the other original inhabitants of the Netherlands. They also share many social, economic, educational, and political institutions with the non-Frisian Netherlands. This institutional overlap coincides with an overlap of (partial) comprehensive doctrines. As a consequence of this close identity between Fryslân and the rest of the Netherlands, the Frisians are far less prone to fall victim to racism or discrimination than the new minorities. In so far as the treaty signatories take on the obligation to encourage the maintenance of the identity of members of national minorities, and to combat discrimination and assimilation, where the Frisians are concerned this obligation is met almost by default.

A final observation with regard to the memorandum accompanying the approval bill of the Framework Convention for the Protection of National Minorities concerns the goal of participation laid down therein, which goal is formulated in particular for ‘ethnic groups’, i.e. the target groups of integration policy. According to the memorandum, ‘autochthons are open to the participation in society by members of ethnic groups, [...] they give them sufficient room to do so, and [...] they respect their norms and values.” Members of ethnic groups, conversely, are expected to ‘endeavor to participate in that society and to contribute to it, and [to] respect the norms and values of the ‘majority”.” Note the similarity in approach to the minorities policy of the 1980s, evident in the premise that society can consist of a diversity of moral communities, in this case ethnic groups, with their own, distinct, norms and values. Note also, however, the emphasis on participation. More than that even, members of minorities are expected to ‘contribute’ to society. What does this mean? Is it merely a reflection of the fear of the possible consequences of societal isolation, which underlay the

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16 See supra, note 7.
17 Idem.
minorities policy also? This is not elaborated. It is therefore instructive to contrast the target groups of integration policy, to which latter groups the imperatives to participate and contribute are addressed exclusively, with the Frisians on this point. Imagine that the Frisians were similarly required to participate in and contribute to Dutch society; addressed to the Frisians in Fryslân itself, this requirement would be redundant, for the Frisians constitute Dutch society in Fryslân. If it were to mean, however, that the Frisians must contribute to the broader Dutch society, outside of Fryslân, the requirement would imply that Frisian cultural autonomy depends on the value of the Frisians for the rest of the Netherlands. Such a requirement would run counter to the central goal of the Framework Convention itself, which is precisely to accomplish that respect of national minorities’ rights be unconditional of the esteem in which they are held by the majority, or of other considerations, such as their economic or cultural value. It is hard to see why this would be any different for non-Frisian minorities.

Perhaps, however, the Dutch insistence on participation and contribution points to a realization that failing such participation and contribution the conditions cannot be created through which minority identities can be adequately protected. Be that as it may, the above considerations show, at minimum, that there is an uneasiness of fit between the stated objective of the Framework Convention, namely to establish an unconditional right to the preservation of the identity of national minorities, and the stated requirement of participation in and contribution to society. As we will see in the following two chapters, the notion of participation plays a central role in the integration debate.

As will be demonstrated in the following pages, at the start of the millennium the Second Chamber, like the Government, does not view the dissimilarity between the Frisians and the target groups of integration policy or the uneasiness of fit between the protection of minority identities and the pursuit of integration policies as practically debilitating. This should not be interpreted as an implicit commitment to framework liberalism, however. More than anything this seems to reflect the then prevailing idea that its own minorities posed no problems, one way or the other, for the Netherlands. Of course the memorandum accompanying the approval bill dutifully states that the ’most important reason for ratification of the Framework Treaty by the Kingdom [of the Netherlands] is, of course, that thereby the Kingdom will be bound to the principles
laid down in the Framework Treaty.'\textsuperscript{18} But the repeated emphasis on
the message the convention sends abroad, especially to countries in
Central and Eastern Europe, and on the necessity of an adequate regime
of minorities protection there, suggest that it is to those countries and
their kind of minority problems that the convention is to apply, as far as
the Government is concerned.\textsuperscript{19} As we will see, however, before the bill
was finally to be passed in 2004, both the Government’s and Parliament’s
appreciation of minority problems in the Netherlands would change
dramatically. Acknowledging the relevance of the convention for the
Netherlands and thus forced to take position, Parliament ultimately
chooses to restrict the scope of the convention to a single, territorially
bound minority: the Frisians. This choice, it is argued below, entails an
implicit rejection of the broader applicability of framework liberalism to
Dutch society.

**Debating the Framework Convention in Parliament: the Second Chamber**

Parliamentary debates in the Netherlands generally consist of two terms,
sometimes followed by a third, in each chamber of Parliament. The lower
house of Parliament, the ‘Second Chamber’, consisting of 150 directly
chosen representatives, is the first arena, and the heart, of political debate.
Only if a bill is passed in the Second Chamber will it be sent to the upper
house, the ‘First Chamber’. This chamber consists of 75 members who are
chosen indirectly, by the members of the Provincial Assemblies. Members
of the First Chamber are often considered to be the ‘elder statesmen’ of
the Netherlands, having traveled the ranks of political parties and/or
public office. As the First Chamber convenes only once a week, also, most
of its members combine their parliamentary work with other employ,
relatively often in academia or local public office. Often, as we shall see
in the following chapters, members of the First Chamber draw upon
their extra-parliamentary expertise in the debates. In general, also, the
debates in the First Chamber are regarded as somewhat less political

\textsuperscript{18} Kamerstukken II, 26389, nr. 3: 5. (‘De belangrijkste reden voor het bekrachtigen van het
Kaderverdrag door het Koninkrijk is uiteraard dat hiermee het Koninkrijk gebonden zal zijn
aan de in het Kaderverdrag neergelegde beginselen.’) That being said, the application of
the convention within the Kingdom of the Netherlands is restricted to the Netherlands (and for
instance does not include the Dutch Antilles). See Kamerstukken II, 26389, nr. 3: 16.
\textsuperscript{19} Kamerstukken II, 26389, nr. 3: 5. (‘het belang dat wordt gehecht aan een goede minderheden-
bescherming, in Nederland zelf alsook – en vooral – in de Midden- en Oost-Europese landen’).
and somewhat more focused on the legal and constitutional aspects of proposed measures.

The approval bill for the Framework Convention for the Protection of National Minorities was put up for debate in the Second Chamber of Dutch Parliament on March 15 of the year 2000. Due to intervening political and social developments, it took four and half years, during which two Cabinet governments came and went, before the approval law was passed. After the Second Chamber passed the bill in 2000 it was first debated in the First Chamber in 2001, then in 2004.

The first thing that stands out with regard to the debate in the Second Chamber is its brevity, especially in comparison to the other debates discussed in these chapters. Not only are parties’ respective contributions short, not all parties in the Second Chamber take part in the debate, and of the parties that do only the opposition parties use more than a single term to contribute to the debate. This suggests that the subject matter of the debate, the protection of national minorities, was neither politically significant nor controversial at the time. This is also borne out by the parties’ individual contributions, which can generally be characterized as mild, and by the lack of media attention for these debates, which were followed especially by the regional press of Frysland.20 That this general lack of urgency accompanying the debate in the Second Chamber had less to do with the subject-matter of the debate (i.e. the protection and status of national minorities) than with attitudes current in the Netherlands at the time (March 2000), is suggested by the fact that each subsequent debate in the First Chamber (in 2001 and 2004) exceeded the length of its predecessor considerably.21

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21 The single first term of the debate in the First Chamber (in May 2001) exceeded the length of the two terms of the Second Chamber; the final debate in the First Chamber (in November 2004), comprising of two terms, was longer still. On the other hand, the final adoption of the law in 2004 also generated hardly any press outside of Frysland; two newspapers published opinion pieces criticizing the final interpretation of the bill; see Meijknecht & Letschert 2005 & Groenendijk 2005.
Three further features of the debate in the Second Chamber stand out especially:

- the widespread endorsement of the Cabinet’s broad interpretation of the convention for the example it sets abroad;

- the relative absence of ‘multiculturalist’ justifications for minorities protection;

- the limited criticism of the Cabinet’s proposal for including the target groups of Dutch integration policy in its definition of ‘national minorities’;

These subjects will be treated in turn. Subsequently a motion submitted by the orthodox Protestant party GPV, proposing to limit the convention’s scope to the Frisians, will be briefly discussed. This motion, which failed to gain the support of the Second Chamber, is primarily of interest because it foreshadows the position to be adopted, four years later, in the First Chamber.

**The exemplary Netherlands**

There is unanimous agreement, in the Second Chamber in 2000, on the necessity for ratifying the convention. Most parties concur with the Government that the convention bears especially on the treatment of national minorities in other ratifying states, particularly those in Central and Eastern Europe.\(^{22}\) Only two parties, the social democratic PvdA and

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\(^{22}\) The (conservative liberal) VVD states explicitly that ‘[t]his convention is especially important for the countries in Central and Eastern Europe’, as does the (orthodox Protestant) GPV. ‘*Dit verdrag is met name van belang voor de landen in Midden- en Oost-Europa.*’ (HTK 1999/2000, No. 56: 3973, VVD; represented by Rijpstra); ‘benadrukken dat [...] dit verdrag vooral betekenis heeft voor de landen van Midden- en Oost-Europa’ (HTK 1999/2000, No. 56: 3968, GPV; ; represented by Van Middelkoop). Both (the progressive liberal) D66 and the (orthodox protestant) SGP point out that this importance stems from the ‘minorities-question’ which is still ‘emphatically problematic’ in these countries (SGP), as the ‘distinct identity’ of minorities is still prone to ‘come under pressure’ there (D66). ‘*Wat de waarde van het verdrag betreft zien wij ook vanuit de geschiedenis een belangrijke betekenis ervan voor Midden- en Oost-Europese landen, waar de minderhedenkwestie nadrukkelijk als problematiek aan de orde is.*’ (HTK 1999/2000, No. 56: 3972, SGP; ; represented by Van der Staaij); ‘*waar de eigenheid van minderheidsgroepen nog vaak in het gedrag dreigt te komen*’ (HTK 1999/2000, No. 56: 3970-3971, D66; ; represented by Ravestein.). The (Christian democratic) CDA, finally, wonders how ‘the Netherlands will exert political pressure’ on these countries ‘in order to ensure observance of the convention.’: ‘*Op welke wijze zal Nederland politieke druk uitoefenen om de naleving van het verdrag te waarborgen?*’ (HTK
the progressive ‘GreenLeft’ GroenLinks, discuss the convention in light of threats to minorities in the Netherlands.\textsuperscript{23}

Ratifying the convention, then, for the government as well as for most parties, serves the purpose especially of setting a good example for other countries. The wish to set such an example moves many parties to endorse the broad interpretation of the convention’s scope suggested by the Government. The general attitude towards the convention, concerning its limited importance for the Netherlands and vice versa, is nicely summed up by the responsible minister (Van Boxtel, D66) during his second term in the debate on March 15, 2000:\textsuperscript{24}

‘I think our extension of the target group of the convention enhances its value. We do not do so out of some desire to always be “Nederland gidsland”.[\textsuperscript{25}] I think we have built up a tradition here of permanent discussion on the question of how we wish to treat minorities in our country. And that includes not only the Frisians, who happen to live together in a province, but also groups which have lived here for a long time or at least have been in our country for two or three generations. [...] The attitude we wish to project is that those groups also will be given the opportunity to safeguard their position in the Netherlands within the non-negotiable fundamental values and within the national laws and regulations. [...] If you just refer to the situation in Central and Eastern Europe, to the former-Yugoslavia, to the situation that is described so beautifully by Kaplan in his “Balkan Ghosts”, where all those different ethnicities in the different territories are continuously in conflict with each other, then to them you could say: look at what we at least try in the Netherlands! We don’t just have a province with inhabitants, but we have a diversity of minority groups in our country. We stand up for them, we point out their duties, and that is the way we would like to interpret this framework treaty.”\textsuperscript{26}

\textsuperscript{23} 1999/2000, No. 56: 3966, CDA; \textsuperscript{; represented by Verburg).}
\textsuperscript{24} See infra, 96-97.
\textsuperscript{25} The minister’s second term follows the Chamber’s first term.
\textsuperscript{25} The Dutch phrase ‘Nederland gidsland’ (literally ‘the Netherlands guiding country’) designates the Netherlands as having the duty to set the international standard of moral behavior.
\textsuperscript{26} I.T.K 1999/2000, No. 56: 3982. (‘Ik vind het een meerwaarde dat wij de doelgroep vergroten. Dat doen wij niet omdat wij altijd maar “Nederland gidsland” willen zijn. Ik denk dat wij hier een traditie hebben opgebouwd van een permanente discussie over de vraag hoe wij in ons land met
While most parties, like the minister, refer especially to the countries in Central and Eastern Europe, a few also explicitly mention Austria, where Jorg Haider’s rightwing anti-immigrant party the FPÖ had recently joined the government coalition. Because of the success of such anti-immigrant parties, these parties argue, it is imperative that the convention not be interpreted as applying only to national minorities narrowly defined.\textsuperscript{27} For most parties, however, the specter hanging over this convention is that haunting Central and Eastern Europe especially. The horror is that of countries which are segmented, much like the Netherlands under pillarization, but without an accompanying procedural morality ensuring mutual respect and forbearance between the segments.

In a very real sense, the Convention for the Protection of National Minorities constitutes a legal codification of a procedural morality for the peaceful accommodation of minority groups in segmented societies, stating explicitly what according respect to minorities entails. The question underlying the debate on the convention in the Netherlands is whether that procedural morality also reflects the way the Netherlands wishes to treat not just the Frisians, but its other minorities as well. The answer to this question depends on what kind of society parliamentarians understand the Netherlands to be, and relatedly on their conceptions of the standing of minority moral communities in that society.

\textit{The status and protection of minorities in the Netherlands}

As mentioned, only two parties in the Second Chamber discuss the convention primarily in view of its implementation in the Netherlands.

\textsuperscript{27} See D66 and GroenLinks especially; HTK 1999/2000, No. 56: 3970 and 3971 respectively (Groenlinks is represented by Oedayraj Singh Varma).
Both hail from the left of the political spectrum: the social democrat PvdA and the progressive ‘GreenLeft’ party GroenLinks. That being said, the PvdA especially does not seem to regard the convention as a particularly urgent matter. In answer to another parliamentarian’s criticism that the convention merely has ‘symbolic value’, the PvdA replies that ‘nothing’s wrong with a pretty symbol.’ Also, reflecting that if 80% of an urban neighborhood were to be Turkish, it might be a good idea were the elementary schools in that neighborhood to offer the lower grades education in Turkish, the PvdA refrains from pursuing the point further as ‘this is not currently an issue’. The PvdA does however see ratification of the convention as an opportunity to define more clearly which elements of minority cultures are and which elements are not compatible with the Dutch legal order, and calls on the Government to install a committee to study the matter. Significantly, the purport of this exercise is not only to discover that which is incompatible; as the party states, there may be ‘elements that are regarded as essential to a culture’ that are not protected by Dutch law, but possibly should be, implying that the Government has a positive role to play in ensuring that they are.

GroenLinks, on the other hand, explicitly welcomes the convention for the role it can play in combating assimilation, especially in light of the ‘discussion that has recently been rekindled about integration and assimilation’, a reference to the public debate instigated a few months earlier by Scheffer’s newspaper article The multicultural drama. The party calls attention to a number of articles of the convention, repeatedly asking of the Government how it proposes to implement each article with regard to minorities in the Netherlands. GroenLinks is ‘especially pleased’ with art. 5, which obligates parties to promote ‘the maintenance and development of identities of members of minorities’ and to ‘prevent assimilation’, and emphasizes that it will ‘strongly resist proposals for assimilation’. Thus the party projects and endorses an image of the Netherlands as a society consisting of a plurality of moral communities and welcomes the convention for its stipulation of the procedural morality facilitating their interaction. As such, support for central tenets of framework liberalism is implicit in GroenLinks’ position in this debate.

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In response to the PvdA and GroenLinks especially the minister explicitly addresses the Government’s view of the relative merits of integration and assimilation:

‘Questions have been raised concerning the link with integration policy in the Netherlands. [...] This includes questions about whether or not to assimilate or integrate. Why don’t I spell it out in black and white for a change: I believe that every minority in the Netherlands should assimilate where the basic rights are concerned that have been given the force of law. This is nonnegotiable. I cannot formulate this any clearer. But after that a door falls open, where many interpretations come into play, where issues and value patterns come in contact with each other which are not obstructed expressis verbis by law.’

In reaction to the PvdA’s request to investigate what is tolerable and what intolerable under Dutch law, and GroenLinks’ worry about the assimilation of members of minorities in the Netherlands, the minister concurs that these issues should be addressed. According to the minister, it is necessary to

‘propagate what is nonnegotiable, where there is room to maneuver, where misunderstandings must be cleared out of the way, where lack of understanding of the Islam must be explained and where comparisons should be made to the way in which we, in the traditional autochtthon society, handle a diversity of expressions and beliefs, what freedom that offers and what problems it entails.’

33 ‘Er is geïnformeerd naar de link met het integratiebeleid in Nederland. [...] Daarbij gaat het om vragen over het wel of niet assimileren of integreren. Laat ik het eens heel zwart-wit formuleren: ik vind dat iedere minderheid in Nederland moet assimileren als het gaat om de grondrechten die wij in wet- en regelgeving hebben vastgelegd. Dat is ononderhandelbaar. Ik kan het niet duidelijker formuleren. Maar daarna valt er een luik open, waar heel veel interpretaties opgeld gaan doen, waar zaken elkaar raken en waar waardepatronen elkaar raken die niet expressis verbis door wetgeving worden gehinderd’; HTK 1999/2000, No. 56: 3976.

34 ‘uitdagen wat ononderhandelbaar is, waar ruimtes liggen, waar misverstanden moeten worden opgeruimd, waar onbegrip over de islam moet worden verklaard en waar er een vergelijking moet worden gemaakt met de manier waarop wij in de traditioneel autochtone samenleving omgaan met een bandbreedte in uitingen en geloven, welke vrijheden dat biedt en welke problemen het met zich brengt’; HTK 1999/2000, No. 56: 3977.
The minister as yet offers no definite answers to these questions; this subject matter, he promises parliament, will be addressed in a future memorandum. When pressed by the SGP to answer whether or not the convention entails a departure from standing policy in so far as it consciously emphasizes, more than in the recent past, the ability to maintain and further develop cultural minority identities, the minister evades the question, claiming that it is too far-ranging, and repeating that the convention is compatible with existent law.\(^{35}\) Put on the spot, then, the minister is wary to acknowledge that the bill may imply, in the terms of this thesis, a framework liberal interpretation of Dutch society. What is clear from his answers is that he at least regards the Netherlands as being committed to pluralism, though within clearly defined limits. His reference to how Dutch society traditionally handles ‘a diversity of expressions and beliefs’ is not very helpful, however, as that is precisely the question at issue. Does it do this on the basis of a procedural morality, premised on the continuing presence of a diversity of distinct moral communities in society, or on the basis of a shared (partial) comprehensive doctrine premised on the value of individual liberty?

GroenLinks, then, is the only party in the Second Chamber to welcome the convention as a bulwark against assimilationist pressures in the Netherlands. Most parties, including the PvdA, seem convinced that the ability of members of minorities in the Netherlands to develop and maintain their own identity is not especially compromised, and that this is not likely to change in the foreseeable future. Most parties in the Second Chamber therefore support the convention’s aim of maintaining minority cultures, but without considering the domestic consequences of that support in the Netherlands. This insouciance with regard to minority issues is reflected most directly in the casual treatment of what should, arguably, be the debate’s most central question, namely ‘what is a national minority?’

**What is a national minority?**

During the debate the minister emphasizes that the convention’s primary purpose is to impress upon the countries of Central and Eastern Europe how they ought to treat national minorities. The broad definition of ‘national minorities’, therefore, should be seen in light of this cautionary

\(^{35}\) HTK 1999/2000, No. 56: 3978.
function of the convention. The majority of parties, it was shown above, take the same view of the convention, or at least endorse the Cabinet’s broad definition of ‘national minorities’. The exceptions are the conservative orthodox Protestant parties GPV and the SGP. Two coalition members also, the conservative liberal VVD and progressive liberal D66, acknowledge certain tensions inherent in the broad definition. Ultimately, however, only the SGP takes these concerns as a reason to vote against the ratification bill.

The VVD questions whether the convention has anything to add to the existing legal protection of individual members of minorities, and is concerned that it may hamper integration policy. More fundamentally, the VVD asks whether it would not be better to discard talk of ‘minorities’ altogether:

‘Why do we still use the term ‘minorities’? I know many minorities. [...] But aren’t we discussing living in Dutch society, which comes with certain rights but also with certain duties? And those apply to all.’

The VVD, however, seems to regard this criticism more as an academic point than one with any direct consequences for its own stance regarding the treaty; the remark falls outside the scope of the convention, though the party would ‘actually like to pursue the question further sometime.’

D66 similarly acknowledges certain principled shortcomings of the convention without regarding these as in any way practically debilitating. Even though the party recognizes that there may exist a tension between the convention on the one hand, ‘with its emphasis on the rights of minorities,’ and integration policy on the other, ‘which attempts, in certain regard, to put less emphasis on distinct identities than happened in the

37 HTK 1999/2000, No. 56: 3966 (CDA); HTK 1999/2000, No. 56: 3967 (PvdA); HTK 1999/2000, No. 56: 3970 (D66); HTK 1999/2000, No. 56: 3971 (GroenLinks). For the VVD’s position (which is ultimately supportive also) see below.
40 ‘Het voert te ver voor dit kaderverdrag, maar ik zou eigenlijk graag eens dieper op die vraag willen ingaan.’ HTK 1999/2000, No. 56: 3973.
past’, the party does not regard this as problematic. Despite having taken notice also of the Council of State’s advice concerning the approval bill, which states unequivocally that tension and conflict are to be expected when according minorities a principled right to their distinct identity on the one hand and pursuing a policy of integration on the other, D66 welcomes the Government’s broad definition of ‘national minorities’, even if this means that the target groups of integration policy will not receive the convention’s full protection.

In contrast to the VVD and D66 the orthodox Protestant parties GPV and SGP do pursue the point further. According to these parties the differences between national and ethnic minorities respectively are too great to bring both under the ambit of the same convention, both as a matter of definition – difficult enough in itself – and as regards their respective needs. Whereas integration policy concerning ethnic minorities is geared towards integration of members of minorities in society, the question of national minorities generally does not concern integration, but coexistence between the majority and a minority. According to the SGP, the purport of the convention is

‘to make the national minorities that have inhabited a distinct country for generations and that are evidently distinct in culture and language from the majority the object of governmental protection, precisely because in some situations these minorities are suppressed or discriminated against’.

The SGP, then, recognizes the convention as a codification of a procedural morality protecting minority groups from each other and the majority. The party goes on to question the compatibility of such an implicitly framework liberal framework with the policy goal of minority integration. How can a convention so conceived function as ‘a kind of normative “underpinning” of the integration policy concerning ethnic minorities’, the party asks. In

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61 *enerzijds dit verdrag, met zijn nadruk op de rechten van minderheden, en anderzijds het integratiebeleid dat op bepaalde aspecten nu juist de vroegere nadruk op eigenheid probeert te relativiseren’; (HTK 1999/2000, No. 56: 3970)
64 *om de nationale minderheden die sinds generaties in een bepaald land wonen en zich in cultuur en taal duidelijk van de meerderheid onderscheiden, tot voorwerp van bescherming van overheidswege te maken, juist omdat in sommige situaties die minderheden onderdrukt of gediscrimineerd werden of worden’; HTK 1999/2000, No. 56: 3972.
65 *een soort extra normatieve “underpinning” aan het integratiebeleid etnische minderheden’ (HTK 1999/2000, No. 56: 3972); see also HTK 1999/2000, No. 56: 3973.
answer to the Government’s argument that the convention will serve to set a high standard for the protection of the identity of minorities during the process of their integration in Dutch society, the SGP points out that this would imply that their identity is not sufficiently protected by the Constitution and treaties to which the Netherlands is party to begin with.46

The difficulty implicitly pointed out by these parties is that while the convention can best be interpreted as promoting the acceptance of a procedural morality protecting minorities, as groups, against other minorities and the majority, this is not necessarily, and probably not, the goal of integration policy. For that to be the goal of integration policy, there must at least be evidence of the existence of such a procedural morality in the Netherlands. This evidence is not readily available in the debate. Though there is repeated mention of the liberty to hold a diversity of beliefs, it is as of yet unclear whether that liberty is premised on a procedural morality akin to that of framework liberalism, or, for example, on a positive estimation of liberty which is grounded in a (partial) comprehensive doctrine, as in liberal culturalism.

The SGP and GPV, then, are more sensitive than other parties of the tensions that can result from the application of the convention, understood as a procedural morality, to a society ill-suited to that application. This also shows in their concern that the convention will be interpreted as laying down collective rights for national minorities.47

Pointing out the close relationship between collective rights and the self-determination of minorities, the GPV warns that to do so is, ‘especially in Central and Eastern Europe, political dynamite.’48 Rather than granting collective rights to minorities, the party argues that the ‘first task where human rights are concerned is and remains protecting these rights equally for all citizens.’49 The SGP similarly asks the Government to elaborate on the relationship between individual and collective rights in the convention, implying that it doubts that this distinction is as clear-cut as the Government maintains, and that this should be regarded as worrisome.50 The party also worries that the non-‘traditional minorities’,

47 The only other party mentioning collective rights is the VVD; see HTK 1999/2000, No. 56: 3973.
49 ‘De eerste taak op het gebied van de rechten van de mens is en blijft het waarborgen van deze rechten voor alle burgers op gelijke voet.’ HTK 1999/2000, No. 56: 3968.
i.e. the target groups of integration policy, will be able to derive ‘new or additional rights’ from the convention, especially with regard to religion.\(^{51}\) In that same vein, the GPV asks the Government to confirm that if,

‘as we could read in the newspaper last week, three Islamic organizations in our country were to request that the Islamic Feast of Sacrifice were to be made an officially recognized holiday, than this request by these minorities could not be supported by calling upon the rights contained in this convention’\(^{52}\)

What criticism there is, then, with regard to the broad interpretation of the term ‘national minorities’ favored by the Government, has bearing on the (in)compatibility of pursuing the integration of members of minorities while recognizing and protecting their distinct, moral community identity at the same time. The conservative liberal VVD, while allowing that the convention may serve a purpose for the Frisians, thinks it redundant against the background of existing individual liberties and tolerance in the Netherlands.\(^{53}\) (This tolerance, by the way, according to the VVD is illustrated by the ‘fact that the extreme right meets with hardly any success in the Netherlands’.\(^{54}\)) Given this freedom and tolerance, policy should be geared to removing those barriers to participation that still exist. Protecting minority identities, the VVD implies, is not helpful to that aim.\(^{55}\) The VVD, then, seems to endorse a policy of indifference with regard to cultural identity, be it that of the majority or a minority. The two orthodox Protestant parties, on the other hand, while also critical of the Government’s broad definition of ‘national minority’, are so less because they are of the opinion that the Government should be indifferent to cultural matters, than because they do not wish to give minorities, except for the Frisians, any cultural rights vis-à-vis the majority culture, especially in light of possible societal conflicts such rights may engender.

\(^{52}\) ‘Als, zoals we vorige week in de krant konden lezen, in ons land een drietal islamitische organisaties vraagt om van het islamitisch offerfeest een officieel erkende feestdag te maken, dan kan dat verzoek van deze minderheden niet worden gesteund met een beroep op rechten ontleend aan dit verdrag.’ HTK 1999/2000, No. 56: 3968.
\(^{54}\) ‘Het gegeven dat extreem rechts in Nederland nagenoeg geen voet aan de grond krijgt, laat dat eveneens zien.’ HTK 1999/2000, No. 56: 3973.
\(^{55}\) HTK 1999/2000, No. 56: 3973.
The GPV's motion: the convention should apply only to the Frisians

The second term of the debate is used especially by the orthodox Protestant parties GPV and SGP, who reiterate their concern about the broad definition of ‘national minorities’ endorsed by the Cabinet. The GPV repeats that the application of the convention in the Netherlands should be restricted to the Frisians. To that end, the party submits a motion explicating that ethnic minorities do not share in the characteristics necessary to be considered a national minority (‘being situated in a distinct territory and having and wishing to maintain a distinct and long-established national identity’) and that the treaty should therefore be applied exclusively to the Frisians.

When both motion and approval bill are put to the vote, the motion fails to garner majority support, however; only the CDA, the GPV, the SGP, and the RPF (another orthodox Protestant party) vote in favor. That notwithstanding, all parties bar one vote in favor of adopting the cabinet’s approval bill for the convention. The exception is not the GPV, as might be expected considering the motion submitted by that party, but the SGP, which party maintains that the broad definition of ‘national minorities’ is not beneficial to the protection of the traditional national minorities which were its original concern and that the implications of the convention for Dutch integration policy are insufficiently clear.

Summarizing the debate in the Second Chamber, it can be said that the Second Chamber as a whole, with the possible exception of GroenLinks and the orthodox Protestant parties, is not overly concerned about minority issues in the Netherlands. This is exemplified especially by the casual treatment of the possible consequences of the application of the convention to the target categories of integration policy in the debate. It seems that, for most parties, setting a good example abroad weighs heavier than assessing the convention’s impact at home. There are two exceptions, however, corresponding to two divisions running through the Second Chamber. The first separates the PvdA and especially GroenLinks.

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56 See HTK 1999/2000, No. 56: 3979-3981. CDA and GroenLinks also make use of the second term; CDA to remind the minister of the questions posed by the CDA in the first term that the minister failed to respond to, GroenLinks to emphasize their disagreement with the GPV’s restrictive interpretation of ‘national minorities’.

57 ‘zich op een bepaald grondgebied bevinden en vanouds een eigen nationale identiteit hebben en willen handhaven’, HTK 1999/2000, No. 56: 3980. See also Kamerstukken II, 26389, nr. 6.

58 Kamerstukken II, 26389, nr. 6.

from the rest of the Chamber; the second concerns the position taken by the two orthodox Protestant parties with regard to the rest of the Chamber.

First, the PvdA, and especially GroenLinks, both stand apart from the rest of the Second Chamber with regard to the government’s allotted role in protecting minority identities. Whereas most parties in the Second Chamber regard the existing regime in the Netherlands as sufficient for the protection and maintenance of minority identities, the PvdA and GroenLinks suggest that the state may have to take a more activist stance in order to protect minorities against assimilation (if they wish to be so protected). That being said all parties, including GroenLinks and the PvdA, agree that there are basic rights to which all members of society must conform, and that distinct cultural identities can only be enjoyed in so far as they do not conflict with those rights.

The second division separates the orthodox Protestant parties from the rest of the Second Chamber. This division concerns the broad definition of ‘national minorities’ proposed by the government. According to the GPV and SGP, the convention and the protection it entails should be restricted to the Frisians; the target groups of integration policy should not fall within the convention’s scope. The other parties do not see the broad definition as particularly problematic. That most parties do not see the broad definition of ‘national minorities’ as problematic serves as a warning not to draw any strong conclusions from this particular debate in the Second Chamber. As pointed out above, for most parties minority issues as of yet lack the urgency necessary for them to clearly define their position on the matter. Even the GPV, which party argues unambiguously against the broad definition of ‘national minorities’, ultimately votes in favor of the bill. For most parties international considerations weigh more heavily than national considerations with regard to the convention. The exceptions are the SGP and GroenLinks. The SGP is the only party to vote against the bill as a consequence of reservations concerning its compatibility with Dutch integration policy, which policy the party implicitly supports. GroenLinks, conversely, is the only party to explicitly support the bill from the conviction that the government should actively support the development and maintenance of minority identities, thus harking back to the minorities policy of the 1980s, the policy retrospectively labeled as multiculturalist. GroenLinks’ position seems to imply a rejection of the Dutch integration policy, though the party does not make this explicit.
In 2000, then, GroenLinks is the only party to explicitly voice its commitment to the organization of liberal society along framework liberal lines, while the PvdA makes it clear that it also would not be unsympathetic to such a society. Given the lack of urgency characterizing this particular debate, however, any further conclusions with regard to parties’ understanding of the place of minority moral communities in liberal society are unwarranted.

**Debating the Framework Convention in the First Chamber: the first term**

After adoption by the Second Chamber it took more than a year for the draft approval law to be debated in the First Chamber of Dutch Parliament. One of the reasons accounting for this delay was the extensive written proceedings preceding the oral proceedings. The written proceedings are a first indication that a number of representatives in the First Chamber were more critical of the approval bill than their counterparts in the Second had been.60 This was manifest in the oral proceedings also, which culminated in the minister’s request, in light of the bill’s likely defeat in the First Chamber, to suspend the proceedings until further notice. In what follows the similarities and dissimilarities between party-positions in the First and Second Chamber respectively will be addressed.

**CDA**

Though the position of most parties in the First Chamber is similar to their party’s position in the Second, this is not the case for the Christian Democrats (CDA). In the Second Chamber the CDA had argued that ‘the convention can entail a stimulus, or, in the words of the government, a useful legal support in developing and executing integration policy’.61 In the First Chamber, however, the CDA claims that the contradiction inherent in the Dutch interpretation of the convention as ‘an integration instrument

60 See the Reply Memorandum (*Memorie van Antwoord*), Kamerstukken I, 26389, nr. 60; the report of the standing committee for the interior and the high councils of state (*Nader voorlopig verslag van de vaste commissie voor binnenlandse zaken en hoge colleges van staat*), Kamerstukken I, 26389, nr. 60a; and the Further Reply Memorandum (*Nadere Memorie van Antwoord*), Kamerstukken I, 26389, nr. 60b.

supplementing Dutch integration policy’ is a ‘more fundamental’ reason to object to the approval law.62 According to the CDA, the convention ‘lays a line of defense around groups that historically stand in a more or less strained relation to the government, and provides their members, and their children and their children’s children, with claims against that government.’63 Integration policy, however, is of a different nature, for it is ‘geared precisely at clearing out of the way as fast as possible, if possible within one generation, a number of obstacles [to integration].’64 The CDA thus recognizes that respecting the inherently framework liberal procedural morality laid down in the convention cannot be squared with the object of integration policy.

The CDA also points out the oddity of insisting that the protection of minority groups is important enough to bring them under the ambit of the treaty, while making whether or not they remain under that protection dependent on a ministerial decision: ‘An attempt is made to immunize the position of national minorities by laying down an extra lock in the convention, and subsequently the key is handed over to the minister.’65 As a consequence, a ‘national minority’ can cease to exist as such if, in the words of the Government’s reply memorandum (as cited by the CDA) ‘the members [of the minority] are regarded as self-supporting and unhampered free members of our society and as enjoying all associated rights, including cultural and linguistic rights. Under those circumstances extra protection, as envisaged by the convention, is no longer necessary.’66

62 ‘veel wezenlijker bezwaar, namelijk de uitleg van het verdrag door Nederland, dat in het verdrag een integratie-instrument ziet ter aanvulling van het Nederlands integratiebeleid.’ HEK 2000/01, No. 31: 1390 (Dölle).
63 ‘Het verdrag legt een verdedigingslinie rond groepen die historisch in een min of meer gespannen verhouding staan tot de overheid, en verschaft de leden daarvan, hun kinderen en hun kinds kinderen aanspraken tegenover die overheid’; HEK2000/01, No. 31: 1390.
64 ‘er juist op gericht om zo snel mogelijk, als het kan binnen een generatie, een aantal hindernissen op te ruimen.’ HEK 2000/01, No. 31: 1390.
65 ‘Er wordt gepoogd om de positie van nationale minderheden te immuniseren door een extra slot in het verdrag op te nemen en vervolgens wordt de sleutel aan de minister gegeven’; HEK 2000/01, No. 31: 1391. As similar point was made in the Second Chamber by the SGP; see HTK 1999/2000, No. 56: 3972.
66 ‘dat de leden ervan geacht worden op eigen kracht en zonder enige hindernis te handelen als vrije burgers van onze samenleving en alle, ook de culturele en linguïstische rechten te genieten die daaraan verbonden zijn. In die situatie is een bijzondere bescherming als door
But what, on this account, should be made of the Frisians, asks the CDA. Why is their protection a continued necessity, even if they are clearly free and self-supporting members of Dutch society?67

Other relevant issues raised by the CDA include the question whether members of minority groups desire the status of minority as conferred on them by the convention, and whether enhancing the status of minorities is desirable in light of existing academic debate which increasingly emphasizes that ethnic groups should be accorded legal personality and should be regarded as subjects of international law.68

In the First Chamber the CDA, then, is much more sensitive to the problematic nature of protecting minority identities as collective identities. As far as the Frisians are concerned the CDA seems to regard the convention as redundant – presumably because the Frisians do not ‘historically stand in a more or less strained relation to the government’. As regards the new minorities the party favors integration, which the party seems to understand as a process by which members of these minorities become ‘self-supporting and unhampered free members of our society’ – who as such have all the rights necessary to enjoy their own culture already.

**VVD**

The VVD, like the CDA, believe that the Dutch constitution already offers the requisite protection of the cultural identity of all members of society, including members of minorities.69 Given that the Netherlands is also party to the European Convention on Human Rights and the International Covenant on Civil and Political Rights the party questions what the convention has to add to the existing regime.70 Not only that, but given the broad interpretation of national minorities favored by the government, the VVD fears that all manner of minority groups will

‘feel the desire, now the convention and the Dutch interpretation accommodate it so royally, to emphasize their own identity and to

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68 HEK 2000/01, No. 31: 1391.
69 HEK 2000/01, No. 31: 1393 (represented by Rensema).
70 HEK 2000/01, No. 31: 1393.
develop it. Their language and culture will have to be stimulated.\textsuperscript{71} ‘To stimulate’, argues the VVD, goes quite a bit further than ‘to respect’.\textsuperscript{72}

‘This is an essential point. There is no reason whatsoever to blame members of minorities for wanting to emphasize their own identity, but this in no way stands in the way of questioning whether a country with so many ‘national minorities’ [as the Netherlands] can form a good society.’\textsuperscript{73}

In the terms of this thesis, the party is thus raising the question of the feasibility of organizing Dutch liberal society along framework liberal lines. It immediately goes on to answer this question in the negative: the government’s professed belief that accommodating distinct identities and pursuing integration are mutually reinforcing is put down to ‘wishful thinking’.\textsuperscript{74}

‘It is, after all, to be expected that there will be a number of groups that will seek their strength in partial isolation. This can be a romantic notion that isn’t merely attractive but also dangerous.’\textsuperscript{75}

Finally, the party fears that applying the convention will fall foul of the principle of legal equality. How can it be explained that ‘a Frisian in Leeuwarden [(the capital of Fryslan)], who speaks outstanding Dutch, has the right to use his own language in education, in government, court, etc., and a Turk in Rotterdam does not’?\textsuperscript{76}

For these reasons the VVD, like the CDA, is highly critical of the bill. Interestingly, while the VVD in the Second Chamber emphasized that the

\textsuperscript{71} ‘Al deze groepen en groepjes zullen de behoeftte hebben, nu het verdrag en de Nederlandse interpretatie hen die zo royaal biedt, om hun eigen identiteit te benadrukken en te ontwikkelen. Hun taal en cultuur zal bevorderd moeten worden’; HEK 2000/01, No. 31: 1394.

\textsuperscript{72} HEK 2000/01, No. 31: 1394.

\textsuperscript{73} ‘Dat is een wezenlijk punt. Dat de personen die behoren tot een minderheid hun eigen identiteit willen vooropstellen is hen ook geenszins kwalijk te nemen, maar het is wel de vraag of een land met zo vele “nationale minderheden” een goede samenleving kan vormen’; HEK 2000/01, No. 31: 1394.

\textsuperscript{74} HEK 2000/01, No. 31: 1394.

\textsuperscript{75} ‘Het is immers waarschijnlijk dat er verschillende groepen zullen zijn die in een eventueel gedeeltelijk isolement hun kracht zullen willen zoeken. Hierin kan een romantiek schuilen die niet alleen aantrekkelijk maar ook gevaarlijk is’; HEK 2000/01, No. 31: 1394.

\textsuperscript{76} ‘Het zou mij grote moeite kosten, uit te leggen dat een Fries in Leeuwarden die voortreffelijk Nederlands spreekt, recht heeft op zijn eigen taal in onderwijs, bestuur, rechtspraak etc. en een Turk in Rotterdam niet’; HEK 2000/01, No. 31: 1396.
The orthodox Protestant party SGP, representing in this debate the ChristenUnie as well (a new party dating from January 31, 2000, in which the abovementioned GPV is fused with a second, smaller orthodox Protestant party, the RPF) takes a stance similar to that of SGP and GPV in the Second Chamber, though, as with the CDA and VVD’s respective contributions, the critique is somewhat more explicit and geared more to legal issues than that in the Second Chamber. For example, the SGP expresses its concern over the more robust legal base provided by the convention for positive action, above and beyond that which is necessary to combat discrimination. Also, the party worries that the convention may acquire a significance in the national domain that is not foreseen at present; it is, after all, a human rights treaty, and these are prone to dynamic interpretation.

With regard to the compatibility of integration policy and the protection of national minorities, the SGP expresses doubts concerning the Cabinet’s claim that integration and respect for distinct identities are mutually reinforcing rather than mutually exclusive. Moreover, the party rejects the government’s contention

‘that integration policy should be directed both to minority groups and the autochthonous part of society “in order to bring about, by mutual adjustment, a balanced plural society” [...]’

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77 HEK 2000/01, No. 31: 1397 (represented by Holdijk).
78 HEK 2000/01, No. 31: 1397.
79 HEK 2000/01, No. 31: 1397.
80 ‘dat integratie van minderheden en het respect voor eigenheid elkaar eerder versterken dan uitsluiten, kunnen wij nog steeds niet goed uit de voeten. Voor het uitgangspunt dat integratiebeleid zowel op de minderheidsgroepen als op het autochtone deel van de samenleving gericht moet zijn “om met wederzijdse aanpassing een evenwichtige plurale samenleving tot stand te brengen” [...] geldt hetzelfde”; HEK 2000/01, No. 31: 1397, referring to the Cabinet’s Reply Memorandum (Kamerstukken I, 26389, nr. 60: 9).
The implication is that the SGP, and therefore the ChristenUnie also, either regards the necessary adjustment as falling on the members of minority groups one-sidedly, or that the goal of integration policy should not be ‘a balanced plural society’, or both. In any case the party explicitly rejects any policies geared to bolstering the collective identity of ‘persons or groups having settled in a country during the course of the twentieth century’.81

The SGP and the ChristenUnie, then, like the VVD hint that integration involves shedding particular group identities to the degree necessary for membership of the new society. Being a member of society and having a distinct identity do not necessarily go together naturally. Given that both the SGP and the ChristenUnie represent small segments of Dutch society which are quite distinct as a consequence of their religious identity, the party should not be taken to understand integration as adaptation to the majority identity, however. It remains to be seen, then, in what respect members of society, according to these parties, must be integrated, and to what extent they can pursue their own distinct identity.

D66

D66 expresses sympathy for the worry, expressed by the three previous parties, that despite the government’s avowal that the convention will not have direct effect it will ultimately be invoked by individuals in court: ‘It should not be possible for newcomers to dodge civic-integration duties. It should be impossible to act contrary to Dutch law by invoking one’s culture or religion.’82 D66 chooses, however, to take the government on its word, though it does ask the minister to confirm that the treaty creates ‘no new duties for the Dutch government within the Dutch legal order.’83 (In an aside, considering the difficulty of finding an adequate definition for ‘a significant minority’, D66 suggests the following working definition: ‘a minority becomes significant when it starts having problems concerning its acceptance by the majority.’84)

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81 ‘personen of groepen die zich in de loop van de 20ste eeuw in een land hebben gevestigd.’ HEK 2000/01, No. 31: 1398.
82 ‘Nieuwkomers moeten zich niet aan inburgerings-verplichtingen kunnen ontworstelen. Men moet zich niet, met een beroep op de eigen cultuur of religie, in strijd met de Nederlandse wet kunnen gedragen’; HEK 2000/01, No. 31: 1398 (represented by Terlouw).
84 ‘Misschien is het wel een bruikbare definitie: een minderheid wordt substantieel als zij problemen krijgt met acceptatie door de meerderheid’ HEK 2000/01, No. 31: 1398.
D66, then, takes a stance very close to its counterpart in the Second Chamber: cultural and religious experience should be protected, but do not provide title for the exemption of individuals from the Dutch law. The convention, in short, should add nothing to the protection of individual liberty already existent in the Netherlands.

**PvdA**

The PvdA expresses its regret that the Cabinet’s broad interpretation of minorities is not received with more enthusiasm in the First Chamber. At the same time the PvdA concedes that formal ratification of the convention, even under the broad interpretation (which it endorses), will have hardly any material consequences for the Netherlands. Freedom of religion and ‘other forms of cultural experience’ are largely secured by the basic rights of the Dutch constitution, according to the party. Indeed, for the Netherlands the convention contains ‘nothing new under the sun’. Nevertheless, it would constitute ‘an international embarrassment of the first order’ if the Netherlands were not prepared to take the measures that it demands of other European countries in the context of the convention.

The PvdA welcomes the convention especially in light of the role it can play in combatting assimilation. That is why it endorses the broad interpretation of the government:

> ‘We believe such a broader definition does justice to the intentions of the convention, that wishes to further the integration of minorities without exacting assimilation. It cannot have been intended to set this treaty-mechanism in motion at the European level, while excluding the largest minority groups, for example the Muslims, from consideration, with which the Netherlands would fall back to the level of Austria.’

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85 HEK 2000/01, No. 31: 1401 (represented by Van Thijn).
86 HEK 2000/01, No. 31: 1400.
87 ‘andere vormen van culturele beleving’; HEK 2000/01, No. 31: 1400.
88 ‘niets nieuws onder de zon’; HEK 2000/01, No. 31: 1400.
89 ‘dat het ons internationaal een blamage van de eerste orde zou opleveren’; HEK 2000/01, No. 31: 1400.
90 Referring to the recent formation of a coalition government with Jörg Haider’s far-right party FPÖ in Austria. ‘Het kan niet de bedoeling zijn dat in Europees verband deze verdragsmachinerie in werking wordt gezet, terwijl de grootste minderheidsgroepen, bijvoorbeeld de moslims, buiten beschouwing worden gelaten, waarmee Nederland zou terugvallen tot het niveau van Oostenrijk’; HEK 2000/01, No. 31: 1401.
The PvdA does not condemn voluntary assimilation, however: every individual has the choice to what extent he or she wishes to adopt to Dutch society.\textsuperscript{91} That being said, the PvdA wishes to emphasize the existence of a number of 'shared, fundamental values,' which 'cut right through all the cultural diversity';

‘\textit{minima moralia}, that flow from international treaties and the Dutch legal order, the Constitution in the lead, that deserve general recognition and respect and belong to our shared heritage.'\textsuperscript{92}

According to the PvdA cultural diversity ‘demands a shared defense of shared fundamental values and norms’.\textsuperscript{93} The Netherlands has a reputation to live up to in this field, and the party expects the minister to ensure that the Netherlands does so by ratifying the convention.\textsuperscript{94}

The PvdA's statements can be interpreted in two ways. One, tending towards framework liberalism, is that cultural diversity cannot exist without a shared commitment to a procedural morality governing the interaction between different moral communities. The \textit{moralia} mentioned by the party, in that case, would be referring to such a procedural morality. The other interpretation, which tends more towards liberal culturalism, is that the scope of permissible cultural diversity in the Netherlands is determined by the acceptance, by the members of different moral communities, as a part of their comprehensive doctrines, of certain crucial values, such as the equality between the sexes, or the right to apostasy. Which interpretation is implied by the party depends in large part on its understanding of society and the place of minorities therein. Does it understand society as a collection of groups, or as a collection of individuals? Does ‘cultural diversity’ consist in a plurality of cultural groups living side by side, or in a plurality of individuals from different cultural backgrounds, managing their individual cultural identities as they individually please, together

\textsuperscript{91} HEK 2000/01, No. 31: 1401.
\textsuperscript{92} ‘\textit{dat er in de Nederlandse samenwerking, dwars door alle culturele diversiteit heen, een aantal gemeenschappelijke kernwaarden gelden, minima moralia, die voortvloeien uit internationale verdragen en de Nederlandse rechtsorde, de Grondwet voorop, die algemeen erkenning en respect verdienen en tot ons gemeenschappelijk erfgoed behoren}; HEK 2000/01, No. 31: 1401. ‘\textit{Minima moralia}’ perhaps is a misnomer, as arguably what the PvdA-MP has in mind are more properly Aristotle’s \textit{magna moralia}, with which Adorno contrasted his observations of bourgeois life under the conditions of modernity, in his 1951-book \textit{Minima Moralia: Reflexionen aus dem beschädigten Leben} (Adorno 2003 [1951]).
\textsuperscript{93} ‘vraagt ook om een gemeenschappelijke verdediging van gemeenschappelijke kern-waarden en normen'; HEK 2000/01, No. 31: 1402.
\textsuperscript{94} HEK 2000/01, No. 31: 1402.
with whosoever they choose? Though the PvdA does not make this explicit, the emphasis the party places on individual choice in cultural matters, and also its specific mention of Muslims as a beneficiary of the convention, lead me to suggest that the latter, liberal culturalist interpretation is implicit in the party’s contribution to the debate. The mention of Muslims is telling, in this regard, as the Muslim identity in the Netherlands does not denote a particular ethnic group, but rather a large group of believers from a wide variety of backgrounds. By mentioning the Muslims separately, the PvdA suggests that its concern lies more with discrimination against Muslims and possible threats to their religious liberty, than with maintaining a distinct Muslim community, and so also that it does not conceive of the Netherlands as consisting of a diversity of separate communities, but of individuals with a diversity of beliefs, views, etc.

**GroenLinks**

If GroenLinks in the Second Chamber interpreted the convention as a welcome explication of the procedural morality necessary for the kind of framework liberal accommodation of minorities favored by the party, its position in the First Chamber is somewhat confusing. For while here the party is similarly in favor of a broad definition of ‘national minorities’, implying thereby that the procedural morality laid down in the convention should not be limited to the status and treatment of the Frisians, at the same time it maintains that the current regime of minorities protection is sufficient for the recognition and protection of minority identities in the Netherlands, going so far as to challenge other parties to raise ‘concrete issues that haven’t yet been regulated in current Dutch law, with the exception of voting rights.’

According to GroenLinks the function of the convention is twofold: to better the prospects of minorities in so far as they are disadvantaged vis-à-vis the rest of society, and to express, protect, and develop the culturally distinct identity of a minority. This latter function meets a permanent need, ‘even when concerning a fully emancipated minority, such as the Frisians’. GroenLinks regrets that the government sees the need to

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95 ‘Ik daag u uit om in tweede termijn concrete punten te noemen die nog niet in de huidige Nederlandse wetgeving zijn geregeld, afgezien van het kiesrecht’; HEK 2000/01, No. 31: 1404 (Platvoet).
96 ‘ook als het een volledig geëmancipeerde minderheid betreft, zoals de Friezen’; HEK 2000/01, No. 31: 1404.
distinguish between two different categories falling under the convention, arguing that

‘new ethnic and cultural minorities manifest themselves as groups and have, as constitutive parts of society, an equal right to the protection of their distinct ethnic, cultural, and linguistic identity, and/or their particular Weltanschauung.’

In this light GroenLinks finds the government’s choice to include minority groups within the ambit of the convention only on the basis of their relative disadvantage questionable; in principle the identity of the Japanese, for instance, is just as deserving of protection as that of the target groups of integration policy. GroenLinks, then, seems to interpret the convention especially as a means of extending official, public recognition to minority cultures in the Netherlands, even though the existing regime of minorities protection means that recognition is not in itself necessary for the maintenance of those cultures. Be this as it may, it is in any case clear that GroenLinks conceives of Dutch society as consisting, at least in part, of a diversity of separate and distinct groups, and therefore to that extent as a framework liberal society.

The minister’s response to the first term

After stressing, once again, the importance of ratifying the convention for the sake of the Netherlands’ reputation abroad, the minister, representing the ‘purple’ coalition of PvdA, VVD, and D66, uses most of his response to address the expressed concern over the compatibility of the convention with integration policy. According to minister Van Boxtel (D66), Dutch integration policy, with its emphasis both on rights and duties and on maintaining cultural identities, is liable to cause tensions, that is nothing new. But that is precisely where the strength of Dutch integration policy lies, and that is the reason that the Cabinet wants to see that approach to the treatment of minorities applied in other countries as well:

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97 ‘nieuwe etnische en culturele minderheden zich als eenheden manifesteren en als constitutionerende delen van de samenleving evenzeer recht hebben op de bescherming van hun etnische, culturele, linguïstische en/of levensbeschouwelijke eigenheid’; HEK 2000/01, No. 31: 1404.
98 HEK 2000/01, No. 31: 1404.
99 HEK 2000/01, No. 31: 1405.
That is not inconsistent; on the contrary, it is a forceful way of showing that we take this issue seriously in a world that is not static. […] At present, the world is permanently in flux. We want to make clear that we also want to offer people that are new to our country a place, within the context of our basic and other legal norms, which everybody must respect.¹⁰⁰

Ratifying the convention, according to the minister, will not necessitate any adjustments to existing law and policy in the Netherlands. Its particular relevance for the Netherlands lies in creating a minimum standard, a threshold below which the Netherlands cannot fall. This will also have an effect the dialogue between states, however.¹⁰¹

The society envisioned by the minister is a society in which groups can maintain their cultural identity, as long as they respect ‘basic legal and other norms’. Note that the minister does not mention shared values. The minister also mentions the world as ‘not static’ and ‘in flux’, implying that Dutch society is changing as well. Finally, the minister describes the tension that results from the policy of accommodating minority identities as its strong point, and as setting an example for other countries. This implies that the minister accepts that accommodating minority groups involves tolerating, within the limits set by the law, what one might regard to be disagreeable. All in all, the position defended by the minister here is highly reminiscent of framework liberalism.

The minister’s position, however, is not shared by a majority in the First Chamber. At the close of his term the minister expresses doubt that the bill will carry the day. He therefore asks the First Chamber for a recess in order to ‘discuss with my colleagues how we assess [the current situation] in light of our international standing and the course taken thus far.’¹⁰² Subsequently, the debate is adjourned indefinitely in preparation for the second term.

¹⁰⁰ ‘Ik heb willen betogen dat wij juist de kracht van ons Nederlands integratiebeleid, zoals dat tot nu toe gevoerd is, inlechten in de benadering van de positie van minderheden in een land. Dat is niet inconsistent, maar juist een krachtige manier om te laten zien dat wij de zaak serieus nemen in een wereld die niet statisch is. […] De wereld is op dit moment permanent in beweging. Wij willen duidelijk maken dat wij binnen de context van onze grondwettelijke en andere wettelijke normen, waar eenieder zich aan moet houden, ook mensen die nieuw zijn in ons land een plek willen bieden’; HEK 2000/01, No. 31: 1406.

¹⁰¹ HEK 2000/01, No. 31: 1405.

¹⁰² ‘Ik wil goed met mijn collega’s bespreken hoe wij dit zien in het licht van onze internationale positie en de gang die wij tot nu toe zijn gegaan’; HEK 2000/01, No. 31: 1408.
Some reflections on the first term of the debate in the First Chamber

The content of the divisions and similarities between the parties in the First Chamber is roughly the same as in the Second, even though a number of parties have shifted their position. On the whole, parties are agreed that the importance of the convention lies in its application abroad and that existing rules and regulations in the Netherlands suffice to protect the members of minorities in Dutch society against assimilation. That being said, there is more awareness in the First Chamber than in the Second that the convention legally requires member states to do more than simply protect those members against assimilation, calling for the protection and maintenance of the distinct identities of the members as it does. No parties are willing to take those extra measures where the ‘new’, ethnic minorities are concerned (recall that for GroenLinks the current level of minority protection in the Netherlands is adequate).

This brings us directly to the first division, that concerning the responsibility of the government to protect distinct identities, which separated GroenLinks and the PvdA from the other parties in the Second Chamber. In the First Chamber the PvdA is more concerned with issues of discrimination and involuntary assimilation than with protecting minority identities as such. GroenLinks, however, in calling on the government to expand the target groups of the convention to include what one might call, following D66’s suggestion, ‘non-problematic minorities’, sees a role for the government in explicitly recognizing that society consists of distinct and separate cultural groups, suggesting that the maintenance of their identity is also the government’s responsibility. In doing so it stands in isolation from the rest of the Chamber.

The most apparent difference between Second and First Chambers, however, concerns the second division identified earlier, which separates parties in favor from those against the broad interpretation of the convention. In the First Chamber the CDA unambiguously sides with the orthodox Protestant parties in rejecting that broad interpretation. The VVD also, though this is more in line with its position in the Second Chamber, is much more outspoken in its rejection of the treaty. For both these parties the reason to reject the treaty is that it creates too many rights for minorities as groups, while they believe that the protection of minorities as individuals is adequate in the Netherlands.
In the spring of 2001, all parties represented in the debate in the First Chamber, with the partial exception of GroenLinks, regard the existing regime in the Netherlands to be largely sufficient for the protection of minority identities. Upholding individual liberty rights, combatting discrimination, and, presumably, treating the religious and cultural groups of newcomers equitably, are regarded as adequate and sufficient to that end. While some parties point out that there are limits to the diversity society can accommodate and stress the necessity of integration policies to accommodate diversity, parties on average seem to regard current integration policies as compatible with the protection of minority identities as well. All in all parties are agreed that there is room in Dutch society for minority moral communities. Society itself, however, is not understood as consisting primarily of such communities, as in framework liberalism, but as consisting of a diversity of individuals.

**Debating the Framework Convention in the First Chamber: the second term**

The temporary adjournment of the debate in the First Chamber lasts three and a half years. In the meantime the political context changes radically. The ‘purple coalition’ government of the second half of the nineties, consisting of PvdA, VVD, and D66, is replaced in 2002 by two consecutive governments headed by the CDA, first in a short-lived coalition with VVD and LPF (the party founded by Pim Fortuyn), then, from May 2003, together with VVD and D66. The extra-political context undergoes changes also. In 2004 the integration debate is well under way, fueled by global events such as the terrorist attacks of September 11, 2001 and local events such as the murders of Pim Fortuyn and, barely one month before the current debate’s second term, Theo van Gogh, the latter by a Moroccan-Dutch inhabitant of Amsterdam.

The new political context has given rise to a reinvigorated integration policy, which, though at the time of the debate still in the making, puts less emphasis on accommodating distinct identities, and more on establishing a common identity. In light of this new integration policy the new Cabinet, represented in the debate by minister Verdonk (VVD), has severed

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103 The PvdA requested, and was granted, a third term; HEK 2004/05, No. 7: 346 (represented by Van Thijn).
104 See supra, 9.
105 See also, supra, 79.
the link between the convention and integration policy, choosing to limit
the convention’s scope in the Netherlands to the Frisians, in exclusion of
the target groups of integration policy (as requested, recall, in the Second
Chamber by the GPV and the SGP). This relieves any tensions inherent
in pursuing integration and identity maintenance simultaneously. It also
emphasizes the categorical difference between the accommodation of
territorially distinct minorities such as the Frisians and of minorities that
are interspersed among the majority.

The composition of the First Chamber is also different, though a number of
parties is represented by the same representative as in the first term (the
CDA, the PvdA, and GroenLinks). Two parties not present during the first-
but taking part in the second term of the debate are the OSF, the one-man
‘Independent Senate-fraction,’ and the Socialist Party (the SP). While their
respective contributions to the debate are distinct from those presented by
other parties in the first term, the parties taking part in both terms show
no deviations from the respective positions taken earlier. The CDA, the
VVD and the orthodox Protestant parties, both of which are represented
by the SGP, welcome the limitation of the convention to the Frisians.106 The
PvdA and GroenLinks regret the narrow interpretation of the convention
now supported by the government.107 D66 sees the convention primarily
as an instrument for international dialogue concerning the treatment of
minorities and therefore abstains from objecting to the treaty on the
grounds of purely national considerations.108

Nevertheless, a few new subjects are broached in the second term. In
the following the focus will be on these new subjects. In light of the
Government’s new approach to integration policy, special attention will
also be given to the new Cabinet-minister’s contribution to the debate.

106 The CDA expresses enthusiasm for the ‘drastic revision’ of its understanding of the
convention (HEK 2004/05, No. 7: 301-302, Dölle); the VVD, while remaining skeptical of
the necessity of applying of the treaty to the Netherlands, will not oppose ratification ‘[n]
ow that the [interpretative] declaration is limited to the Frisians’ (HEK 2004/05, No. 7: 304,
De Graaf); the SGP states that given the approval law’s legislative history the approval of
the factions it represents is ‘hardly surprising’ (HEK 2004/05, No. 7: 305, represented by
Holdijk).
107 According to the PvdA the now current minimalist interpretation ‘hollows out’ the treaty
(HEK 2004/05, No. 7: 300); GroenLinks sees ‘little to be proud of’ in the new interpretation
(HEK 2004/05, No. 7: 305, represented by Platvoet).
108 HEK 2004/05, No. 7: 312 (represented by Engels).
What is a national minority?

Now that the application of the convention is limited to the Frisians, a number of parties, in 2004, point to the necessity of at least taking special measures also for the protection of the Roma and Sinti (the PvdA, GroenLinks, the OSF, the SP). This results in a squabble with the minister concerning the criteria for being considered a national minority. According to the Cabinet, these are five: a national minority’s members have the Dutch nationality (by which is meant citizenship; see the discussion of the OSF’s contribution below); they have a shared language, culture, and history that is distinct from that of the majority and so a distinct identity; they wish to preserve that identity; they are long established on Dutch soil and inhabit a distinct territory; and this area is strongly associated with them. According to the SP these criteria were cherry-picked to fit the Frisians and are otherwise arbitrary. According to the minister the reason the Roma and Sinti do not fall under the convention is because they do not meet the fourth criterion, that of being long-established in the Netherlands, ‘in the sense of [being] traditionally in the Netherlands.’ (The minister maintains that the Roma and Sinti have been in the Netherlands for 150 to 200 years. PvdA and GroenLinks say this is closer to 500 years.)

With regard to the criteria for belonging to a national minority, the OSF’s contribution is noteworthy. The OSF is the only party, in the entire debate, that explicitly takes the adjective ‘national’ in ‘national minority’ to refer not to the host nation, but to the nation that is a minority. According to the OSF the treaty protects the rights of national minorities, ‘which are minority groups, that, literally speaking, belong to another nation, even if they have the citizenship of the state in which they live.’ After pointing...

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111 HEK 2004/05, No. 7: 310.

112 ‘in de zin van traditioneel in Nederland.’ HEK 2004/05, No. 7: 341.

113 HEK 2004/05, No. 7: 342.

114 Het verdrag beschermde rechten van nationale minderheden, dat zijn minderheidsgroepen die, letterlijk genomen, tot een andere natie behoren, ook al hebben zij het staatsburgerschap van de staat waarin zij wonen’; HEK 2004/05, No. 7: 308.
out that in the Netherlands it is uncommon to make a difference between citizenship and nationality, and that in some cases individuals can regard themselves as belonging to two nations, as is the case with the Frisians, the OSF concedes that the convention will for that very reason have little material consequence for the Frisians. Nevertheless, explicitly recognizing a national minority can have a psychological effect, and therefore the OSF is pleased that the Frisians fall within the scope of the convention.\textsuperscript{115}

The OSF is equally pleased that the new minority groups are not recognized under the convention.\textsuperscript{116} This because the convention, besides obligating participating states to respect the human rights of members of national minorities, also confers 'rights that nevertheless must be considered as \emph{de facto} collective rights.'\textsuperscript{117} That the convention confers such collective rights is seen by the OSF as testimony that it is meant to apply to 'traditional minorities.'\textsuperscript{118}

'The state which harbors these minorities on its territory, by whatever historical coincidence, carries responsibility for both the individual as the collective rights of these minorities, for who else should have to carry that responsibility?'\textsuperscript{119}

It is because the Roma and Sinti constitute a \emph{nation} that they too should be brought within the scope of the convention. In so doing the Netherlands would be shouldering its share of Europe’s collective responsibility for these groups.\textsuperscript{120}

The Netherlands is not similarly responsible for the members of new minorities, i.e. 'the target groups of integration policy':

'Everyone who establishes himself here has the right to respectful acknowledgement of his identity, notwithstanding his duty not to make misuse of our society. That last remark applies to any given Dutchman. Integration is necessary to that end, but not

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\textsuperscript{115} HEK 2004/05, No. 7: 308.
\textsuperscript{116} HEK 2004/05, No. 7: 308.
\textsuperscript{117} 'rechten die toch in feite als collectieve rechten moeten worden beschouwd.' HEK 2004/05, No. 7: 308.
\textsuperscript{118} HEK 2004/05, No. 7: 308.
\textsuperscript{119} 'De staat die deze minderheden op zijn territorium heeft, door wat voor historische toevalheid dan ook, draagt de verantwoordelijkheid voor zowel de individuele als de collectieve rechten van die minderheden, want wie zou anders die verantwoordelijkheid moeten dragen?', HEK 2004/05, No. 7: 308.
\textsuperscript{120} HEK 2004/05, No. 7: 309.
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assimilation. The individual rights in the convention, that largely coincide with the general constitutional rights such as the freedom of expression, religion, association and assembly, and the right to be protected against discrimination, apply also of course to these new minorities. The rights that are attributed to collectives, however, do not; [...]”\(^{121}\)

For the OSF, then, nations such as the Frisians, the Roma, and the Sinti, that must reside in territories appropriated by other nations or states, have a right to be accommodated there as separate and distinct societies within the host society. For these ‘traditional’ minorities, the convention spells out a procedural morality to be respected by the host society, similar to the way framework liberalism sets forth a procedural morality in order to accommodate a plurality of groups inhabiting the same polity. With regard to other minorities in the Netherlands, including especially the target groups of integration policy, whose members’ identity is established by reference to their country of origin, or that of their parents, this is not the case. These minorities have, though perhaps not always voluntarily, substituted the Netherlands for their own nation-state, thereby implicitly agreeing to become part of Dutch society. They must therefore integrate, though on the terms set out in its constitution.

**The status and protection of minorities in the Netherlands**

The contributions of members of the First Chamber also reflect the societal developments mentioned above. The VVD, for example, confesses that its doubts, large already, considering the purpose and necessity of the convention have only grown,

‘now that the situation in the world and in our country has changed so drastically over the last three and a half years. This is a fact which we cannot and should not close our eyes to. Any measure of law or policy that could be interpreted as an invitation

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\(^{121}\) ‘Ieder die zich hier vestigt, heeft recht op eerbiediging van zijn identiteit, onverminderd zijn verplichting om geen misbruik te maken van onze maatschappij. Dat laatste geldt ook voor elke willekeurige Nederlander. Daarvoor is integratie noodzakelijk, maar geen assimilatie. De individuele rechten in het kaderverdrag, die voor een groot deel overeenkomen met de algemene grondrechten van vrijheid van meningsuiting, godsdienst, vereniging en vergadering en het recht om tegen discriminatie te worden beschermd, gaan natuurlijk ook op voor deze nieuwe minderheden. Maar dat geldt niet voor de rechten die aan de collectieven worden gegeven’; HEK 2004/05, No. 7: 308.
to minorities to withdraw further into themselves, should be omitted.'\textsuperscript{122}

This statement is cited approvingly by the minister in her response as conveying ‘one of the principles on which the new integration policy is based.'\textsuperscript{123} The minister describes this new integration policy as follows:

‘In the past much emphasis was placed on the acceptance of differences between minorities and the autochthone population. That policy was less concerned with bridging gaps. However, the unity of our society must be found precisely in what the participants have in common. That, I believe, is that we are all citizens of one society. Common citizenship for autochthone and allochthone residents is the goal of integration policy.'\textsuperscript{124}

Note that the minister speaks of citizens of society, and not citizens of the state or members of society. ‘Citizen', this implies, is used to demarcate an identity rather than a legal-political status. For the minister, then, ‘common citizenship' points to a shared identity rather than a shared status as citizen. Dutch society is also emphatically understood as one society, and not, for example, as a society consisting of different societal segments such as under pillarization, or of different cultural groups whose differences must be accepted mutually. This suggests that the minister implicitly understands the commonality of the Dutch in liberal culturalist terms as consisting in a shared (partial) comprehensive doctrine.

This emphasis on commonality is seen by the PvdA and GroenLinks as evidence that the new integration policy amounts to an ‘assimilation

\textsuperscript{122} ‘De grote aarzeling van de VVD-fractie over nut en noodzaak van het kaderverdrag voor Nederland [...] is er niet minder op geworden. Zij is eerder versterkt nu de situatie op het wereldtoneel en in ons land in de achterliggende driehalf jaar drastisch is gewijzigd. Dat is een gegeven waarvoor wij onze ogen niet kunnen en mogen sluiten. Elke wettelijke maatregel of beleidsmaatregel die zou kunnen worden opgevat als een uitnodiging aan minderheden om zich meer in zichzelf te keren, dient ons inziens achterwege te blijven’; HEK 2004/05, No. 7: 303-304.

\textsuperscript{123} ‘een van de beginselen waar het nieuwe integratiebeleid op gestoeld is.’ HEK 2004/05, No. 7: 345.

\textsuperscript{124} ‘In het verleden is veel nadruk gelegd op de acceptatie van de verschillen tussen minderheden en de autochtone bevolking. Dat beleid was er minder op gericht, afstand te overwinnen. Echter, de eenheid van onze samenleving moet juist worden gevonden in dat wat de deelnemers met elkaar gemeen hebben. Dat is naar mijn mening dat wij allemaal burgers zijn van één samenleving. Gedeeld burgerschap voor autochtone en allochtone ingezetenen is het doel van het integratiebeleid’; HEK 2004/05, No. 7: 338.
policy’. In a similar vein the SP remarks that though common citizenship is the goal of integration policy, the government seems unconcerned about the mounting discrimination against Muslims. What are the minister’s plans for preventing that the Netherlands itself will become a country that will be reprimanded for its treatment of minorities? Perhaps, suggests the SP, we should ’ask the Muslims to move to Fryslân and feel themselves to be Frisian’, for then they would fall within the scope of the convention.

The minister explicitly addresses the question of what kind of country, or rather, society the Netherlands wishes to be and what is necessary to that end. Answering the concern that the Netherlands is pursuing a de facto policy of assimilation, the minister emphasizes that

’[t]here is a very large difference between integration policy as we wish to pursue it in the Netherlands and a policy of assimilation or uniformity. Our point of departure is a common foundation. Up till now that [common foundation] has always been missing.’

This common foundation consists in speaking the same language, and in knowing and endorsing the values and norms of the Dutch society. ’Above and beyond that, anyone can enjoy his or her culture.’ While this seems to tend towards a liberal culturalist account of Dutch society, when pressed to elaborate on the content of the common values, the minister specifies that these

’are the values and norms of the rechtsstaat. We can be proud of our rechtsstaat, our democracy. We may expect people who wish to settle in the Netherlands to endorse those, our society’s, most important values.’

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125 The PvdA’s response to the minister is ’I take this as meaning that you are in favor of an assimilation policy.’ (’Ik begrijp hieruit dat u een voorstander bent van en assimilatiebeleid’; HEK 2004/05, No. 7: 338; according to GroenLinks the ’turnaround in Dutch integration policy’ ’reeks of assimilation’ (’de omslag in het Nederlandse integratiebeleid’ naar assimilatie riekende tekst’; HEK 2004/05, No. 7: 305.

126 HEK 2004/05, No. 7: 311.

127 ’Moeten wij bijvoorbeeld alle moslims vragen om in Friesland te gaan wonen en zichzelf Fries te voelen? Dan zouden zij natuurlijk wel onder de bescherming van dit verdrag kunnen vallen.’ HEK 2004/05, No. 7: 311.

128 ’Er is een heel groot verschil tussen het integratiebeleid zoals wij het nu willen voeren in Nederland en een assimilatie- beleid of een eensheidsbeleid. Wij gaan uit van een gemeenschappelijke basis. Die heeft tot nu toe altijd gemankeerd’; HEK 2004/05, No. 7: 338.

129 ’Daarboven kan een ieder genieten van zijn of haar cultuur.’ HEK 2004/05, No. 7: 339.

130 ’Het zijn de waarden en normen van onze rechtsstaat. Wij mogen trots zijn op onze rechtsstaat, onze democratie. Van mensen die zich in Nederland willen vestigen, mogen wij
The norms and values emphasized by the minister, the institutional values of the *rechtsstaat*, are reminiscent of the *moralia* referred to earlier by the PvdA. That notwithstanding it is the PvdA who now worry that society is demanding more of newcomers, referring to the extra-parliamentary debate on minority integration, which revolved, according to the party, around the question whether minorities should adapt to the ‘*Leitkultur*, to the dominant culture.’\textsuperscript{131} Is the Netherlands not becoming, asks the PvdA, a country that has too little respect for diversity? Emphasizing commonality should not come at the cost of forgetting about diversity.\textsuperscript{132} The minister denies pursuing an assimilationist policy, while emphasizing that it is necessary to be more explicit about ‘what the Netherlands takes pride in.’\textsuperscript{133} Ultimately, however, matters of culture and diversity are not the government’s responsibility:

‘Again, let it be clear that that common foundation is fixed and that beyond that enjoying the distinct culture and distinct identity of people and of countries of origin is the responsibility of citizens themselves and not of the government.’\textsuperscript{134}

That the government is not responsible for maintaining the culture and identity is implicitly called into question by GroenLinks, who once more expresses regret over the Cabinet’s limitation of the scope of the convention to the Frisians. According to the party the convention advocates

‘a multicultural society, within the frame of the *rechtsstaat*, of course, and so without any form of cultural relativism: a pluriform, diverse society, that, by the way, is a reality and which xenophobic rearguard actions will do nothing to change.’\textsuperscript{135}

\textsuperscript{131} ‘*de Leitkultur, de dominante cultuur*’; HEK 2004/05, No. 7: 339. The concept of a Dutch *Leitkultur* was introduced in the Dutch debate by the CDA-parliamentary leader Verhagen, inspired thereto by his German Christian Democratic colleague Friedrich Merz, who introduced the term in German parliamentary debate. See De Waard 2002. See on the German *Leitkultur*-debate Joppke 2008: 540.

\textsuperscript{132} ‘Natuurlijk zoeken wij naar wat wij gemeenschappelijk hebben, zeker op het gebied van normen en waarden en rechtsstatelijkheid. Dat neemt echter niet weg dat wij ook vorm moeten blijven geven aan diversiteit’; HEK 2004/05, No. 7: 346.

\textsuperscript{133} ‘waar Nederland trots op is’ HEK 2004/05, No. 7: 339.

\textsuperscript{134} ‘Laat nogmaals duidelijk zijn dat die gemeenschappelijke basis vaststaat en dat daarboven het beleven van de eigen cultuur en de eigen identiteit van mensen en van het land van oorsprong de eigen verantwoordelijkheid is van de burger en niet van de overheid’; HEK 2004/05, No. 7: 339.

\textsuperscript{135} ‘Het verdrag bepleit een multiculturele samenleving, maar uiteraard binnen de kaders
Cultural relativism, it should be understood, stands for allowing practices which are contrary to the laws and rights accorded to all Dutch citizens. The PvdA, GroenLinks, and the minister, then, all agree that the norms and values of the rechtsstaat set the limits within which diversity can be accommodated in the Netherlands. Whereas the minister, however, is indifferent with regard to the ability of minorities to maintain their distinct identity, GroenLinks is not, and the SP and the PvdA are especially worried about discrimination. According to GroenLinks, the state should recognize minority identities. This in itself would stimulate their integration:

'integration has the most chance of succeeding if minority groups are given the chance, with respect for their cultural and religious identity, to integrate in society. You should not deny that identity, as is currently done in the Netherlands, also in politics.'

This implicitly framework liberal position, of course, is highly reminiscent of the minorities policy of the 1980s. In 2004 GroenLinks stands alone in its endorsement.

**Adoption of the approval law in the First Chamber**

Despite differences of opinion such as those outlined above, the bill concerning the convention is adopted without a vote.

**Reflecting on the second term in the First Chamber**

In line with earlier reflections in this chapter the similarities and divisions between the party positions in the First Chamber will be highlighted here. First, despite the changed political context, the divisions are still roughly the same as in the forgoing debates: there is a division separating parties on the basis of their support for a broad or narrow interpretation of the convention respectively, and a division concerning issues of identity and assimilation.

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van de rechtstaat en dus zonder vorm van cultuurrelativisme: een pluriforme, diverse maatschappij, die overigens een realiteit is en waaraan xenofobe achterhoedergevechten niets zullen veranderen'; HEK 2004/05, No. 7: 307.

136 'Volgens mij is integratie het meest kansrijk, als je minderheidsgroepen met respect voor hun culturele en religieuze identiteit de kans geeft om in de samenleving te integreren. Je moet die identiteit niet ontkennen, zoals thans in Nederland gebeurt, ook in de politiek'; HEK 2004/05, No. 7: 306.

137 HEK 2004/05, No. 7: 348.
With regard to the first division the PvdA and GroenLinks are joined by the SP in (now) deploiring the narrow interpretation of the convention as covering only the Frisians and not the new ethnic minorities as well. That being said, all parties, including, notably, GroenLinks, seem to regard integration and participation to be legitimate goals of government policy.

The division concerning identity and assimilation separates GroenLinks, and to a lesser extent the PvdA and the SP, from the rest of the First Chamber. For GroenLinks distinct identities are a vehicle for the integration of minority groups and must be protected. That notwithstanding GroenLinks, and again to a lesser extent the PvdA, also seems to regard diversity as an end in itself, though ultimately it is the choice of members of minorities if they wish to preserve their identity. The PvdA and the SP both state that the protection offered the Frisians should also be granted to ethnic minorities. The rest of the First Chamber concurs with the minister, though in less explicit terms, that the maintenance of ethnic or cultural identities is not the responsibility of the state and that the existing regime in the Netherlands is sufficient for that maintenance.

The dominant similarity between all parties of the First Chamber, in line with the similarities in the previous debates, is that none of the parties deny that what diversity there is must be in conformity with the fundamental norms and values of the rechtsstaat.

**Debating the Convention for the Protection of National Minorities: Conclusion**

When the ratification bill for the Framework Convention for the Protection of National Minorities was presented to the Second Chamber in 2000, few members of Parliament welcomed it as necessary for the protection of minorities in the Netherlands. Though some MP’s worried about assimilation and discrimination at home, most parties took the convention as applying especially to other countries, where minority groups were actively suppressed by hostile majorities. For the sake of setting an example for those countries, the Dutch government wished to offer the convention’s protection to as broad a range of minorities as possible in the Netherlands. As a consequence, ‘national minorities’ were interpreted as including those minorities who were ‘target groups of integration policy’, i.e. minorities whose weak socio-economic performance and general marginalization in society were cause for worry. While some
MP’s pointed to the difficulties inherent in pursuing integration policies for these groups while also taking on the duty to protect their particular minority identities, suggesting to limit the convention’s application to the territorially bounded Frisians instead, this suggestion was not taken up by the Chamber. This should not be interpreted as a positive commitment to the preservation of minority identities in Dutch society, however, nor as a tacit commitment to framework liberalism. Rather, it seems that minority issues simply were not particularly salient in the Netherlands at that time.

In 2004, when the ratification bill was finally adopted in the First Chamber, minority issues had become salient, giving rise to a new appreciation of the implications of a broad interpretation of the convention. As a result, the Government had come to reject this earlier broad interpretation, choosing to limit the scope of the convention to the Frisians instead. In this it was ultimately supported by a majority of parties in the First Chamber.

The most significant finding of this chapter is a negative one: given a choice, the Netherlands chose not to accommodate minority moral communities as groups, except in the case of the Frisians, whose accommodation is already facilitated both by their territorial separation from and their close socio-cultural proximity to the rest of the Netherlands. This does not mean that the Netherlands is hostile to other minority moral communities in the Netherlands, only that it does not wish to confer collective rights on them, and that it believes the current regime facilitates their accommodation sufficiently. Notably, in 2004 also, increased emphasis is placed on the limits to diversity, which limits are not only legal but also cultural, consisting as they do in a shared allegiance to the values of the rechtsstaat. Relatedly, society is conceived of as consisting of individuals, not groups or segments.

The Framework Convention for the Protection of National Minorities serves as an example, it was suggested in this chapter, of a procedural morality governing the interaction between moral communities in a single polity. The choice to limit the scope of the convention to the Frisians demonstrates how much easier it is to sustain such a morality when societal divisions match territorial divisions. The parliamentary debates demonstrate, also, the difficulties inherent in sustaining minority moral communities whose members live dispersed among the majority. The major fear of doing so, finally, is that minority moral communities, as groups, will dissociate from the broader society. The possibility of such
dissociation is reason in itself not to stimulate the preservation of such communities or their communal identity.

To the extent that minorities wish to retain their cultural identity, most parties and the Government regard this to be an individual choice and the responsibility of minorities themselves. The Government’s responsibility is for society as a whole. Given its fear of societal disintegration, the stress it places on society’s homogeneity, and its emphasis of citizens’ common identity, it seems that the shared values propagated by the Government should not be interpreted along framework liberal lines as constituting a procedural morality governing the interaction between groups or individuals in society, but rather as part of a shared comprehensive doctrine defining the contours of the Netherlands as a moral, liberal cultural community in its own right. This conclusion is only tentative, however, as the debates covered by this chapter only touched upon integration indirectly. Therefore, in the next two chapters, we will look more closely at three debates bearing specifically on the integration of newcomers to Dutch society, and what is thought to be necessary for that integration to be successful.