



Tenth session

DRAFT INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Observations by Governments

The Secretary-General has the honour to circulate, in accordance with resolution 833 (IX) of the General Assembly, the following observations by the Government of the Netherlands.

7. THE NETHERLANDS

(Transmitted by note verbale dated 29 August 1955)

I. GENERAL

1. In their earlier comments the Netherlands Government have stated their general position with regard to the draft International Covenants on Human Rights as prepared at the earlier sessions of the Commission on Human Rights.

Since 1952 a number of provisions have been added to the covenants. Some of these provisions are - as will be set forth in the comments on individual articles - in the opinion of the Netherlands Government undefined as to their content and scope to such an extent, that the States no longer know at all to what they bind themselves when accepting the covenants. Therefore the Netherlands Government would at the present moment refrain from stating their general position with respect to the covenants as a whole, as they have finally emerged from years of work in the Commission. Suffice it to refer in this connexion to the statement made by the Netherlands representative in the Third Committee of the General Assembly on 29 October 1954. Comments and suggestions made are not necessarily

ficial and are not in any way to prejudice the position either of the Government of the Netherlands or of the Governments of Surinam and the Netherlands Antilles to be taken at the time when the question of accession to the covenants comes up for consideration.

2. Furthermore, observations and amendments to special articles are submitted below on the understanding that an acceptable solution will be found to the problem dealt with in the territorial application clause of both covenants and in respect of the system of reservations.

3. As regards the general drafting technique of both covenants the Netherlands Government share the view accepted by the Commission on Human Rights that the provisions of the draft Covenant on Civil and Political Rights, since these rights are to be assured immediately from the moment of ratification, should be drafted with the utmost possible precision, including a sufficiently clear indication of the permissible limitations of these rights, whereas the provisions concerning economic and social rights, since they are subject to an undertaking of progressive realization, can be suitably formulated in a single covenant in brief general terms, as concisely as possible and leaving out questions of detail which fall under the responsibility of the specialized agencies. As will be pointed out in the commentary on the articles below, both covenants, however, contain provisions which do not fit in with this general scheme.

4. The texts of both covenants suffer from unnecessary repetition which is not entirely without danger in a legal text.

For instance, a provision stipulating the right to an adequate standard of living is repeated several times in different terms in the draft Covenant on Economic, Social and Cultural Rights. The guarantee that there shall be no discrimination on the ground of sex in the enjoyment of the rights enumerated is repeated at least three times in each of the covenants. If, in fact, the principle of non-discrimination is accepted as regards all the possible grounds for discrimination and with respect to each of the articles of the covenants, a general clause covering this point, as contained in article 2 of both covenants, should suffice. Repeating one or more of the distinctions mentioned in the general clause in the text of isolated provisions, while omitting some or all of the other

distinctions, has the (probably undesired) effect of implying that, in the enjoyment of the right with which such a provision deals, less importance should be attached to the principle of non-discrimination in respect of the other grounds for discrimination which have not been repeated in the provision.

5. The comments on the articles confine themselves to a statement of the major objections which the Netherlands Government feel bound to raise to the substance or drafting of the articles concerned. Simple points of drafting technique have in general been omitted. The Netherlands Government reserve the right to raise any further questions or to submit further amendments, both as regards the substance and drafting of the articles, during the further stages of study and discussion of the draft covenants.

6. The views set forth in this comment are those of the Netherlands Government. The Governments of Surinam and the Netherlands Antilles had not been consulted when this comment was drawn up. These Governments fully reserve the right to submit their observations on, and to propose amendments to, the covenants at a later stage of study and discussion.

II. COMMENTS ON INDIVIDUAL ARTICLES OF THE COVENANTS

A. Draft Covenant on Economic, Social and Cultural Rights

Article 1

The Netherlands Government propose to delete this article. As this article is not concerned with an individual human right but with a collective right to be exercised by "peoples" and "nations", it has no place in the present Covenant.

Moreover, self-determination is not an absolute right as enunciated in paragraph 1 of this article, but a political principle of very great importance whose application in practice may be of direct concern to certain groups or nations. By their acceptance of the Charter Members of the United Nations are already bound to observe this principle in their relations with one another. The concept of self-determination is a complicated one, consisting of a number of notions and being susceptible of different forms of application. It embodies the fundamental idea of justice and liberty, but there is no general agreement

as to its detailed contents, i.e. what groups are to benefit from the principle, what forms of political expression are to be recognized as genuine expressions of a desire for self-determination and how it should be applied in concrete situations in relation to other Charter principles. All these different aspects of the principle of self-determination in its practical application should be considered in each concrete situation in the light of particular circumstances.

Because of its far-reaching and unforeseeable consequences article 1, as it now stands, will give rise to confusion and uncertainties as regards the scope of obligations to be undertaken by the States parties to the covenant, thereby creating the very real danger of adversely affecting their ability to sign the present covenant. This consequence is particularly unfortunate in that the importance of the covenants would not only be proportionately reduced, but also because of the fact that a fundamental principle is involved, to the observance of which all Members of the United Nations alike are bound as a sacred duty.

Article 2

Paragraph 2: Though the Netherlands Government consider the principle of non-discrimination to be a very important one which certainly deserves a place among the fundamental human rights they are of the opinion that the provision of the second paragraph of article 2, containing an immediate guarantee that there will be no distinction of any kind is too strict a requirement, which, under the present circumstances, hardly any State will be able to meet. For, in all countries where the materialization of these rights has not yet been fully accomplished, there will exist some inequalities in one form or another in the enjoyment of particular rights amounting to distinctions in the exercise of such rights.

Though there is every reason to eliminate as much as possible most of the distinctions mentioned in article 2, paragraph 2, a guarantee that they will disappear overnight cannot be demanded, the less so as in a number of countries (among which the Netherlands) the attainment of such a result is not within or not wholly within governmental control.

If then the provision of article 2, paragraph 2, should be retained in its present form, this will probably cause many countries, on signing, ratifying or acceding to the Covenant, to make some reservation, regarding the application of one or more of the rights mentioned in part III, which would adversely affect the operation of the Covenant. Therefore, the Netherlands Government would prefer to add at the end of the first paragraph the principle of non-discrimination now laid down in the second paragraph. According to this suggestion the text of article 2 would read as follows: "Each State party hereto undertakes to take steps, individually and through international co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in this Covenant by legislative as well as by other means and without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 3

The Netherlands Government consider this article redundant since discrimination on the ground of sex has already been dealt with in the general clause of article 2, paragraph 2. See also the general remark above concerning the dangers of repetitive or partially repetitive statements in a legal text.

Article 6

Legislation in the Netherlands in respect of employment of foreigners is compatible with the fundamental right of everyone to gain his living by work which he freely accepts, as enunciated in article 6.

The Netherlands legislator has taken certain legal measures for the protection of the Netherlands economy and the labour market in connexion with special conditions. These provisions open up the possibility of subjecting employment of foreigners to a system of licences. Such measures, which indeed exist in practically every country in one form or another, imply, it is true, a certain "distinction" as regards foreigners (see comment on article 2, paragraph 2) in so far as the right to work is concerned. The Netherlands Government are not prepared to relinquish in advance their powers of applying such measures when required.

An attempt might be made to find a solution to this problem in the way of granting to foreigners who have stayed in a particular country for a certain period, for instance five years, the same rights in this respect as are enjoyed by nationals of that country.

Article 7

For the reasons already stated above (see comment on article 3 and article 2, paragraph 2), the Netherlands Government are of the opinion that the following words are redundant and should be deleted: "in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work";

Furthermore, the Netherlands Government suggest that sub-paragraph (b) (ii) be deleted for the following reasons:

(1) Paragraph (b) does not make a distinction between "full-time" workers and "part-time" workers; the requirement of sub-paragraph (b) (ii) cannot be enforced in respect of "part-time" workers, whereas, in respect of "full-time" workers, the requirement of a "decent living" is already implied in the conception of "fair wages";

(2) The subject-matter is already covered by article 12.

Article 8

The Netherlands Government propose to bring this article into conformity with article 21 of the draft Covenant on Civil and Political Rights, including the addition with respect to members of the administration of the State, which is proposed as an amendment to paragraph 2 of the latter article.

Article 10

Paragraph 2: The Netherlands Government propose that the words "or morals" be inserted between the words "health" and "or dangerous to life".

Article 11

This article seems to be redundant as the subject matter appears to be already covered by article 12.

Article 14

Paragraph 2: The Netherlands Government propose that for "and shall be made progressively free" in sub-paragraphs 2(b) and 2(c), be substituted: "and measures shall be taken to ensure that no one for financial reasons only will be deprived of secondary /in sub-paragraph 2(c) "higher"/ education".

The object of this article, in so far as it deals with free education, is that no one shall be deprived for financial reasons only of elementary, secondary, or higher education. This object has the full approval of the Netherlands Government. The introduction of free education is only a means to this end. The end itself can also be realized in other ways. In the Netherlands, for instance, education is compulsory for a period of eight years of a child's life. The costs involved are borne, both for public and private education, by the State and partially by the municipalities. Advanced elementary education, secondary education, technical and vocational training, in so far as the child is over compulsory school age, as well as higher education is not free.

This does not alter the fact that the object of free education as regards that division of education that is not compulsory - namely, that no one for financial reasons only shall be deprived of this education - has nevertheless been realized in the Netherlands, both for public and private education, as the fees to be paid by the parents of the pupils of advanced elementary education, of secondary education and of vocational and technical training are proportionate to their financial capacity, whilst the granting of loans free of interest and of scholarships to students with no or limited means enables those who are eligible on account of their talents to enjoy the benefits of higher education.

So it appears that for realizing the object of this article it is not at all necessary to grant free education in all cases. That is why it is to be recommended to leave the contracting parties a certain measure of latitude in the way in which they propose to realize this object.

Article 15

The Netherlands Government propose that the words "or other territories under its jurisdiction" be deleted.

See comment on article 28. As regards the article as a whole, the Netherlands Government do not think that the present Covenant is suited for containing detailed implementation provisions of this kind. See their observation on the general technique of drafting the two covenants.

Articles 17 - 25 (reporting procedure)

The objections raised by the representative of Belgium (vide paragraph 77 and 205 of the report of the Commission on Human Rights on its tenth session) to the participation of States which have not acceded to the Covenant in the supervision of its implementation through their membership of the Commission on Human Rights and of the Economic and Social Council, merit the most careful consideration.

It would seem that any system according to which an existing organ of the United Nations is entrusted with a task in regard of the implementation of the covenant would, in principle, be liable to the same objections. In practice, the inconveniences resulting from such a system will be gradually reduced as the Covenant will be adhered to by a larger number of States. In any case it would seem logical to provide that the proposed machinery of implementation, involving organs of the United Nations as such, will only become operative if and when at least one half of the Members of the United Nations have acceded to the Covenant.

Article 27 (Federal State article)

The Netherlands Government are of the opinion that this article does not meet the intention of General Assembly resolution 421 (V). They reserve the right to offer any suggestions concerning this question or to propose amendments to this article at the further stages of study and discussion of the Covenant.

Article 28 (Territorial application clause)

The Netherlands Government regret the inclusion of this article which for constitutional reasons will make it difficult, if not impossible, for a number of States administering Non-Self-Governing Territories to adhere to the Covenant. The article does not take into account the constitutional developments in a number of Non-Self-Governing Territories as a result of which the metropolitan Government is bound to consult with the autonomous Government of the Territory and often

to obtain their consent on the application of an international treaty to the Territory, whenever such treaty deals with matters falling within the autonomous powers of the territorial government. This particularly applies to the present Covenant which contains numerous matters traditionally within the sphere of territorial or local autonomy.

Since separate Governments decide on the application of the Covenant to the metropolitan territory and to that of the non-self-governing country, the requirement that the provisions of the Covenant shall extend to or be applicable "equally" to a signatory metropolitan State and to all the territories which are being administered or governed by such metropolitan State, can only have the effect of unduly restricting the extension of the Covenant, both in respect of its material provisions and on account of the inevitable delays which will ensue in the adhesion to the Covenant by the metropolitan Government.

The condition of "equal applicability" of the provisions of the Covenant is also inconsistent with the responsibilities assumed by the administering States under Article 73 and following of the United Nations Charter. Under that Charter these States are pledged to develop the Non-Self-Governing Territories in accordance with "the particular circumstances of each territory and its peoples and their varying stages of advancement" and to promote the welfare of the peoples of these territories "with due respect for the culture of the peoples concerned". The Netherlands Government would therefore prefer a provision on the lines of article 63 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to be substituted for the present article 28, which would make it possible for the administering States to apply the Covenant to Non-Self-Governing Territories in conformity with their responsibilities under the Charter.

B. Draft Covenant on Civil and Political Rights

Article 1

See comment on article 1 of the draft Covenant on Economic, Social and Cultural Rights.

In the present Covenant this article is even less acceptable in connexion with the special provision relating to its implementation contained in article 48. See comment on article 48.

Article 2

Paragraph 2: The Netherlands Government consider this provision redundant, as the obligations of the States parties to the Covenant have already been laid down in paragraphs 1 and 3 of article 2 and failure to enact the necessary legislation cannot be pleaded as an excuse for not fulfilling these obligations.

Article 4

Paragraph 2: In connexion with the fact that under exceptional circumstances it may happen that the execution of a sentence of death cannot be delayed till the petition for pardon or commutation of the sentence has been decided upon (see article 6, paragraph 3), the Netherlands Government propose that paragraph 2 of article 4 be amended so as to provide that derogation from paragraph 3 of article 6 is possible in time of public emergency. To that end the words "paragraphs 1, 2 and 4" should be added in parentheses after the words "articles 6" in paragraph 2 of article 4.

Article 6

Paragraphs 1 and 2: The Netherlands Government do not deem it desirable that in a covenant in which the rights should be stated with the utmost possible precision terms such as "arbitrary" ("arbitrarily") should be used. Owing to their vagueness such terms give rise to uncertainty. There are no generally accepted standards according to which it could be determined whether deprivation of life, or an arrest (see article 9) or interference with privacy etc. (see article 17) is "arbitrary" or not.

That is why the Netherlands Government would prefer the contents of this provision to be stated more precisely by amending these paragraphs on the lines of the corresponding article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accordingly the Government propose that paragraphs 1 and 2 of article 6 be amended as follows:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

"2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from lawful acts of war or from the use of force which is not more than absolutely necessary:

"(a) In defence of any person from unlawful violence;

"(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

"(c) In action lawfully taken for the purpose of quelling a riot or insurrection."

Article 7

The Netherlands Government assume that the second sentence of this article aims at outlawing the degrading, so-called scientific experiments made on human beings in the recent past and that the word "experimentation" does not cover experimental methods of medical treatment having the welfare of the patient in view.

If this interpretation is correct the part of this article after the words "involving risk" should be deleted.

Article 8

The Netherlands Government propose that the following words be added at the end of sub-paragraph 3(c) (1): "or of a person during conditional release of such detention".

Article 9

Paragraph 1: In this paragraph, too, the term "arbitrary" is employed. In this provision the condition that no arrest shall be "arbitrary" is made over and above the requirement that it must be authorized by law. The Netherlands Government are of the opinion that the term "arbitrary" is far too vague for assessing action lawfully taken for arrest or detention. Should, however, the second sentence of paragraph 1 be deleted, only the requirement of the lawfulness of an arrest or detention would remain. The latter is a formal criterion which, in connexion

with the divergence of legislations, would not in itself offer a sufficient guarantee. That is why the Netherlands Government think it desirable to state explicitly in this article which exceptions to the general prohibition of the deprivation of liberty ought to be permitted. In the opinion of the Netherlands Government the first paragraph of article 5 of the European Convention contains a satisfactory phrasing in respect of this matter, which phrasing the Netherlands Government would recommend for paragraph 1 of article 9 of the Covenant. Accordingly the Netherlands Government propose to amend paragraph 1 of article 9 as follows:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

"(a) The lawful detention of a person after conviction by a competent court;

"(b) The lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

"(c) The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence;

"(d) The detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

"(e) The lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

"(f) The lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

Paragraph 2: That every person arrested should already "at the time of his arrest" be informed of the "reasons for this arrest", seems to be to the Netherlands Government too strict a requirement. It seems sufficient to stipulate that he shall be so informed "promptly". It is also recommendable to ensure that the person arrested shall be informed of the reasons for his arrest and of any charges against him in a language which he understands.

Therefore it seems more appropriate to word paragraph 2 as follows:

"2. Anyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

Paragraph 5: For the reasons stated above (see comment on paragraph 1 of this article) the Netherlands Government propose that the words: "arrest or deprivation of liberty in contravention of the provisions of this article" be substituted for the words "unlawful arrest or deprivation of liberty".

Article 10

The Netherlands Government are in general agreement with the provisions of this article, which have already been satisfactorily implemented in their national legislation. They do not, however, consider the provision of paragraph 1 necessary, since "inhuman treatment" has already been prohibited in article 7 of this Covenant. As regards paragraph 2, they think that the present Covenant is hardly suited to contain provisions of a detailed and technical nature of this kind. The Netherlands Government would therefore consider its elimination as an advantage or, alternatively, would suggest that the word "normally", or a similar term, be inserted between "shall" and "be". They would also prefer to substitute the word "entitled" for the word "subject" in paragraph 2 in order to avoid too restrictive a phrasing.

Article 11

The Netherlands Government believe that this article does not exclude the possibility, existing under Netherlands laws, of imprisoning civilly, persons refusing to meet duly contracted financial obligations, including obligations to provide alimentation. Should there be any doubt on this point, it is suggested

that Article 11 be worded more restrictively so as to exclude the above-mentioned cases, e.g. as follows:

"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation to perform labour".

Article 12

Paragraph 1: The freedom to leave a country should not be given to persons who have special obligations to the Government of that country, which commitments have not yet been fulfilled (e.g. tax liabilities, national service, or voluntary contracted obligations binding the individual to the Government). Furthermore, it goes without saying that persons who are lawfully detained or on conditional release from detention should not be free to leave the country.

Accordingly, the Netherlands Government propose that article 12, paragraph 1 be amended as follows:

"1. Subject to any general law of the State concerned which provides for such reasonable restrictions as may be necessary to protect national security, public safety, health or morals or the rights and freedoms of others, consistent with the other rights recognized in this Covenant, everyone legally within the territory of a State shall, within that territory, have the right to

"(1) Liberty of movement; and

"(ii) Freedom to choose his residence;

"2. Everyone shall be free to leave any country, including his own, subject to the restrictions mentioned in the preceding paragraph and to any outstanding obligations with regard to national service, tax liabilities or voluntarily contracted obligations binding the individual to the Government;"

Paragraph 2: To be renumbered as paragraph 3.

Article 13

The right granted to aliens in the second part of this article should be confined to aliens who have been lawfully resident in the territory for more than two years.

Article 14

Paragraph 1: As this article is, for the rest, wholly concerned with criminal procedure, it is assumed that the requirement of "equality before the Courts", laid down in the first sentence of this paragraph, does not exclude the possibility of levying a cautio judicatum solvi from aliens in civil suits, nor the possibility of admitting a person to sue or defend in forma pauperis.

Paragraph 4: The Netherlands Government consider the present Covenant hardly suited for containing provisions on such a complicated subject matter as compensation for "miscarriage of justice". That is why the Netherlands Government would suggest that this paragraph be deleted.

Article 15

Paragraph 1: The Netherlands Government propose that the last sentence of this paragraph be deleted. In Netherlands law the provisions of this paragraph are only applicable in case the modification of the law is the result of a change of legal convictions. Moreover, this provision is of too technical a nature to be counted among the civil and political rights of man.

Paragraph 2: The Netherlands Government propose that the last words of this paragraph be brought into line with the phrasing of Article 38, paragraph 1(c) of the Statute of the International Court of Justice, in other words, that the words "the general principles of law recognized by civilized nations" be substituted for the words "the general principles of law recognized by the community of nations".

Article 16

It is understood that this article does not exclude a legal provision to the effect that special categories of persons will need the authorization of other individuals to appear before a Law Court.

Article 17

As regards the use of the term "arbitrary" in connexion with the criterion of lawfulness reference is made to the comment on article 9. In conformity with the nature of this Covenant which aims at as exact a definition of the rights as possible, the Netherlands Government would prefer the text of this article

to be stated more precisely on the lines of the corresponding provision of article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The text to be substituted runs as follows:

- "1. Everyone has the right to respect for his private and family life, his home and correspondence.
- "2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- "3. No one shall be subjected to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such attacks."

Article 18

Paragraph 3: The Netherlands Government would prefer the following text for this paragraph:

"Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." (vide article 9, paragraph 2, European Convention).

Article 19

Paragraph 2: The Netherlands Government propose that the following sentence be added at the end of this paragraph:

"This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises." (vide article 10, paragraph 1, European Convention).

Paragraph 3: The Netherlands Government would prefer the following more comprehensive text to be substituted for this paragraph: (vide article 10, paragraph 2),

"The exercise of the rights provided for in the foregoing paragraph, since it carries with it duties and responsibilities may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary."

Articles 20 and 21

Article 20 should be interpreted thus:

- (1) That the right of peaceful assembly in the open air may be made subject to an official licence;
- (2) That the right of peaceful assembly does not include the right to hold pageants, or processions in the streets.

As regards the "right of peaceful assembly" it is not, but as regards the "right to freedom of association", it is laid down that the provision in question "shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces or of the police". It may be argued that this explicit provision is superfluous on account of its being implicit in the general clause relating to "national security", "public safety" and "public order". If there should be any uncertainty as regards this matter, this explicit provision would have to be inserted not only for the "right to freedom of association" but for the "right of peaceful assembly" as well.

In both articles the explicit provision would then have to run as follows:

"This article shall not prevent the imposition of lawful restrictions on the exercise of this right by members of the armed forces, of the police or of the administration of the State."

In any event, the Netherlands Government propose that the words "or of the administration of the State" be added at the end of paragraph 2 of article 21.

Article 22

Paragraph 2: The term "marriageable age" is vague. It goes without saying, however, that this term should be taken to mean the minimum age laid

down in the national legislation of each State party to the Covenant. In order to bring this out more clearly in the text, the words "as determined by the law of each State" might be added.

As appears from the discussions in the Commission this provision does not exclude the possibility that the exercise of this right by minors may be subject to the consent of their parents, legal guardians or of a public authority in accordance with the national laws of the States parties to the Covenant.

Article 24

As regards the inclusion of this article the Netherlands Government concur in the objections made by the United Kingdom Government in their comments of January 1954 (see document E/CN.4/694/Add.2, page 7) both with respect to content and scope of the article. As regards the peoples living in the Non-Self-Governing Territories in various stages of advancement, the strict enforcement of the absolute prohibition laid down in this article would lead to a violation of their customary law (see comment on article 28 of the draft Covenant on Economic, Social and Cultural Rights).

Article 25

The Netherlands Government understand that the protection of the rights and interests of persons belonging to minority groups with which this provision is concerned applies only to the social intercourse within such groups. In other words that the present article should not exclude the possibility of subjecting, with regard to jurisdiction and the dealings of such groups with the authorities, the use of a minority language to certain restrictions in order to ensure legal uniformity and security.

Article 26

The Netherlands Government concur in the observations on this article made by the United Kingdom Government in their comments of January 1954 (document E/CN.4/694/Add.2, page 7/8).

Article 32

Declaring a seat on the Committee to be vacant should be possible not only if a member has ceased to carry out his functions, but also in case he has ceased to fulfil the conditions required for membership of the Committee.

That is why the Netherlands Government suggest that between the words "temporary character" and "the Chairman of the Committee" in the first paragraph of this article, the words "or to fulfil the conditions required for membership of the Committee" be inserted.

Article 41

This article contains the principle that first the available domestic remedies must be exhausted before the case can be submitted to an international forum, in this instance the Committee.

The question arises in this connexion what is meant by the term "normally", which term may give rise to uncertainty owing to its vagueness. If this term only serves to point to the exception referred to in the second sentence of this article, it had better be dropped. If also other exceptions are meant, the question arises if it is not preferable to refer to the exceptions generally recognized under international law, as is done in article 26 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In order to avoid this uncertainty, the Netherlands Government would propose that article 41 be worded as follows:

"The Committee may only deal with a matter referred to it after all domestic remedies have been exhausted according to the generally recognized rules of international law."

Article 43

Paragraph 2: In the opinion of the Netherlands Government it would be going too far to impose upon the Committee the obligation to report in no event later than eighteen months after the receipt of a complaint. This obligation ought not to exist in case, as a consequence of the provision of article 41, the Committee is precluded from dealing with the complaint. In that case the Committee ought to have the right to dismiss the complaint. Also in the case provided for in article 44, i.e. the consultation of the International Court of Justice on any legal question connected with a matter of which the Committee is seized, the period of eighteen months had better be dropped.

Article 44

See comment on article 43, paragraph 2.

Articles 46 and 47

These articles deal with the relationship between the procedure provided for in articles 40 to 43 of the Covenant, and other procedures for the settlement of disputes concerning the interpretation or application of the Covenant. It would seem that this complicated subject matter requires a more elaborate treatment, since the present text leaves several questions open. Thus, there is no provision with regard to settlement of disputes otherwise than by submitting the case to the International Court of Justice. The Netherlands Government would therefore suggest that articles 46 and 47 be drafted on the following lines:

"Article 46

"A State Party to the Covenant complained of may, if the Committee has stated its opinion that the facts found disclose a breach by that State of its obligations under the Covenant, bring the case before the International Court of Justice.

"Subject to the provisions of article 47, a State Party to the Covenant lodging a complaint may, if no solution has been reached within the terms of article 43, paragraph 1, submit the case to such procedures of judicial settlement of disputes as are provided for in conventions or agreements to which both the State Party complained of and the State Party lodging a complaint are parties."

"Article 47

"The provisions of this Covenant shall not prevent the States Parties to the Covenant from submitting to the International Court of Justice, in accordance with conventions and agreements to which they may be parties, any dispute arising out of the interpretation or application of the Covenant in a matter within the competence of the Committee.

"The submission referred to in the preceding paragraph shall stay any proceedings before the Committee.

"A judgment rendered by the International Court of Justice under the first paragraph of the present article shall be binding also upon the Committee."

Article 48

This article, adopted at the ninth session of the Commission on Human Rights contains special provisions for the implementation of article 1 of this Covenant. Since the Netherlands Government consider that article 1 has no place in the present Covenant, it follows that in their view any provision relating to its implementation is equally unacceptable.

Apart from this, the Netherlands Government would point out that the provision contained in the first paragraph of article 48, and relating to annual reports on the implementation of the obligations assumed under article 1, exceeds the obligation concerning the transmission of information undertaken by United Nations Members who are responsible for the administration of Non-Self-Governing Territories with respect to such Territories. Moreover, the Netherlands Government do not think that the Human Rights Committee would by its nature and functions be an appropriate body for receiving and discussing such reports.

The provision contained in the second paragraph of article 48 exceeds even further the scope of the obligations imposed by the Charter on the United Nations Members administering Non-Self-Governing Territories with respect to their administration of such Territories. In fact, this provision is totally inconsistent with the Charter which under Chapters XI-XIII has conferred certain special responsibilities upon the said Members who have accepted these together with certain clearly prescribed duties. Among these is the responsibility for determining whether a particular Territory has reached such a stage of development as to enable it satisfactorily to determine its own political status. The Netherlands Government are not prepared to abandon this responsibility and consequently cannot undertake to conduct elections, plebiscites or otherwise determine a Territory's status on the adoption of a proposal to that effect by the General Assembly.

Moreover, the Netherlands Government are of the opinion that the provision is discriminatory against the Administering States, since only they are asked to undertake new obligations which go far beyond the scope of the Charter. The Netherlands Government think this the more unacceptable as the article is included in a Covenant which should contain obligations bearing equally on all States parties to the Covenant.

Finally, the Netherlands Government are opposed to the conversion of the Human Rights Committee from a quasi-judicial into a political body, as contemplated in this provision. By empowering the Committee to seek out evidence of the political aspirations of the inhabitants of such Territories, an earlier decision of the Human Rights Committee according to which the Committee was not to have the right to consider petitions from non-governmental organizations and individuals, nor to take any initiative on the basis of such information would be rendered nugatory.

Article 49

The Netherlands Government are of the opinion that the submission of reports by the States parties to the Covenant (particularly as provided for under (b) of paragraph 1 of this article) is not an appropriate method of implementing this Covenant, since this would introduce an element of progressiveness into its implementation, which is inconsistent with the conception that the obligations under this Covenant should be binding from the moment of ratification.

If States encounter difficulties in adapting their legislation to the provisions of this Covenant, a solution should be found by making a reservation (see comment on the proposals concerning a reservation clause).

If, however, it should be thought expedient to receive reports on the implementation of article 22, paragraph 4, consideration would have to be given to the insertion of this article in the draft Covenant on Economic, Social and Cultural Rights.

Finally, the same objections apply to this article as have been made above in connexion with part IV of the draft Covenant on Economic, Social and Cultural Rights as regards the discussion of reports submitted by States parties to the Covenant, and the participation in the making of recommendations with regard to such reports, by States which have not ratified or acceded to the Covenant.

C. Reservations

The Netherlands Government are in favour of the adoption of an article concerning reservations along the lines of the text proposed by the representative of the United Kingdom of Great Britain and Northern Ireland (vide annex II A of the report of the Commission on its tenth session).

D. Denunciation

Neither of the Covenants contains a provision concerning denunciation. The Netherlands Government favour the inclusion of such a provision on the lines of the corresponding provision of article 65 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
