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ON CIVIL AND
POLITICAL RIGHTS



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Fourteenth session

SUMMARY RECORD OF THE 325th MEETING

Held at the Wissenschaftszentrum, Bonn-Bad Godesberg,
on Monday, 26 October 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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the Covenant (continued)

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The meeting was called to order at 10.40 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Netherlands (continued) (CCPR/C/10/Add.3)

1. Mr. BURGERS (Netherlands) said that he would attempt to reply to all questions concerning part A of the initial report of the Netherlands (CCPR/C/10/Add.3) but that, owing to the lack of time, replies to some questions would have to be addressed to the Committee in writing.
2. Concerning the report in general, some members of the Committee had considered that it concentrated unduly on the legislative and juridical aspect of the implementation of the Covenant while nothing had been said about the specific difficulties encountered in implementing the Covenant. That apparent imbalance was to be explained by the fact that the report was an initial one; he assured the Committee that the obstacles and difficulties affecting the implementation of the Covenant would be dealt with in subsequent reports.
3. With regard to the introduction to the report, a question had been raised as to whether the Kingdom of the Netherlands was a unitary State. He said that sovereignty rested with the Kingdom only, so that it was a single State under international law, but that did not mean that it was a unitary State: the Charter of the Kingdom showed that the Kingdom of the Netherlands was a composite State, currently consisting of two countries each having its own legal system. As a result, a treaty to which the Kingdom was a party and whose provisions were directly applicable for both countries, as was the case for the Covenant, could be implemented differently in the two countries. Similarly, reservations might be formulated in respect of one of the countries but not of the other.
4. One member of the Committee had asked whether the Netherlands Government could exercise a veto in the event that the Netherlands Antilles asked for independence. Though it was true that, under the Charter of the Kingdom, the legal framework linking the two countries could not be amended unilaterally, the Netherlands Government had decided to support recognition of one or more independent States, depending on whether the islands chose to become independent together or separately.
5. Concerning section I of part A of the report, several members had asked for more information on the question of the direct applicability of the Covenant to the Netherlands. According to the Netherlands Constitution, the provisions of treaties had binding force if by their substance they were capable of binding all persons; the courts had given a broad interpretation to the expression "capable of binding all persons". The treaty provisions binding on all persons were both provisions creating rights and provisions imposing duties or obligations. In the event that a controversy arose over the direct applicability of a particular treaty provision, the judiciary had the final word. That question was particularly important, for in Netherlands law, only those provisions took precedence over domestic laws. No law in force in the Kingdom would be applied if it was incompatible with directly applicable treaty provisions; that rule pertained to all laws, whether they had been promulgated before or after the self-executing treaty provision had come into force for the Netherlands.

6. Those general constitutional rules were particularly important with respect to treaties in the area of protection of human rights, as was indicated by the extensive case law in the Netherlands on various provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. If an individual considered that a decision by a governmental body constituted a violation of one of his basic rights as set forth in the Covenant, he could argue before the court that that decision was incompatible with the relevant provision of the Covenant; in such a case, the judge would first have to determine whether the treaty provision in question was directly applicable and, if so, whether the disputed rule of national law was compatible with the treaty provision. It was important to point out that, before ratifying the Covenant, the Netherlands Government and Parliament had made an effort to adjust domestic legislation to the Covenant, where necessary, and they would endeavour to ensure that future laws were in conformity with the Covenant. Nevertheless, it was for the courts to determine, in concrete instances, whether the legislature had enacted legislation which respected the Covenant; that provided an additional guarantee for citizens. To date, there had been no cases in which the courts had found an act to be incompatible with the Covenant, but regulations other than those enacted by the central legislature had sometimes not been applied, due to conflict with the provisions of the Covenant.

7. If the judiciary in last instance denied the direct applicability of a particular provision of the Covenant, there was no further remedy at the national level, and the individual who claimed that one of his basic rights had been violated could then appeal to the Human Rights Committee, which the Netherlands Government had recognized as competent to receive and consider individual complaints. The opinion of the judiciary concerning direct application of a provision was decisive.

8. In reply to questions concerning section I, paragraphs (c) and (d), he said that the Government of the Netherlands had not established a national human rights commission, as recommended by the General Assembly, and did not intend to do because the structure of legal and administrative remedies as a whole ensured the correct observance of human rights; moreover, the system was adapted to the needs of modern society. The establishment of other bodies in the field of protection of human rights, such as an Equal Treatment Commission and perhaps a Commission against Racial Discrimination, was being considered. The Government was in the process of creating an Independent Advisory Committee to deal with human rights in the area of foreign policy.

9. He confirmed that there were several non-governmental organizations in the Netherlands concerned with the protection of human rights, including the very active Netherlands section of the International Commission of Jurists.

10. With regard to section I, paragraph (e), concerning publicity given to the Covenant, he said that the Dutch text of the Covenant had been published in the Netherlands Treaty Series even before the ratification procedure had started and a second time after it had been completed. Furthermore, on the occasion of the

thirtieth anniversary of the Universal Declaration of Human Rights, the Netherlands Minister for Foreign Affairs had published a booklet containing the Dutch text of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Finally, he had held a press conference recently to inform the public that the Human Rights Committee would be considering the initial report of the Netherlands, and he would hold another conference the following week in order to report on the replies to the questions.

11. One member of the Committee had asked for explanations concerning section I, paragraph (f)(i) of the report; it would have been useful to be able to distinguish between "droit" and "loi", but it was impossible to make that distinction in English, which had only the word "law". The Netherlands Constitution contained provisions according to which certain areas could be governed by law - in other words, only Parliament could make the rules. The English word "law" should therefore be understood as meaning "legislation" in that context.

12. With regard to section I, paragraph (f)(iii), it was not true that the report stated that the Government of the Netherlands gave the European Convention for the Protection of Human Rights and Fundamental Freedoms precedence over the International Covenant on Civil and Political Rights or that the report gave a subjective interpretation to its articles. The authors of the report had merely mentioned the arguments put forward in the Council of Europe during the discussion on whether it was necessary for States parties to the European Convention also to accede to the Covenant and had stated the argument on which the Netherlands Government had based its decision to become a party to the Covenant.

13. Turning to section II of the report, he recalled that one member of the Committee had asked, in connection with article 1 of the Covenant, what was the position of the Kingdom of the Netherlands on the questions of South Africa, Namibia and the Palestinian people. The Government of the Netherlands regarded the problem of South Africa as a human rights problem, condemned the policy of apartheid and believed that all sorts of pressures, including economic measures, should be exerted on the régime of South Africa in order to force it to abide by United Nations resolutions: the Netherlands Government was looking for the most effective manner to participate in the oil embargo and was rendering humanitarian assistance to movements that opposed apartheid.

14. The Namibian problem, on the other hand, was a decolonization problem. The Netherlands Government regarded the continued presence of South Africa in Namibia as illegal and had recognized the legal competence of the United Nations Council for Namibia to issue Decree No. 1 relating to the protection of the natural resources of Namibia.

15. As to the Palestinian people, the Government of the Netherlands recognized its right to self-determination while at the same time recognizing the right to existence and to security of all States in the region, including Israel.

16. With regard to article 4 of the Covenant, one member had asked for information on the powers of the State in the event of a state of emergency. The power to restrict basic rights, conferred upon the Government by the War Act and the Civil Authority (Special Powers) Act, conformed with the Covenant.
17. In response to a member who had asked in which cases citizens could be tried by military courts, he said that the offences which military courts were competent to try were set forth in the Criminal Offences in Time of War Act. They comprised, in particular, all attacks on the security of the State committed in time of war, whether by military personnel or by civilians.
18. With regard to article 6 of the Covenant, a question had been asked about the infant mortality rate in the Netherlands. It had been 10.7 per mil in 1976 and 8.6 per mil in 1980. In the Netherlands, the death penalty was provided for in cases of offences against State security, breaches of military obligations such as desertion, violence against the sick or wounded, espionage and treason and voluntary service for the enemy in time of war. A death sentence could not be carried out against a pregnant woman.
19. Concerning problems raised by drugs, the central objective of the Netherlands' policy was the prevention and elimination of individual and social risks involved in drug use. Restrictive measures depended on the assessment of the risks involved. A distinction was made between drugs involving unacceptable risks and the traditional cannabis products. In 1976, the Opium Law of 1927 had been amended. The new legislation and the law enforcement measures concentrated on tackling the drug trade, particularly the trade in drugs involving unacceptable risks. However, the restrictions and sanctions applicable to the possession of traditional cannabis products had been reduced.
20. Medical and scientific experimentation on persons (article 7 of the Covenant) had been the subject of very strict instructions by the Minister of Justice. Not only was the written consent of the person required, but in the case of a minor or a mentally disturbed person, a declaration signed by the individual concerned or his legal representative was also required. Moreover, even if the consent was given, the Minister of Justice decided whether or not the experiment would take place.
21. With regard to article 9 of the Covenant, the report had mentioned an amendment of the military criminal and disciplinary codes and of the legislation on mentally ill persons. It might perhaps be more accurate to state that, as far as the military criminal and disciplinary codes were concerned, an amending Bill had been submitted to Parliament, and that the amendments to the legislation on the mentally ill had been adopted by the Lower House but had not yet been adopted by the Upper House.
22. In reply to the question whether a person wrongly detained could obtain compensation, he said that the person could obtain compensation only if he requested it.
23. A judge ruling on the lawfulness of the detention of a mentally ill person took a decision not only on the form but also on the substance, in other words he attempted to determine whether the detained person was really ill. In order to do so, he sought the opinion of psychiatrists, but he had to see the individual in person.

24. In cases of pre-trial detention, the detention order was not renewed automatically by the magistrate. Whenever it came up for renewal, the magistrate had to determine whether there were sufficient grounds to warrant an extension.

25. The Boards of Inspection of houses of detention, prisons and State asylums for psychopaths (article 10 of the Covenant) included among their members a judge, a lawyer, a doctor and a social worker. They could have access at any time to all institutions they were responsible for visiting and to all premises within those institutions where inmates were housed. The Boards of Visitors monitored the treatment of inmates and the observance of regulations. They could give opinions on all matters concerning the institutions they inspected. The members of the Boards of Visitors took turns visiting the institutions under their supervision at least once a month, and the inmates could talk with them on those occasions.

26. With regard to article 11 of the Covenant, there was continuing discussion in the Netherlands on imprisonment for debt. The Government of the Netherlands was of the opinion that Netherlands legislation was compatible with the provisions of the Covenant. Nevertheless, it intended to amend that legislation so that the judge responsible for deciding the case could determine whether the debtor was acting with malice or was genuinely unable to fulfil his obligations.

27. Turning to questions concerning article 12 of the Covenant, he explained that, in the matter of human rights, aliens enjoyed the same protection as Netherlands nationals. Furthermore, there were no restrictions on persons from the Netherlands Antilles who wished to settle in the Netherlands. Interlocutory injunctions were of a final nature.

28. Judges (article 14 of the Covenant) were appointed for life by the Queen, and only the Supreme Court could remove them from office under certain conditions, which were extremely restrictive. To his knowledge no judge had ever been removed from office in the Netherlands.

29. With regard to the reservation entered by the Netherlands Government in respect of article 14, paragraph 5, of the Covenant, he explained that the persons whom the Supreme Court was empowered to try in first and last instance were members of Parliament, Ministers, the Governor of the Antilles and the Provincial Commissioners. However, any accessories of such persons were tried by the ordinary courts; they would therefore have the possibility of appealing to a higher court.

30. Aliens had the same rights and opportunities as Netherlands nationals in bringing lawsuits. They did not have to deposit security.

31. In the event of amendments to the criminal laws (article 15 of the Covenant) a lighter penalty could not be applied to a person who had already been tried and found guilty. The lighter penalty could be applied only if the case had not yet been tried at the time when the new legislation entered into force.

32. In connection with article 18 of the Covenant, it had been asked what was the number or proportion of conscientious objectors in the Netherlands. In 1976 there had been more than 2,000 of them (1.8 per cent), and in 1979 they had numbered more than 3,000 (2.8 per cent).

33. With regard to article 19 of the Covenant, the guidelines governing freedom of expression of civil servants, published in July 1972 by the Prime Minister, did not create legal obligations. The legal obligation applicable was the norm laid down in article 50, paragraph 1, of the Royal Decree containing the "General Rules for the Civil Service", according to which "The civil servant is obliged to fulfil scrupulously and diligently the duties ensuing from his function, and to behave as befits a good civil servant". That rule was extremely vague. That was why, in 1972, the Prime Minister had issued a guideline in order to assist civil servants in determining the scope of their obligations. However, that guideline was not law in the sense of article 19, paragraph 3, of the Covenant.

34. More information had been requested about the dilemma presented by protection of freedom of expression and protection of certain other legitimate interests. That information would be furnished in a subsequent report.

35. He explained the reasons which had prompted the Netherlands to formulate a reservation in respect of article 20, paragraph 1, a reservation which did not concern the Netherlands Antilles and about which there had been a divergence of opinion in Parliament. First of all, the prohibition of war propaganda was applicable only to such warfare as was not permissible under international law, in particular wars of aggression. But the question was not a simple one, for most often both sides maintained that they were in the right. Besides the fact that the question did not appear to lend itself to adjudication by domestic courts, a court judgement on that matter might be exploited for political purposes, which could have repercussions on relations with foreign countries. Secondly, it was extremely difficult to determine what constituted "war propaganda". The Netherlands Government wished above all to avoid restrictions being placed on the freedom of expression for political considerations.

36. Concerning paragraph 2 of the same article, he explained that, while very little information was given in the report on that point, that was not because the authors had wished to conceal any difficulties but because the Netherlands reports on racial discrimination were already dealing extensively with those difficulties. The latest report had stated that Netherlands society as a whole was relatively tolerant, but that some forms of discrimination against members of ethnic minorities did occur, not only among the public but also in government bodies. The latest report had also explained why the Netherlands courts had thus far been unable to prohibit the political party with racist opinions to which one member of the Committee had referred. The Netherlands authorities were aware that the lack of such a possibility made it difficult to perform certain treaty obligations. However, he wondered, given its extremely poor showing in the latest elections, in which it had won only 0.12 per cent of the vote, whether prohibition of that party would be the most effective way of reducing its influence.

37. In reply to a question concerning section 429 (3) of the Penal Code, which prohibited the providing of financial or other material support for activities directed towards racial discrimination against persons on account of their race, he said that he knew of no case in which that matter had arisen in connection with support for the apartheid system. On the other hand, as stated in the annexes to the report, the President of the Judicial Division of the Council of State had

recently ruled that measures should be taken to ensure that a street collection for the South African anti-apartheid trade union SACTU could take place. In that connection, the Netherlands Government and Parliament had indicated their profound disapproval of apartheid; that attitude was shared by the majority of the Netherlands population.

38. In reply to the question whether the granting or refusing of a licence for open-air meetings (article 21 of the Covenant) was left to the discretion of the authorities, he said that, in accordance with article 9 of the Constitution, a licence could be refused only in the interests of public order and that, in particular, it could not be refused on account of the purpose of the meeting. In the event of refusal, it was possible to appeal to the Judicial Division of the Council of State.

39. Concerning article 22 of the Covenant, a question had been asked about the position of the Netherlands Government regarding the possibility of third-party applicability of the right of association. The Government's opinion concerning that article was the same as had been mentioned in the report with regard to article 21: article 22 also affected the relationship between individuals, but the form that took would have to be decided by the courts. With regard to the difficulties that had arisen in observing the relevant instruments of the International Labour Organisation, he said that, approximately two years before, the Confederation of the Netherlands Trade Union Movement had filed a complaint against the Netherlands Government because it believed that ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise had not been fully observed. The Confederation had considered that workers' rights had been affected by the Government's decision to take certain measures with regard to wages. That question had been discussed in 1980 and 1981 in the Conference Committee on the Application of Conventions and Recommendations. In June 1981, the former Minister for Social Affairs, Mr. Albeda, clarifying the decision of the Government before that Committee, had stressed that the Netherlands Government considered freedom of association to be a fundamental human right and that the Government regretted that in some cases it had been obliged to enforce certain measures, as voluntary wage stabilization had been rejected by some of the organizations concerned. That Committee had expressed the hope that in the near future it would be able to note fuller conformity with the principle of free collective bargaining, and Mr. Albeda had promised to keep the Committee informed.

40. Turning to articles 23 and 24 of the Covenant, he said that a person who was under an obligation to pay alimony but was unable to pay could always apply to the court for reduction or termination of that obligation. As for adoption, it was not a requirement that both adoptive parents should be Netherlands nationals; it was sufficient for the adoptive father to be a Netherlands national.

41. Concerning measures taken in the Netherlands for the protection of the family and the child, reference should be made to the Netherlands report relating to article 10 of the International Covenant on Economic, Social and Cultural Rights, in which the Netherlands authorities would give adequate attention to that question.

42. Several members of the Committee had expressed concern about current developments in Netherlands society and their possible impact on Netherlands legislation. He pointed out, first of all, that his country did not envisage legislative modifications in order to stimulate or produce changes in social behaviour, since that would be inimical to individual freedom. However, if the people freely decided on such changes, the authorities had to examine what implications that might have in the fields of legislation and administration. For instance, if many Dutch people now preferred to live together unmarried, it would not be reasonable to ignore that in the rules that governed the allocation of housing. Furthermore, foreign observers might gain an exaggerated impression of the scope of the changes taking place. Actual social practices differed far less than might be thought from those of the past. He did not know which changes might be introduced in the relevant Netherlands legislation, but he could assure the Committee that such changes would not run counter either to the letter or to the spirit of the Covenant.

43. In connection with article 25 of the Covenant, he explained that political parties came under the general rules concerning associations. In connection with the question whether a political party preaching nazism would be tolerated, he referred to what had been stated in connection with article 20, paragraph 2, of the Covenant and to the explanations given to the Committee on the Elimination of Racial Discrimination. Furthermore, even if such a party were prohibited, the problem would not be solved as far as elections were concerned. Former members of a dissolved political party could still stand for election as individuals. As that electoral system lay at the heart of Netherlands democracy, it was unlikely that the law would be changed on that point. That was a case where legitimate constraints on the freedom of association would run counter to the basic features of the Netherlands electoral system.

44. It had also been asked whether the distribution of voting districts was not such as to endanger the "one man, one vote" principle. The Netherlands applied the system of proportional representation. For administrative purposes, the country was divided into voting districts, but the distribution of seats in Parliament among the political parties corresponded to the national aggregates of votes received.

45. With regard to the situation of minorities in the Netherlands (article 27 of the Covenant), he explained that the figures he was in a position to give were based simply on estimates, since registration of the population on the basis of ethnic origin or race was considered to be incompatible with the right to privacy and to be morally unacceptable. The main ethnic minority groups were, first of all, migrant workers and their families from Mediterranean countries; secondly, people from Suriname and from the Antilles; and, finally, the Moluccans. There were also Chinese, gipsies and various groups of refugees, mainly from Latin America and South-East Asia. There were about 270,000 Mediterraneans, 160,000 Surinamese, 35,000 persons from the Antilles and 35,000 Moluccans. There were thus more than 570,000 people belonging to ethnic minorities, which represented over 4 per cent of the Netherlands population. However, that percentage did not sufficiently bring out the real problems. In the big cities, for example, the proportion was about 10 per cent, and within the cities the situation differed from neighbourhood to neighbourhood. In The Hague, for example, it was 9 per cent, but more than 20 per cent and even as high as 36 per cent in certain neighbourhoods. Distribution

by age group also had to be taken into account. In one neighbourhood in The Hague, for instance, 57 per cent of children under 15 years old belonged to ethnic minorities. There were already schools in which more than half the pupils belonged to ethnic minorities.

46. In its latest report under the International Convention on the Elimination of All Forms of Racial Discrimination, the Netherlands Government had indicated that its policy on minorities was based on the recognition that the Netherlands was a multicultural community in which ethnic minorities would occupy a permanent place. Many measures had been taken to combat disadvantage and discrimination, in particular in the fields of education, housing, employment and health, but also in the area of personal relations between members of the various minorities. His delegation would submit to the Committee copies of a document published by the Netherlands Ministry of Home Affairs concerning the policy on minorities. Finally, with regard to the legal position of minorities, the Netherlands did not view minorities as such as bearers of group rights which needed to be protected; the Government's concern was to protect the rights of the individuals who were members of those groups, an approach fully in conformity with the provisions of article 27.

The meeting was suspended at 11.55 a.m. and resumed at 12.30 p.m.

47. Mr. OLDE KALTER (Netherlands) said that he would reply to the questions that had been asked concerning the revision of the Constitution of the Netherlands, the principle of non-discrimination, the right to physical integrity, the protection of privacy, and freedom of expression.

48. He explained first of all that the revision of the Constitution had the purpose of modernizing the text of the Constitution in force, which dated from 1814, and adapting it to the new political and legal realities of the country. Another purpose was to change important elements of constitutional law, affecting, in particular, the extension of fundamental rights and their systematization. Concern with developing a coherent vision of the theory and practice of those rights in the Netherlands had really begun after the Second World War, especially under the influence of the international proclamation of the protection of fundamental rights. The desire to give those rights a clear and systematic protection at the national level had led the Government and Parliament to open the revised Constitution with a chapter on fundamental civil, political, social, economic and cultural rights which had to be protected in a democratic State. That new provision was expected to come into force the following year.

49. One member of the Committee had asked whether the judiciary in the Netherlands had competence to determine the constitutionality of acts of Parliament in the area of basic rights. During the discussion on the revision of the Constitution, the advocates of judicial competence in that field had argued that judges had competence, under the Constitution, to examine acts of Parliament concerning the provisions of international instruments, such as the Covenant, which by their substance were binding on all persons. However, successive Netherlands Governments had rejected the competence of the judiciary to examine whether acts of Parliament were in conformity with constitutional regulations on basic rights, their central argument

being that in the field of national law, the central legislature (Government and Parliament), according to the principles of a parliamentary democracy, was the final instance for judging the constitutionality of those acts, since the procedures for preparing them guaranteed that the relevant problems would be taken into account.

50. Several important questions had been asked about the implementation of the provisions of the Covenant prohibiting discrimination, specifically those contained in article 2, paragraph 1, article 3 and article 26. Some members of the Committee had asked whether article 4 of the Constitution in force fully met the requirements of those articles and, if not, whether article 1, paragraph 1, of the new Constitution would do so. He pointed out first of all that the meaning of article 4 of the Netherlands Constitution was not decisive for the question of whether Netherlands law fully implemented the non-discrimination clauses of the Covenant. It should be kept in mind that, according to Netherlands constitutional law, provisions of the Covenant could have direct application in the legal order. That was the case, in particular, for the provisions of article 2, paragraph 1, those of article 3, and even those of article 26. In his opinion, direct application of article 26 in the area of social, economic and cultural rights depended on the character of the regulations or policy for which direct application was requested. In that field, the adaptation of often complex regulations concerning taxes, social security, etc., was the task of the legislature in the Netherlands. In that connection, he noted that the Government of the Netherlands was currently analysing national legislation concerning discrimination on grounds of sex or race.

51. Returning to the meaning of article 4 of the Constitution in force, which stated that "all persons in the territory of the Kingdom shall have equal rights to protection of their person and goods", he explained that that article had been introduced into the Constitution in 1815 to guarantee to residents and foreigners equal rights to protection. In his opinion, that article covered the field of rights set forth in the Covenant, but it did not cover all the provisions of article 26. The new article 1, paragraph 1, of the Constitution would have a wider scope and would be applicable to all Government activities. It would therefore have the same meaning as article 26 of the Covenant. When it entered into force in 1982, the Constitution would fully implement the provisions of the Covenant, apart from those which were already directly applicable.

52. An important way of implementing the general provisions of the Covenant and the Constitution regarding discrimination was to enact laws accompanied by specific regulations. For that reason, a preliminary draft for a general act on sex discrimination had been published. Important questions had also been asked about the Equal Treatment Bill. In particular, it had been asked whether future Netherlands legislation in that area might not affect the purpose and spirit of article 23 of the Covenant concerning protection of the family. In that connection, he stressed the fact that the rule of non-discrimination was based on the principle of human dignity and freedom. Public authorities and private institutions with a public function were not free to make arbitrary distinctions between persons on such grounds as race, religion, sex, marital status and homosexuality. Therefore, specific anti-discrimination legislation was necessary. The purpose of that legislation was to guarantee individual freedom and individuality by forbidding any distinctions on unjustified grounds, in particular in public life.

53. Under the proposed legislation, the meaning of marriage would be restricted to the field where it had its function, which was regulation of the juridical relation between the two spouses and between the spouses and their children, if any. In that area, the State had a positive role to play. Netherlands legislation in that field met the requirements of article 23 of the Covenant, since as far as families with children were concerned, it considered not the marital status of the parent or parents but the practical situation of the family, in the field of housing, for example.

54. One member of the Committee had pointed out that the Equal Treatment Bill concerned not only relations between public authorities and citizens, but also private law relations, such as those between private institutions and citizens, and had asked whether that elaboration of the non-discrimination principle did not restrict other freedoms such as freedom of association or freedom of religion (articles 22 and 18 of the Covenant). That observation was correct. First of all, the imposition of public principles and regulations on private associations and religious institutions was a familiar feature of modern society. He noted that two of the instruments adopted by the United Nations -- the International Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on the Elimination of Discrimination against women -- obliged the State to impose non-discrimination principles on private institutions. Freedom of association and freedom of religion implied that public principles had to be imposed in conformity with the provisions of the Covenants and the Constitution and with due respect for the essence of those freedoms. For that reason, the Equal Treatment Bill would prohibit churches and religious groups from practising discrimination based on sex, homosexuality, or marital or family status in their schools, hospitals and homes for the elderly. Only religious activities themselves would not be affected by the provisions of that Bill.

55. With regard to associations, the most important exception was that associations were allowed to select on grounds of sex, homosexuality or marriage, if the distinction was intended to be a form of affirmative action.

56. Concerning the percentages of men and women in gainful employment, he said that women were strongly represented in the medical and social services, in education and in the footwear, clothing and leather industries, especially in the lowest paid jobs. The percentage of women in the total labour market had been 29.4 per cent in 1980, as opposed to 22.6 per cent in 1960. In 1980, women had accounted for 38 per cent of Government employees.

57. In connection with article 6 of the Covenant, one member had asked whether article 1.10a of the new Netherlands Constitution protected the right to corporal integrity. He explained that the general terms of the new article offered guarantees against all violations of physical integrity and protected the individual's right to dispose of his body.

58. Several members of the Committee had asked for further information about respect for privacy. One had asked in particular whether Netherlands law contained a clause on the general protection of the person. The answer was negative. In complex modern society, many restrictions and adaptations of such a right would be necessary. The Netherlands constitutional and legal system aimed at protecting specific vulnerable aspects of the person, for example, his privacy, his physical integrity, and his civil and political rights. Similarly, Netherlands law did not contain a general provision on non-material damages. However, the new Civil Code and the draft bill on privacy protection with regard to data registration would

introduce that right. In modern society, the registration of personal data was often essential to the proper functioning of public and private institutions and was often in the interests of the registered persons themselves. Privacy protection, therefore, consisted in finding a balance between the functional and organizational requirements of public institutions, on the one hand, and the interests of individuals on the other. With regard to registration of certain data regarding such matters as political opinions, religion and intimate behaviour, strict requirements must be imposed and, in general, data recording could be allowed only for legitimate purposes and within reasonable limits. A new institution, the Data Registration Board, would supervise the implementation of the relevant legal rules.

59. With regard to the content and legal basis of the provisions regarding the tapping of telephones and the opening of correspondence by public authorities, he explained that, according to the constitutional principles of his country, authority in that area was defined by the laws of the central legislature. The exercise of such authority was supervised by the judges for the purpose of criminal proceedings and, where the requirements of State security were involved, authorization had to be given by the Prime Minister and three other ministers.

60. Concerning the actual legal basis of the intelligence services, he said that the tasks of those services and the main lines of their functioning were regulated by a law which did not give the intelligence services powers to restrain citizens. Any such restraint, based on information of the intelligence services, must be in accordance with the regular legal powers recognized by the Criminal Code and Code of Criminal Procedure.

61. With regard to the constitutional provisions concerning freedom of expression, he explained that the term "lesser authorities" meant every law-giving authority in the Netherlands public order lower than the central legislature. Article 7 of the Constitution in force would be incorporated in the new article on freedom of expression, because the legislature had not wanted to disrupt the very elaborate system of protective norms that had been established at the end of the nineteenth century.

62. With regard to the constitutional position of commercial advertising and information, he said that commercial advertising would in future have no explicit constitutional protection, but that publicity for the purpose of disseminating ideas would be protected by the Constitution.

63. In conclusion, he expressed the hope that his observations had clarified some of the problems posed by the protection of fundamental rights in the Netherlands legal order.

The meeting rose at 1.05 p.m.