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COMMISSION ON HUMAN RIGHTS

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COMMENTS OF GOVERNMENTS ON THE DRAFT INTERNATIONAL COVENANT
ON HUMAN RIGHTS AND MEASURES OF IMPLEMENTATION

The Secretary-General has the honour to circulate the following comments:

7. The Government of the Netherlands

Comments and proposals of the Government of the Netherlands with respect to the draft International Covenant on Human Rights and the proposals for new articles on economic and social matters received by the Secretary-General on 21 February 1950

General observations

The Netherlands Government wish to express their great appreciation of the considerable and important work which has been done by the Commission on Human Rights, and the results of which have been embodied in the report on the fifth session of this Commission. This report constitutes one more step on the road which will lead to the realization of human rights and fundamental freedoms. The safeguarding of human rights by the Netherlands Constitution is on the whole in accordance with the standards proposed by the Commission.

Many difficulties, however, will have to be overcome before the complete international safeguarding of the rights of all individuals all over the world will be achieved. The formulation and realization of the same idea of indefeasible and unassailable individual rights is not the same in the legislation of the various nations; these differences do not only result from a different appreciation of individual freedom and of the relation between the individual and the community, but they are also defined by the political, social, financial and economic circumstances prevailing in these countries. To an even greater extent this applies to those human rights which cannot be exercised individually (right to work, right to social security) and whose realization may demand considerable sacrifices from the national community as a whole. Owing to these facts the unification of the formulation of these human rights, on which depends in principle all international safeguarding of these rights, will be an extremely [...]
task which can only gradually be carried out. In the opinion of the Netherlands Government it should be borne in mind that the very nature of these human rights requires that all efforts should be aimed at attaining the most expensive sphere

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of application of international protection. Her Majesty's Government are of opinion that in the first instance it is more important to achieve some form of unification of human rights which is acceptable to the greatest possible number of States than to aim at a regulation containing as many details and including as many human rights as possible and which, therefore, will perhaps be acceptable to a small number of States only.

Preamble

The Netherlands Government prefer the text proposed by the representative of the United States as they deem it desirable that the undertakings of the parties under this Covenant shall be defined in the articles of the Covenant exclusively.

Article 1

It is proposed that this article be deleted in order to avoid the impression that the present Covenant should be binding on States not being parties to this Covenant.

Article 2

Paragraph 1

The Netherlands Government assume, in connexion with the provisions of paragraph 2, that the undertaking to ensure and to give effect to the rights as set forth in the present Covenant, includes (1) the undertaking not to adopt any legislative or other measures which violate the rights set forth in the Covenant, (2) the undertaking to adopt, in so far as this has not been done yet, legislative or other measures to ensure that the obligation mentioned under (1) shall apply to all authorities of the State concerned, and (3) the undertaking to abrogate legislative and other measures in existence which violate the rights set forth in the Covenant. They deem it, however, desirable, in order to avoid any confusion with regard to the extent of the obligations under this paragraph explicitly, to define in the first paragraph the three undertakings mentioned above. With regard to the undertakings mentioned under (2) and (3), it might be pointed out that they should be carried out "in accordance with its constitutional processes",

Paragraph 2

The Netherlands Government feel that this provision goes too far as it does not seem necessary to provide that an effective remedy for the violation of the rights as defined in the Covenant can only be obtained before the national tribunals. There are other ways in which an effective remedy may be ensured. It is therefore proposed that the words "before the competent national tribunals" be deleted.

Article 4

The Netherlands Government propose that paragraph 2 of this article read as follows:

"No derogation from articles 5 and 6, except in respect of lawful acts of war, and of articles 7, 8 (i) and (ii) or 10, can be made under this provision".

Article 5

The text proposed in the "comments by representatives of Australia, Denmark, France, Lebanon and the United Kingdom" (document E/1371 (E/CN.4/350) 23 June 1949, page 32) should be substituted for the text of this article.

Article 9

In the opinion of the Netherlands Government the provisions of paragraph 6 of this article should be deleted, as article 2, paragraph 2 deals already with this matter.

Article 11

The restriction set forth in the beginning of the first paragraph seems too narrow. It should be possible to prevent a person from leaving the territory of a State, if this person by so doing would withdraw from carrying out obligations resulting from laws of that State, provided these laws are consistent with the other provisions of the Covenant on Human Rights. The beginning of paragraph 1 of this article should therefore read as follows:

"Subject to any general law, consistent with the rights defined in this Covenant

The right, defined in the second paragraph, should be ensured by the country, a national of which wishes to return. It would, therefore, seem advisable for the second paragraph to read as follows:

"Any one has the right to be admitted to the country of which he is a national."

Article 13

The "right to legal assistance of his own choosing", laid down in paragraph 2 b, should be limited by provisions concerning the legal profession.

The formulation of the right of assignment of legal assistance seems too wide. The circumstances can be such that there is no reason to provide legal assistance; this can in particular be the case in the event that the offence, of which the suspected person has been accused, is liable to a small punishment only or in the event the person suspected has not been detained.

The provisions of paragraph 3 of this article should be deleted as article 2, paragraph 2, already deals with this matter.

Article 20

In conformity with the formulation of article 2 the beginning of paragraph 2 of this article should read as follows:

"2. To everyone shall be ensured the rights and freedoms defined in this Covenant without discrimination

Article 21

The provisions proposed by the representatives of France and the Union of Soviet Socialist Republics do not fit in with the system of the Covenant and should therefore not be included in the Covenant.

Article 24

The Netherlands Government prefer the text proposed by the representative of India supplemented by the text proposed by the representative of the United Kingdom.

Article 25

The Netherlands Government prefer the text proposed by the representative of the United States.

Proposed additional articles

Article proposed by the representative of France to follow the present article 9 or 10:

The proposed article does not fit in with the system of the Covenant, as it is not the formulation of a human right or freedom. In connexion with the provisions of article 6 of the Draft Covenant the first sentence of the proposed article seems redundant.

Article proposed by the representative of the USSR to precede the present article 11:

The Netherlands Government doubt whether any article concerning this matter belongs in the present Draft Covenant. In any event they prefer the text of the paragraphs 1 and 2 of article 21 of the Universal Declaration of Human Rights.

Article proposed by the representative of the USSR to precede the present article 20:

This article should not be included in the Draft Covenant, as this question falls under the competence of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Articles proposed by the representative of the USSR to precede the present article 22:

The matters with which these articles deal are not suitable as yet to be regulated in detail in the present Draft Covenant. Partly they are, moreover, under the competence of specialized agencies such as the International Labour Organisation which already has dealt with or is still dealing with some of the above-mentioned matters.

Articles proposed by the representative of Australia:

The observations made with regard to the proposals of the USSR representative apply also to these proposals.

Article proposed by the representative of the United Kingdom to follow the present article 23:

This article would seem to be redundant.

Article proposed by the representative of Denmark to follow the present article 23:

The Netherlands Government deem it useful to include an article concerning the possibility of acceptance with reserves as this may lead

/a greater

a greater number of states to ratify or to accede to the Covenant.

Questionnaire on Measures of Implementation

General observations

In their observations on the report of the second session of the Commission on Human Rights dated 31 March 1948, the Netherlands Government outlined the measures of implementation which in their opinion should be adopted in order to create a complete international guarantee for the realization of the human rights and freedoms formulated in the Covenant. When they made these proposals they were fully aware of the necessity, resulting from the very nature of the human rights and freedoms, of closer definition of the rules laid down in the Draft Covenant in such a manner as to aim at international unification of the national public law systems. For this reason the measures of implementation outlined by the Netherlands Government provided inter alia a body which would act, in part as an international legislative body, and it was proposed that the decisions of the International Court with regard to legal disputes concerning human rights should be binding on all parties to the Covenant and should also apply to similar cases.

The Netherlands Government remain of the opinion that the completest possible international guarantee for the implementation of human rights and freedoms can only be achieved along the lines of their proposals of 31 March 1948. They are, however, aware that the international unification of the national systems of public law necessary thereto will meet with great difficulties in view of the variety of national legal needs. Furthermore, this unification cannot be realized without more extensive international co-operation in regard to the political, economic and other interests, which are at present served on a national basis by national systems of public law.

On the other hand, they do not overlook the fact that the greatest possible sphere of application of the measures of implementation is essential in order to achieve the aim of the international codification of human rights and freedoms. From all this they conclude that in the long run a gradual development of the international safeguarding of human rights will yield better results than immediate attempts at perfection. The answers given by the Netherlands Government with regard to the questionnaire should be seen in the light of the foregoing.

It may be pointed out that the questionnaire repeatedly uses the words "signatory States". It is assumed that these words stand for "High Contracting Parties".

Part I

1. The Netherlands Government are of opinion that provisions concerning international measures for the implementation of the Covenant should be included in the Covenant.
2. For the time being the Netherlands Government deem it unadvisable that provisions concerning economic and social matters should be included in the Covenant; in case this should happen it would be difficult to adopt different measures of implementation with regard to the sections of the Covenant concerned.
3. Some provision concerning the implementation should be included in the Covenant as without such provision the Covenant would lose much of its importance.

/Part II

Part II

Chapter I

1. This question is answered in the affirmative.
2. In the event the dispute cannot be settled within a reasonable time either by negotiations or in any other manner to be agreed upon by the states concerned, a State should have the right to refer the dispute to an ad hoc fact-finding and conciliatory body.
3. Whereas the dispute concerns the alleged non-fulfillment of obligations under the Covenant, the complaint should be receivable, without any limitation, if lodged against any State party to the Covenant.
4. Prior to an examination of the facts the ad hoc body should consider and decide whether the alleged facts constitute a non-compliance with the obligations under the Covenant and whether the conditions mentioned under 2 above have been fulfilled.
5. This question is answered in the affirmative.

Chapter II

The Netherlands Government feel that individuals or groups of individuals or non-governmental organizations should for the time being not be given the right to put into effect the international machinery of implementation. They admit that the complete international protection of human rights and freedoms should eventually include this right, but they deem it desirable that, before this right is granted, a certain practice has developed with regard to the limits of international safeguarding of human rights and freedoms.

Part III

Chapter III

The Netherlands Government recommend that for the time being the possibility of the establishment of ad hoc bodies should suffice.

II A: 1. The "Panel for Inquiry and Conciliation" established by General Assembly resolution 268 (III) D of 28 April 1949, enlarged if necessary, might also serve as a Panel from which members of the ad hoc bodies are chosen.

The questions 2 to 7 inclusive are answered in the affirmative.

II B: 1 and 2 are answered in the affirmative.

3. It does not seem necessary to tie down the ad hoc body to a fixed period. The ad hoc body should make recommendations to the States concerned with regard to the question whether the body's report should be published.

4. This question is answered in the affirmative.

Chapter IV

The question whether states should set up local agencies of implementation or not, and if so, how they should set up these agencies, should be left to each State party to the Covenant.

Part IV

General: 1. This question is answered in the affirmative.

2. In the event that a court is empowered to be final guarantor of the Covenant, this should be a special Chamber of the International Court of Justice.

Part V

General: 1. This question is answered in the affirmative.

2. This question is answered in the affirmative, it being understood that the submission should take place in common consent.

Chapter VI

1. The Secretary-General should have the right to request information from the Governments parties to the Covenant in the event an ad hoc body so desires and in accordance with the procedure laid down by that body.

2. This question is answered in the affirmative.

A.1. This question is answered in the affirmative.

2. The Netherlands Government do not deem it advisable to modify the present relationship between the Economic and Social Council and the Commission on Human Rights in the manner suggested by the question.

B.1. The instrument should be open for accession to any non-member State to which an invitation has been extended by the General Assembly.

2. Allegations of violations against a State non-party to the Covenant should be dealt with in accordance with the procedure provided if such a State consents thereto.

C.1. This question is answered in the affirmative.

2. The Netherlands Government deem it desirable that an article such as that proposed by the representative of Denmark (vide proposed add. art. in fine) should be included.

D.1. Reference may be made to the comment on article 25 of the Draft Covenant.
