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DRAFT PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION
IN THE MATTER OF POLITICAL RIGHTS

Note by the Secretary-General

As requested in the second operative paragraph of resolution 4 (XVIII), which the Commission adopted at its eighteenth session, the Secretary-General transmitted to the Governments of States Members of the United Nations and of the specialized agencies the text of the draft principles on freedom and non-discrimination in the matter of political rights drawn up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/213, para. 370), as well as the suggestions made by the Commission on the Status of Women (E/CN.6/L.336), so that they could submit their comments on the substance of the draft principles and the form in which such principles should be embodied.

The comments of the Government of the Netherlands are transmitted to the Commission herewith.

NETHERLANDS

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The Netherlands Government holds the view that, as long as the two Covenants on Human Rights are not yet operative, it is useful to elaborate certain sections of the Universal Declaration of Human Rights as is being done in the present document in the case of Article 21 of the Universal Declaration. An elaboration and definition of this kind may prove of great help to countries that are in need of guidance in developing their political structure. That is why the Netherlands Government attaches great importance to Draft Principles, provided it is understood that they are no more than recommendations. Therefore it is the view of the Netherlands Government that the Principles should be embodied in a Recommendation.

The Netherlands Government also wishes to point out that a certain measure of restraint should be exercised in two respects when the rights and freedoms embodied in the Universal Declaration are elaborated. Firstly, the field to be covered should be marked out carefully. Secondly, over-much detail should be avoided.

TextArticle I.

This article might be worded as follows: "The resident nationals of all States shall have the right to self-determination as regards the structure of the State and the form of Government so that they may freely pursue their political, economic, social and cultural development".

Explanatory Note: The Netherlands Government considers it implicit in the aim and content of the draft Principles (as described in the last paragraph of the Preamble) that the right of self-determination to be affirmed here is not the right of a people to determine their international status, but the right of the resident nationals of any State to choose their own form of Government and to determine how their home affairs should be conducted. It is the object of the proposed text to define the concept of self-determination in this way. The word "peoples" has been avoided because it is not susceptible of precise definition.

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Article III.

It is suggested that the word "persons" in the second sentence of this article be replaced by "nationals".

Explanatory Note: Whereas the other articles define the rights of nationals, this article affirms the rights of all persons, including aliens. It would seem to be going too far to grant in an absolute sense, as this Article does, the freedoms in question to persons residing in a country other than their own.

Article XII.

The last sentence: "Any limitations that may be imposed shall be consistent with the purposes and principles of the United Nations" seems superfluous and could, therefore, be omitted.

Explanatory Note: As the Government of the United Kingdom aptly remarked in connexion with a similar sentence in the draft principles concerning freedom and non-discrimination in the matter of religious rights, "due recognition and respect for the rights and freedoms of others and the just requirements of public order, morality and the general welfare in a democratic society" cannot be inconsistent with the purposes and principles of the United Nations (document E/CN.4/809, page 15).

Article XIII.

It is suggested that this article be deleted.

Explanatory Note: The Netherlands Government is of the opinion that it should be left to each individual State to decide how the rights and freedoms described in the Draft Principles should be embodied in its national legislation. A question of this nature, which concerns the manner in which a State should implement its constitutional law, should not be dealt with in an international instrument.

Article XIV.

The closing words "independent and impartial tribunals" should be replaced by the words "judicial authorities or other independent and impartial bodies".

Explanatory Note: The wording suggested is similar to that used at the end of Article VIII, paragraph (c). Generally speaking, recourse to an independent and

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impartial judiciary constitutes, of course, the best legal protection. However, in specific cases, at least as far as conditions in the Netherlands are concerned, the judge or a judicial body (tribunal) is not the appropriate authority to pass judgement on a denial or infringement of a right as specified in the draft. The Netherlands Government feels that such matters as the supervision of appointments to non-elective public office might conceivably, perhaps even preferably, be placed in the hands of independent and impartial bodies that are not part of the judiciary.

Article XV.

It is suggested that the text be changed to read as follows: "These principles shall apply to all countries whether they be independent, Trust, Non-Self-Governing or under any other limitation of sovereignty".

Explanatory Note: This wording is more in keeping with the terminology of Article 2, paragraph 2 of the Universal Declaration of Human Rights.
