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Seventy-second session

SUMMARY RECORD OF THE 1928th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 9 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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Third periodic report of the Netherlands

GE.01-43312 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5)

Third periodic report of the Netherlands (CCPR/C/NET/99/3 and Add.1; CCPR/C/72/L/NET; HRI/CORE/1/Add.66)

1. At the invitation of the Chairperson, the members of the delegation of the Netherlands took places at the Committee table.

2. The CHAIRPERSON invited the head of the delegation to address the Committee.

3. Mr. RAMAER (Netherlands), introducing the report of the European part of the Kingdom of the Netherlands, said that his Government had consistently sought to establish high standards of human rights in its bilateral and multilateral contacts. He expressed his Government's wholehearted support for the indispensable work of the Committee. National reporting procedures had recently been reviewed with a view to increasing efficiency, and his Government attached great importance to transparency. Information on the submission of periodic reports under article 40 and their consideration by the Committee was transmitted publicly to Parliament, and related documents were made available on the Internet. The Committee's specific recommendations were followed up by the relevant ministries. Individual communications by the Committee were received and processed by the International Law Division of the Ministry of Foreign Affairs. The same legal counsel who acted as Agents before the European Court of Human Rights dealt with individual applications under international human rights instruments, which ensured that the State maintained a coherent position on human rights procedures.

4. Several amendments had been made to the Constitution of the Netherlands in 1999 and 2000, including the establishment of an independent complaints body, the National Ombudsman, under article 78a, and a review of defence provisions under articles 97 to 100. The function of the Ombudsman was to investigate the actions of central government and other administrative authorities, either on his own initiative or on request. He acted independently and was appointed by the Lower House of Parliament. The right of Parliament to be informed if the Government decided to send Dutch troops abroad had also been established in the Constitution.

5. With regard to article 6 of the Covenant, in April 2001 Parliament had passed an Act to review procedures for the termination of life on request and assisted suicide, which would enter into force on 1 January 2002. The Act was the result of intense public debate in the Netherlands concerning the decriminalization of euthanasia in cases where patients experiencing unbearable suffering asked for their life to be terminated. Over the years, case law and the constructive cooperation of the medical profession had led to the development of a set of due care criteria which doctors were required to observe in decisions concerning requests for euthanasia. They included the receipt of a voluntary request, a finding of unbearable suffering with no prospect of improvement, discussion with the patient and consultation with another physician. The basic assumption of the Act was that patients had no right to euthanasia and that physicians were not obliged to perform it. Doctors' actions would be reviewed by a multidisciplinary committee,

appointed by the Minister of Justice and the Minister of Health, Welfare and Sport. Whenever the review committee found that the doctor had fulfilled all the due care criteria, the case would not be referred to the public prosecution service. By decriminalizing euthanasia in those specific circumstances, his Government wished to ensure that doctors exercised due care and acted openly and honestly in such cases. The Act recognized the right of doctors and nurses to refuse to take part in preparations for euthanasia. His Government believed that the Act was in accordance with international law and provided legal certainty without undermining the effective protection of life.

6. With regard to article 13 of the Covenant, the new Aliens Act had entered into force on 1 April 2001. It did not affect the general principles of Government policy on aliens, as laid down in the 1994 Aliens Act Implementation Guidelines. The Netherlands pursued a restrictive policy on admitting aliens, except in the case of refugees. Admission was possible on grounds of compliance with international obligations, substantial Dutch interests or compelling reasons of a humanitarian nature. The amendments to the Aliens Act were designed to achieve a more streamlined asylum procedure, and the above principles remained unchanged.

7. With regard to article 8 of the Covenant, his Government assigned high priority to the fight against trafficking in persons. A conference of European Union justice and equal rights ministers chaired by the Netherlands in April 1997 had adopted a declaration entitled "The Hague ministerial declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation". It encouraged States to appoint a national rapporteur to review the scale and nature of trafficking in women as well as the mechanisms involved. His country was the first Member State to have appointed such a rapporteur, a former advocate-general, supported by research staff and financial contributions from five ministries, who was nevertheless independent and would make recommendations based on her own convictions. The rapporteur had been granted special access to police and criminal records. Part of her mandate was to promote international cooperation in combating trafficking in persons, which included helping to coordinate data collection and management at the international level. She could make recommendations to central and local government, as well as to international and non-governmental organizations (NGOs), and her annual report would be published and presented to Parliament.

8. The CHAIRPERSON invited the delegation of the Netherlands to reply to questions 1 to 10 of the list of issues, relating to existing mechanisms for the implementation of the Covenant; the practice of euthanasia; the Medical Research Involving Human Subjects Act; the right of detained persons to notify family members or friends; the right of detained persons to have access to a lawyer; the practice of electronic tagging; provisions in the Code of Criminal Procedure concerning pre-trial detention for property offences; the new Aliens Act; traditional gender-based practices taken into consideration in expulsion decisions; and incidents of child abuse.

9. Mr. BOCKER (Netherlands), replying to question 1 (implementation mechanisms), said that the Committee's Views were dealt with by the same legal counsel who handled applications to the European Court of Human Rights. Communications from the Committee were transmitted to the relevant ministries by the Permanent Mission in Geneva. The translation and dissemination of the Committee's Views, as well as reimbursement of costs incurred by the

authors of communications to the Committee, were dealt with promptly. Five or six communications from the Committee had required further measures of implementation, which had been the subject of consultations within the Government.

10. Ms. ABBING (Netherlands), replying to question 2 (euthanasia), said that the new Act concerning euthanasia and assisted suicide, the culmination of a gradual process of decriminalization would enter into force on 1 January 2002. Currently, a physician who performed euthanasia was officially liable to criminal prosecution. Physicians were required to report on the cause of death to local coroners under the Burials Act (1994), following a model established by ministerial decree for cases of euthanasia. Until 1998, the coroner had been required to inform the public prosecutor, who decided whether to prosecute on the basis of the physician's report. That included information on the patient's history, the possibility of alternative treatment, the request by the patient to have his life terminated, consultation with another physician, and the means of carrying out the request. Since 1998, a specialized review committee, comprising a lawyer, a physician and an ethicist, had been responsible for advising the prosecutor on the degree of care exercised by the physician. Although the advice was not legally binding, it was accorded considerable importance by the prosecutor. Under the new Act, any doctor who performed euthanasia would be required to observe the established due care criteria. Provided he satisfied those criteria, he would not be liable to criminal prosecution. Despite the many palliative benefits of modern medical techniques, even the best care was sometimes insufficient to prevent unbearable suffering. Her Government believed that the new Act reflected the majority of domestic public opinion, and was consistent with its obligations under article 6 of the Covenant. The Act was grounded in the fundamental article 6 principle of respect for life. In her view, the provisions of that article were not designed to prolong unbearable suffering where there was no hope of recovery.

11. Mr. WIJNBERG (Netherlands), replying to question 3 (medical research), said that the main objectives of the Act concerning clinical trials were to protect the human subject and to ensure that the researcher complied with the necessary standards. Research could be carried out either on healthy volunteers or on existing patients. Pursuant to the Act, research subjects were required to be informed in writing about the nature of the research and to give written consent, insurance must be taken out to cover any harm caused to the subject, a doctor not involved in the research should be available to give advice, and every project was subject to compulsory review. Medical research was obviously needed to combat the growing incidence of such diseases as Alzheimer's in the elderly and cancer in minors, but such research should be made subject to stringent conditions. Accordingly, pursuant to Article 4 of the Medical Research Involving Human Subjects Act, it was forbidden to conduct research on minors or incapacitated adults, with the exception of research that might be of direct benefit to the subject, or research that could not otherwise be conducted. The Act stipulated that the risk associated with such research should be negligible and that the burden should be minimal. Pursuant to article 5, it was forbidden to conduct non-therapeutic research on a subject in a dependency relationship to the party recruiting the subject. In the case of minors over the age of 12, their consent, and that of their legal guardian, was required, while for younger children, the consent of their legal guardian was needed. For research on incapacitated adults, consent was required from a legal representative of the patient, or in the absence of such a person, a person holding written

authorization from either the patient or the patient's partner. Incompetent persons could be involved in research provided they were capable of understanding its implications, and any objections raised would mean the immediate end of the trial.

12. In his view, the very strict requirements provided for in the Act were consistent with the right to physical integrity contained in the Constitution of the Netherlands, as well as with article 7 of the Covenant. The review committee had recently reported that the statutory requirements were being observed satisfactorily. In accordance with the Council of Europe Convention on Human Rights and Biomedicine the interests of minors and incapacitated adults should not be made subordinate to the interests of science.

13. Referring to concerns expressed about the terminology used in the Act, he said that no problems had arisen from the use of the term "medical research" rather than "experiments". In his view, what was at stake was not so much the terminology used but the nature and extent of interventions. With regard to acceptable risk, standards varied according to the objective of therapeutic research, while minimum risk always applied to non-therapeutic research. The terms "negligible risk" and "minimal burden" were internationally recognized in the field. Of course, any medical intervention implied a degree of risk, but a negligible risk was considered to be no different to that which existed in normal daily life. Minimal risk meant that, on the basis of science and experience, no risk was to be expected. Practice showed that in research projects involving minors or incapacitated adults, independent experts were always called upon if there was any doubt as to whether the risks were acceptable. Codes of conduct had been drawn up by professionals to offer guidance in determining thresholds of unacceptable risk. His Government was confident that whenever individuals expressed objections, they would no longer be involved in research. The conditions provided for in the Act were so strict that there was no inconsistency either with article 7 of the Covenant or with the Council of Europe Convention.

14. Mr. RAMAER (Netherlands), replying to question 4 (detained person's right to notify family members or friends), said that no specific measures had been taken to improve the right of notification. In general, persons taken into custody were given the opportunity to notify family and friends. In some cases, however, the police could prevent a detainee from making telephone calls or contacting specific persons.

15. Replying to question 5 (detained person's right of access to a lawyer), he said that any person suspected of committing an offence was entitled, under article 57 of the Code of Criminal Procedure, to legal assistance of his or her own choosing. If necessary, an independent lawyer was assigned to the suspect free of charge. The police and the public prosecutor were under no obligation to refrain from questioning a suspect until the lawyer arrived but the suspect might choose to remain silent under those circumstances.

16. Turning to question 6 (electronic tagging), he said that electronic monitoring was a programme of assistance and supervision used as an alternative to cell detention. Participants could leave their place of residence only at predetermined times to travel to their place of employment, to visit care providers or to attend training courses. The idea was to reintegrate offenders into society through programmes tailored to their individual circumstances. They wore an anklet that functioned as a transmitter and was tracked electronically by a receiver installed in their homes and linked to a central monitoring unit. Their presence or absence was monitored at

random times and an alarm was set off if it failed to correspond to the daily schedule. The probation service then investigated the matter. There were two categories of participant: individuals placed under electronic surveillance by court order on a conditional basis and inmates allowed to serve the final phase of their prison sentence at home. In 2000, 55 persons had fallen into the first category and 407 into the second.

17. In reply to question 7 (pre-trial detention for property offences), he said that the new statutory provision of the Code of Criminal Procedure was designed to address problems that had arisen in cases involving repeated property offences. It had previously been impossible to place a repeat offender in pre-trial detention unless the offence in question was punishable by at least six years' imprisonment. Under the new provision, pre-trial detention was permissible where an offence was committed within five years of a final conviction for a similar offence. Detention could be suspended where a repeat offender suffering from addiction agreed to undergo a course of treatment. The relevant section of the Care of Addicts under the Criminal Law Act of 1 April 2001 provided for compulsory treatment in certain cases. The scheme was not incompatible with article 9 of the Covenant. The individuals concerned were deprived of their freedom on grounds and in accordance with procedures established by law.

18. Supplementing the delegation's response to question 8 (Aliens Act of 1 April 2001) in its introductory statement, he said that under the previous procedure persons denied asylum had been permitted to lodge an objection and request reconsideration of their case. Under the new Act, the objection procedure would cease to exist but decisions on applications for asylum had to be made within six months and unsuccessful applicants could appeal to the courts. They were allowed to remain in the Netherlands pending the outcome of the appeal. The abolition of the objection procedure necessitated a qualitative improvement in the decision-making process. Applicants would be given an opportunity by the Immigration and Naturalization Service (IND) to clarify their reasons for seeking asylum and to respond to a stated intention to reject their application. The final decision by the IND would provide a sufficient basis for the courts to rule on its lawfulness. The new Act introduced the possibility of filing an appeal with the Council of State. Persons denied asylum would be required to leave the country by a specific date and would lose their entitlement to accommodation and other facilities. The authorities were empowered to evict them and expel them from the country. The Act provided for a ministerial order extending the normal period for decision-making from 6 to 18 months for certain categories of asylum-seeker, for example in cases where a brief period of uncertainty was anticipated in the applicant's country of origin, where the situation in the country of origin was expected to improve in the short term or where the number of applications submitted was so great that the necessary decisions could not be taken within the prescribed period. Successful asylum-seekers were all given a temporary residence permit of not more than three years involving a package of entitlements, largely determined by international obligations. There would be only one asylum status, compared with three under the previous legislation. After three years, asylum-seekers would be eligible for a permanent residence permit. Holders of temporary permits could take paid employment and were eligible for study grants and housing. Family reunification was permissible only for permit-holders with an independent income that was at least as high as the rate of social assistance, a stricter requirement than that imposed by the previous legislation. Applications had to be submitted from another country and family ties were determined, if necessary, by DNA analysis. The new Act also provided for supervisory measures and for the restriction and deprivation of liberty. Under the previous legislation,

officials had been able to exercise their supervisory powers only in cases where there was concrete evidence of illegal residence. Such powers could now be exercised where facts and circumstances existed that gave rise to reasonable suspicion of illegal residence on objective grounds. Safeguards against discriminatory use of supervisory powers had been attached to the new criterion.

19. Replying to question 9 (gender-based practices taken into consideration in expulsion decisions), he said that the IND had issued procedural instructions in 1997 drawing attention to gender-related aspects of asylum applications by girls and women. In making assessments, decision-makers took into account the social context in the country of origin. As the extent of the public domain or the authorities' influence over society differed from country to country, activities that would normally be considered private might, for example, be viewed as political in the country of origin. There were also cases in which females had reason to fear persecution because public officials routinely used sexual violence in the exercise of their duties. Infringements by women of discriminatory social customs, religious rules or cultural standards could be viewed as the expression of a political opinion provided that two conditions were met: the asylum-seeker had to originate from a society in which women fulfilled a strictly defined and largely subordinate role, and it had to be established that the authorities encouraged or maintained discriminatory gender relations by failing to intervene in cases where women's human rights were violated. Persecution through infringement of a rule that applied in particular to women could also amount to persecution within the meaning of the Convention relating to the Status of Refugees. A one-year renewable residence permit could be granted on pressing humanitarian grounds if traumata policy conditions were met or if expulsion entailed a general risk of infringement of article 3 of the European Convention on Human Rights. The Netherlands authorities looked first at the national legislation of the country of origin and then examined its implementation in the permanent place of residence of the asylum-seeker, a criterion of special importance in cases of local or regional gender discrimination. Provided that they met certain conditions, victims of sexual violence qualified for residence permits on humanitarian grounds. Where violence by public officials or members of political or military groups was not committed in the course of their duties and was not linked to any of the established grounds of persecution, the applicant was not eligible for refugee status but would be granted a residence permit if it could be assumed that the rape had constituted a traumatic experience.

20. There was a standard procedure for scrutinizing applications for asylum. Female applicants were interviewed by a female liaison officer, in some cases with the assistance of a female interpreter.

21. Mr. HARTOG (Netherlands), replying to question 10 (child abuse), said that well-equipped advisory and disclosure centres had been established to deal with the problem of child abuse. They were required to meet the conditions laid down by the Working Group on Child Abuse, set up in 1993 to provide advisory services to the Government. Disclosure centres formed part of a network of regional facilities. They were assisted by local social services and protection boards. In 1995 four pilot projects had been launched and in 1997 the Working Group had submitted an advisory report to the Ministry of Health, Welfare and Sport and the Ministry of Justice. It had found that not all cases of child abuse were reported because of lack of awareness of the existence of bodies dealing with the problem. The need to set up identifiable centres had been stressed. By 1 January 2000, 14 advisory and disclosure centres had been

established and there had been a corresponding increase in the number of requests for advice and disclosure. In cases of disclosure, the centres undertook an investigation, if necessary with the assistance of a protection board. Victims were in some cases assigned to youth care facilities. The centres monitored young people undergoing treatment. Long-term goals included the need to set common standards and to introduce a uniform system of registration for the advisory and disclosure centres. Research had been undertaken into unnatural deaths of minors and a survey centre on child abuse had been established at the Netherlands Care and Welfare Institute which was subsidized by the Ministry of Health, Welfare and Sport. The Ministry also participated in the national plan of action to combat sexual abuse of minors.

22. Mr. HENKIN, while commending the quality of the report, regretted the delay of several years in submission. The Netherlands should, in his view, be setting a good example for other States parties. He inquired about the reasons for the delay and asked whether any action was contemplated to ensure timely reporting in the future.

23. While he welcomed the Government's concern for the elderly, especially the terminally ill, he had been surprised to discover from the report that the Netherlands had not yet introduced measures against age discrimination or enacted a law to address discrimination against the disabled.

24. Mr. KLEIN, referring to question 1, asked whether there was a legal basis for the procedure described by the delegation for implementing the Committee's Views and concluding observations.

25. With regard to question 2, he understood that euthanasia and assisted suicide would continue to be illegal under the new Act but would not be punishable. How did the Netherlands reconcile that seemingly contradictory approach with its duty to protect life under article 6 of the Covenant? A distinction was made in the Act between minors aged between 16 and 18 and minors aged between 12 and 16. In the former case, the parents or guardians must be consulted but their consent was not required. In the latter case, the consent of the parents was mandatory. He asked the delegation to clarify the distinction. Was it true that the Act was not applicable under any circumstances to children under 12, who also might be afflicted with a disease that caused unbearable suffering? The Act provided for a review committee, which would exercise ex post facto control. It would consist of an uneven number of members appointed by the Government. He found it odd that the Government should be promoting a practice that was still theoretically illegal.

26. According to section 36 of the report, the risk to and burden for the subject of medical research would be in proportion to the potential value of the research. While the principle of proportionality was acceptable, he wondered whether in cases where the potential value of the research was very great, a comparably high risk and heavy burden for the subject was considered to be acceptable. He wished to know whether "therapeutic research" was research of immediate benefit to the individual patient or of benefit to the general public.

27. According to paragraph 59 of the report, article 59 (a) of the Code of Criminal Procedure stipulated that a suspect must be brought before an examining magistrate for questioning no more than 3 days and 15 hours after arrest. Did the delegation consider that that provision was in

conformity with article 9 of the Covenant? During a European summit conference in 1997, a series of demonstrations in Amsterdam had led to clashes between the police and protestors resulting in over 600 arrests. On 15 June 1997, more than 300 protestors had allegedly been arrested under article 140 of the Criminal Code. None had been brought before a judge prior to their release. On 18 and 19 June, the public prosecutor had dismissed all cases against the demonstrators. An independent commission dealing with 268 complaints had stated that the arrests on the basis of article 140 had been unjust, a finding that had allegedly been subsequently confirmed by the Minister of Justice. He asked whether there had been a final court decision on the lawfulness of the arrests and whether any detainees had claimed and received compensation.

28. Under the new Aliens Act, there was only one asylum status. But he inquired about the status of persons who could not be expelled because of the non-refoulement principle. Did they enjoy the same entitlements, for example to health care and education?

29. Sir Nigel RODLEY welcomed the decision by the Amsterdam Court of Appeal in the *Bouterse* case, which set an important precedent in the development of international human rights law relating to the issue of impunity.

30. The Netherlands report covered euthanasia under article 6 of the Covenant (right to life), although it might also be seen as an article 7 issue, namely the denial of a person's right to choose to die. The law must be particularly careful in cases involving the right to life, since no redress was possible if the wrong decision was made. If euthanasia were to be carried out, certain substantive criteria must be satisfied - the person must be undergoing unbearable suffering with no prospect of recovery, and must have expressed the wish to die.

31. The main issue was the provision of procedural safeguards to prevent abuse. In some cases, for instance, a person might be pressured into requesting euthanasia. In the Netherlands, two physicians were required to endorse the decision, although that alone was not an adequate safeguard, in his opinion. The Netherlands had also set up a multidisciplinary committee to review euthanasia decisions: like Mr. Klein, he would like to know who its members were and how they were appointed, what its expected workload was and whether it could examine the facts of cases in depth and call new evidence, if necessary. Was the committee ever able to determine for itself the genuineness of a person's request for euthanasia, or could it only review cases where euthanasia had already been carried out? What mechanisms existed or were being considered to prevent abuse of the practice of euthanasia?

32. Turning to the question of medical research, he asked whether people who had been deprived of their liberty were considered incapacitated and therefore not subjected to medical research. If they did take part in such research, what safeguards existed to ensure that they had given their free and full consent?

33. The report stated (para. 36) that "therapeutic" research could be carried out on minors and incapacitated adults. However, it was normal practice in medical research to treat a proportion of subjects with a placebo, which meant that they would not receive any therapeutic benefit. He would welcome comments from the delegation on that point. What measures existed to ensure that potential subjects were fully informed of the treatment to which they would

be subjected? In his opinion, the issue involved not only article 7 of the Covenant (consent to medical or scientific experimentation), but also article 17 (right to privacy) and article 26 (non-discrimination).

34. The delegation had stated that persons under arrest had the right to consult a lawyer: after what period of time did they have that right? He understood that a suspect could be questioned before his/her lawyer had arrived. What would be the consequences, if any, for subsequent court proceedings if the suspect refused to speak without the lawyer being present?

35. Mr. SCHEININ welcomed the Netherlands delegation's presence before the Committee, but regretted that the report was only the third submitted by the Netherlands, which had been one of the original States parties to the Covenant. He hoped for more frequent contacts with the Netherlands Government in the future.

36. On the subject of euthanasia, he saw little benefit in asking for the consent or opinion of the parents of a minor who had requested euthanasia. The new law did not cover the practice of neonatal euthanasia, but he was aware that there had been cases in the Netherlands where the parents of a severely handicapped newborn baby had asked doctors to allow or assist the baby to die. He asked the delegation for further information about the case law arising from such events and whether it was affected by the new law on euthanasia.

37. Turning to the treatment of aliens, he recalled that a Netherlands citizen had been convicted of causing the deaths of 58 Chinese people, who had been illegally transported from the Netherlands to the United Kingdom in June 2000. It had been alleged that the Netherlands authorities had been aware of the stowaways' presence on a Netherlands lorry, but had nevertheless allowed the lorry to proceed. Had there been any administrative enquiry into the conduct of the authorities in that case and, if so, what had been the results?

38. Mr. AMOR welcomed the attention paid by the Netherlands Government to following up the Committee's comments and recommendations. He, too, was concerned about the issue of euthanasia. People suffering from a terminal illness were likely to be severely depressed: moreover, they were often very old, and might be lucid at some times but not at others. In either case, he doubted whether their consent to euthanasia could be considered truly informed consent.

39. There was a risk that, as time went on, euthanasia might arouse less public attention, and safeguards might be less rigorously applied. What measures was the Netherlands Government taking to ensure that people requesting euthanasia gave genuinely informed consent and that there was no danger of the procedure becoming routine in any way?

40. Had the Netherlands Government adopted any measures to regulate human cloning? In some countries parents, in effect, chose the characteristics they wished to have in their future baby: did the Netherlands Government regulate such practices in any way, or did it intend to do so?

41. In his opinion, the Netherlands policy on the entry of aliens into the country was selective to the point of discrimination. Many aliens who wished to enter the country for purposes of tourism, culture or study were refused entry. He would welcome the delegation's comments on that issue.

42. Mr. LALLAH welcomed the enlightened attitude which the Netherlands Supreme Court had displayed in a case where the conflicting provisions of two international treaties had had to be reconciled (para. 29 of the report) and its declaration of the right of victims of unlawful deprivation of liberty to claim full compensation (para. 61). However, he regretted that the Netherlands had not submitted its third periodic report more promptly, since it would have helped the Committee in its consideration of petitions from individuals under the Optional Protocol to the Covenant.

43. He was concerned about the practice described in paragraph 118 of the report, insofar as witnesses might not be required to testify in public proceedings, so as to ensure their protection, and statements taken during preliminary proceedings might be used as evidence instead. In some cases, anonymous witness statements were admissible as evidence. It was difficult for a judge or jury to decide on the credibility of a witness from a written statement. It also made it impossible for the accused person to cross-examine the witness in the public trial, which was contrary to article 14 of the Covenant. He would welcome the delegation's comments on that point.

44. Mr. KRETZMER recalled that the Committee had always considered that a State party was responsible not only for acts committed on its territory but also for acts committed elsewhere by its armed forces. Netherlands troops, acting as United Nations peace-keeping forces in Srebenica, Bosnia, in 1995, had withdrawn from the "safe area", and thousands of Bosnian Muslims had subsequently been massacred. Had the Netherlands Government conducted any investigation into the actions of its troops?

45. Mr. KHALIL asked about the regulations governing the right of an arrested person to have the services of an interpreter during police investigations.

46. Mr. ANDO commended the Government's efforts to promote human rights, but regretted that the third periodic report had been submitted so late.

47. The report stated (para. 100) that an independent complaints committee had been set up to oversee the work of interpreters assisting in procedures for the admission of aliens to the Netherlands. He asked for further information, with statistics if possible, concerning the complaints which had prompted the committee's creation.

48. Mr. VELLA reiterated the concerns expressed by Mr. Lallah about the admissibility of written statements by certain witnesses in criminal proceedings (para. 118 of the report). He did not see how a judge or jury could assess a witness's credibility on the basis of a written statement, or how the witness could be subjected to cross-examination. The fact that the witness was deemed to require protection might prejudice the judge or jury against the accused from the outset. He would welcome clarification from the delegation on that point.

49. Mr. RIVAS POSADA said that the practice of electronic tagging as an alternative to custodial sentences (para. 71b of the report) seemed to have implications for the offender's right to privacy. He would welcome more information from the delegation, with details of specific cases if possible.

50. Mr. SOLARI YRIGOYEN welcomed the breadth and detail of the information in the report, but regretted the delay in submission.

51. The report stated (para. 12) that the Netherlands courts were responsible for deciding whether the provisions of international treaties were self-executing and could thus be directly enforced by the courts without the need for national legislation. The delegation should provide details of specific decisions of the Netherlands courts in such cases.

52. He requested further information about conscientious objection to military service. Was alternative, civilian service possible, and on what terms?

53. The CHAIRPERSON invited the delegation of the Netherlands to reply to questions 11-14 of the list of issues, relating to violence against women; trafficking in women; the Equal Treatment Commission; and protection of minorities.

54. Mr. RAMAER (Netherlands), in answer to question 11 (violence against women), said that many projects had been carried out in recent years to improve existing ways of dealing with violence against women. In October 2000 the Ministry of Justice had launched a nationwide project on domestic violence, with the aim of promoting cooperation at the local level and improving the effectiveness and coherence of local initiatives to deal with domestic violence. The project, conducted under the auspices of an inter-ministerial steering group, involved organizations in the health and social services fields as well as senior officials in the relevant ministries, the public prosecution service and the police. The focus of the work was on improving criminal justice procedures, helping victims and potential victims of violence, expanding treatment options for perpetrators, enhancing the expertise of professionals dealing with domestic violence, disseminating knowledge and amending existing legislation where necessary. It was intended to increase the penalty for common assault from two to three years, and to provide for speedier arrest and pre-trial detention. Future action would include a major study of family violence within ethnic groups, and of the connection between stalking and domestic violence. The action plan now being developed was based on expert research, with input from fieldwork agencies and politicians. The Ministry of Justice was setting up a Web site carrying information on relevant projects and examples of good practice. The steering group might in future expand its work to deal with other forms of violence against women. During 2000, the Government had completed a study on the impact in the Netherlands of the Convention on the Elimination of All Forms of Discrimination against Women. In 2001, the sum of 0.7 million guilders was being allocated to projects by non-governmental organizations on violence against women. The Ministry of Justice, in cooperation with civil society, was devising a national policy to eliminate female genital mutilation, with the emphasis on prevention and on the dissemination of Dutch views on gender equality.

55. Mr. PRINSEN (Netherlands), replying to question 13 in the list of issues (Equal Treatment Commission), said that when the Commission had begun its work in 1994, it had expected to deal with about 1,500 cases a year, but the annual total had proved to be little over 100. In the year 2000, the Commission had rendered decisions in 101 cases, 44 of them involving discrimination on grounds of race or nationality, 41 discrimination on grounds of sex, 9 discrimination on grounds of sexual orientation or civil status, and 6, discrimination based on religion.

56. Replying to question 14 (protection of minorities), he explained that the entry into force in 1999 of the Minorities Policy Consultation Act enabled the Government to consult representatives of minority organizations on policies and plans for the integration of ethnic minorities. The organizations taking part in the consultation process received grants and subsidies for the purpose. The basic principle of Dutch integration policy was reciprocal acceptance of the different groups in society, and its aim was to enable ethnic groups to participate fully in society, with proportional representation in education, employment, housing, social welfare, cultural activities and public administration. Many members of ethnic minorities in the Netherlands were naturalized Dutch citizens with the same legal status as other citizens. However, equal rights did not necessarily entail equal opportunities, and public policy endeavoured to create such opportunities and enable individuals to profit from them and to overcome disadvantage. Research showed that the second generation of immigrants did better than the first, although some disadvantage persisted. In 1996, the Newcomers Integration Act had come into force, its purpose being to provide resources for people settling in the Netherlands to learn Dutch and familiarize themselves with Dutch society and customs, so that they could find jobs and play a part in society. The integration programme also made provision for imams to spend time in the Netherlands. It was important for leaders of significant religious groups to be familiar with the culture of the host society, since they could play an important role in the integration process. Members of ethnic minorities often retained ties with their countries of origin, and hoped to return there at some time; the Repatriation Act, in force since 1999, provided funds for them to do so.

57. Mr. Vander KWAST (Netherlands) explained that because of a severe financial crisis in the Netherlands Antilles and Aruba, it was impossible for them to be represented at the meeting. The chapters of the report dealing with those parts of the Kingdom could be introduced by his delegation either immediately, or at the next meeting.

58. The CHAIRPERSON suggested that before turning to those chapters of the report, members of the Committee should put their oral questions on questions 10 to 14 in the list of issues.

59. Mr. YALDEN praised the thoroughness of the report, while pointing out that because of late submission parts of it were rather dated. He was glad to see a number of comments by the Netherlands authorities on Optional Protocol issues. Concerning mechanisms for monitoring discrimination, he noted that the Ombudsman had jurisdiction over the police, and he wondered how many complaints about the police had been received by the Ombudsman, and what the outcome had been. Did the jurisdiction of the Ombudsman over the Ministry of the Interior extend to prisons? Had any complaints been received about the prisons, and if so on what grounds? On the question of discrimination based on age, he noted that according to

paragraph 197 of the report, "the Supreme Court found no grounds for claiming that the rule by which employment ends at the age of 65 was no longer in accordance with the perception of the law among broad strata of society". In an ageing society, discrimination based on age was particularly prevalent. What was Netherlands policy on that form of discrimination?

60. He also inquired about Dutch policy concerning discrimination based on disability. Article 1 of the Constitution of the Netherlands was framed very broadly, prohibiting discrimination based "on any other grounds whatsoever", which presumably included disability. Did the Equal Treatment Commission deal with that kind of discrimination? As for religious discrimination, paragraph 185 of the report explained that the Equal Treatment Act did not "prejudice the freedom of religions, philosophical or political institutions and private educational institutions to set requirements which, in view of the aims of these institutions, are necessary for exercising the duties of a particular post or upholding the principles of the institution". That apparently made it lawful for private religious schools to impose certain standards of conduct on their staff, which was confusing in the light of the requirement that an individual's sexual orientation or marital status should not "be a factor in assessing that individual's suitability for a particular job". On the question of minorities, he noted that the participation of ethnic minorities in the Netherlands in employment and education, especially post-secondary education, was disproportionately low. Indeed the Committee on the Elimination of Racial Discrimination had referred to an increase in racial segregation in Dutch society. He would welcome some information on the practical results of Dutch legislation and programmes aimed at achieving integration.

61. Mr. AMOR said he would welcome some information about the "sectarian phenomenon", in its pejorative sense, in Dutch society. What was the scale of the phenomenon? Were any groups prevented from exercising their religious activities? Was there any definition in Dutch law or jurisprudence of the concept of religion? Did any group exploit freedom of religion for financial or other purposes? Private educational establishments were free to impose their own rules, but of course each State remained responsible for any discrimination practised on its territory. Referring to paragraph 143 of the report, he pointed out that the freedom of private schools could lead to discrimination, within the meaning of article 26 of the Covenant, against other religions or groups. Had the Netherlands authorities solved the problem of the representation of Muslims, and did they receive any financial support? The new law legalizing brothels could, he feared, encourage the practice of prostitution in a manner such as to offend human dignity and the equality of the sexes and to transgress both the Covenant and the spirit of the 1948 Declaration.

62. Mr. SCHEININ, referring to question 14 in the list of issues (protection of minorities) expressed concern at the lack of sensitivity towards minority cultures evidenced by restrictions on the right to live in a caravan, as described in paragraphs 89 and 201 of the report. There was an underlying assumption that Roma and Sinti, as caravan dwellers, belonged to the same category. The force of the decision of the European Commission on Human Rights, mentioned in paragraph 89, was lessened by the fact that the Covenant lacked any provision comparable to article 27 of the European Convention on Human Rights. Public policy was not a sufficient reason for preventing people from living in caravans where they wished to do so for the sake of living in a community. Was present policy on the matter more sensitive than that described in paragraph 89?

63. Concerning non-discrimination under article 26 of the Covenant, he queried the distinction drawn between European Union citizens and non-citizens with regard to the right to engage in prostitution. Creating a second-class category of prostitutes without formal protection could prove counterproductive, even if it was done for the sake of combating trafficking in persons. In which other fields were distinctions made between European Union citizens and non-citizens, and on what grounds? On the question of religious discrimination, had the Netherlands authorities reconsidered the approach described in paragraph 144 of the report, according to which freedom of religion did not entail the right to State funding for all religious groups? Discrimination against particular groups in that regard would run counter to article 26 of the Covenant, in the light of the findings in the case of *Waldman v. Canada*.

64. Mr. LALLAH pointed out that the report gave no indication of the nature and size of minorities in the Netherlands, apart from the figures for elected representatives of minority groups given in paragraph 181. The Committee had made clear, in its general comments, that the existence of a minority in a State party gave rise to the rights available under article 27 of the Covenant, whether the members of the minority were citizens of the host country or not. They also enjoyed all the other rights enumerated in the Covenant, except those under article 25. He would therefore welcome some statistics on the various minority groups. On the matter of sensitivity towards those groups, he had the impression that the integration policies pursued in the Netherlands assumed that Dutch society was monolithic, whereas it was being transformed by the very presence of minority groups. To promote two-way traffic, Dutch children should also be taught at school that their country recognized the right of others to be different and to practise their own culture, religion and language.

65. Mr. ANDO referred to the amendment to article 137f of the Criminal Code, mentioned in paragraph 195 of the report, whereby "participation in discriminatory activities, or providing material assistance for the benefit of such activities, is now an indictable rather than a summary offence". Could the delegation explain the difference? Article 90 of the Code redefined discrimination so that a given distinction which aimed to violate human rights or had that effect was now a criminal offence. The provision relating to effect raised a delicate issue, because it might infringe freedom of expression, and he would welcome some examples where it had been applied. On the question of exemptions from military service for Jehovah's Witnesses, mentioned in paragraph 196, he wondered whether there were any instances where the practices of that group, such as refusing consent for blood transfusions for minors, infringed human rights. Could they refuse to perform community service when imposed as a criminal penalty?

The meeting rose at 6 p.m.