The Convention on the Elimination of All Forms of Racial Discrimination

A Dutch Perspective (1962-1971)

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The Convention on the Elimination of All Forms of Racial Discrimination

A Dutch Perspective (1962-1971)
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<tr>
<td>AI</td>
<td>Amnesty International</td>
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<tr>
<td>ARP</td>
<td>Anti-Revolutionary Party (political party)</td>
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<td>CERD</td>
<td>Committee on the Elimination of All Forms of Racial Discrimination</td>
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<td>D66</td>
<td>Democrats 66 (political party)</td>
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<td>ICERD</td>
<td>International Convention on the Elimination of All Forms of Racial Discrimination</td>
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<td>KVP</td>
<td>Catholic People’s Party (political party)</td>
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<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
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<td>NAACP</td>
<td>National Association for the Advancement of Colored People</td>
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<td>NASSI</td>
<td>Committee National Campaign for Support of Spijtoptanten Indonesia</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>NZASM</td>
<td>Netherlands South-African Railway-company</td>
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<td>NZAV</td>
<td>Netherlands South-African Movement</td>
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<td>NGO</td>
<td>Nongovernmental organization</td>
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<td>NL-HaNA</td>
<td>National Archives The Hague</td>
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<td>PvdA</td>
<td>Labour Party (political party)</td>
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<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNESCO</td>
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Chapter 1 Introduction

This thesis aims to understand the role of the Dutch government in the creation of the United Nations International Convention on the Elimination of all forms of Racial Discrimination (ICERD), adopted the 21st of December 1965. The Convention, aiming to “prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin…” is one of the first legally binding international human rights instruments of the United Nations (UN).\(^1\) It was drafted during a transformative period in international human rights history, and it would serve as an example for future instruments aiming to broaden and promote human rights globally. There are relatively few historical works on the Convention, and as far as I know nothing substantial has been written about it from a Dutch perspective.\(^2\) I hope to be able to help fill this gap.

In the early 1960s, Afro-Asian countries proposed to create international human rights instruments for the elimination of racial discrimination. Because of decolonization these countries had gained a majority in the UN in 1961, which they used to push through their agenda of self-determination and human rights. One year earlier, they had proposed the Declaration on the Granting of Independence to Colonial Countries and Peoples which was successfully adopted by the UN in 1960.\(^3\) Decolonization, historians Steven Jensen and Roland Burke argued, had a large impact on the international human rights movement. Burke argued that the impact of decolonization on the human rights program of the UN was “disproportionately great” and Jensen argued that the issue of human rights emerged because decolonization created a “crack in the world running from South to North and East to West”.\(^4\)

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\(^1\) See article 5 of the Convention, Appendix 2
\(^3\) By the end of 1961, the UN consisted of fifty-three members from Afro-Asian countries, and fifty-one from all other continents, see P.G. Lauren, *Power and Prejudice*, Westview Press, 1996: 233
\(^4\) Jensen 2016: 2-3; Burke 2010: 6
Aware of the widespread problem of racial discrimination that still existed; a group of nine Francophone African countries tabled a resolution to create the Declaration and Convention on the Elimination of All Forms of Racial Discrimination at the 1962 General Assembly.\(^5\) The Convention would have an effect on the human rights movement at large, and Jensen argued that;

It was this Convention and the race issue itself that enabled the completion in 1966 of the two Covenants on civil and political rights and on economic, social and cultural rights that by then had been underway for eighteen years.\(^6\)

The Convention was drafted before the Netherlands integrated human rights as part of its foreign policy, which they did in the 1970s. Researcher Peter Malcontent set the breakthrough of human rights in the Netherlands to 1973, with the rise of the progressive Cabinet-den Uyl. Two years later, the Dutch Minister of Foreign Affairs Max van der Stoel even went as far as to claim that the Netherlands was the most active country in the world when it came to human rights.\(^7\) The Dutch government was also one of the first to make the promotion of human rights an official goal for its foreign policy in a 1979 policy paper. However, and as I will show in this thesis, the Netherlands became increasingly interested in human rights already in the 1960s.\(^8\)

The main thesis question will be; how did the Netherlands government react to- and influence the Convention? In order to answer this, it seemed logical to focus on the period between 1962 and 1971; starting with the resolution to create a Declaration on the Elimination of All Forms of Racial Discrimination, to the follow-up Convention and its ratification by the Dutch government.

In this introductory chapter, a rather broad historical background is given. The main questions will be; how influential have human rights considerations been in Dutch foreign policy, and

\(^5\) The nine countries were Central African Republic, Chad, Dahomey (Benin), Guinea, Ivory Coast, Mali, Mauritania, Niger and Upper Volta, see Jensen 2016: 105
\(^6\) Ibid: 7
\(^7\) The Cabinet consisted of five political parties; PvdA (Labour Party), D’66 (Democrats 66), PPR (Political Party of Radicals), KVP (Catholic People’s Party) and ARP (Anti-Revolutionary Party). The Prime Minister was Joop den Uyl, see P.A.M. Malcontent, *Op kruistocht in de derde wereld – de reacties van de nederlandse regering op ernstige en stelselmatige schendingen van fundamentele mensenrechten in ontwikkelingslanden, 1973-1981*, Hilversum Verloren, 1998: 49
have they changed over the years? What about its colonial past, has this influenced its policies towards human rights? More generally, when did international human rights have its breakthrough?

**Early tendencies in Dutch foreign policy**

Decolonization helps explain why the Dutch government became increasingly interested in the promotion of the international legal order and human rights in the 1960s, as they no longer had colonial interests shaping their foreign policy. The colonial history is important for another reason; because it shows some early tendencies of Dutch foreign policy.

By the 1650s, the Netherlands was one of the biggest seaborne empires in the World, having colonies in Asia, Africa and America. The Dutch East Indian trading Company, established in 1602, perhaps being one of the better known parts today. The nature of this empire is disagreed upon among historians. Safe to say seems that it was an empire focused more on the accumulation of wealth and profits through trade, than on territorial expansion. As historian Joop de Jong stated about the Dutch Republic (1579-1795);

Political tensions and open conflict within towns, between towns and provinces, between stadtholder and regenten, and especially conflicts and war with other states were generally seen as undesirable because they would threaten peace, prosperity, and the status quo.

Dutch interests in trade, and the ‘smallness’ of their nation, can help explain early efforts in international legal measures to create stability. Important in this regard is one of the founding fathers of international law, Dutch republican Hugo Grotius (1583-1645). Professor in international relations Rob de Wijk argued a focus on the international legal order has been an on-going tradition in Dutch society, and explains why The Hague was made the world capital of international law. In his famous book, *Peace, Profits and Principles*, the Dutch former

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11 de Jong 2011: 47
12 de Wijk 2003: 168
Minister of Defense, Joris J.C. Voorhoeve indeed viewed legalism as one of many factors of what he called an international-idealist tradition. Another factor was moralism.\textsuperscript{13}

The Dutch empire seemed to have had a certain degree of moralism. This was certainly influenced by its Calvinist traditions, which gave clear moral values due to its rather black and white view on ‘good’ and ‘bad’.\textsuperscript{14} This moralism seemed to have become more noticeable after they experienced a crisis of national identity between 1840 and 1848. This crisis was largely due to the loss of Belgium in 1831, which the Netherlands did not truly accept before 1848. They were also experiencing a financial crisis, and it was even considered to become part of Germany. After a constitutional change in 1848, the Monarchy (the Oranjehuis) accepted the smallness of their country, and adopted a policy of abstention and neutrality. Professor in history J.C. Boogman argued this almost automatically led to a feeling of moral superiority, where they felt destined as a small state to promote peace and security, and looked down on power politics by the great powers.\textsuperscript{15} Famous Dutch lawyer C. van Vollenhoven (1874-1933) argued one year before the outbreak of the First World War that the world could only expect salvation from three countries:

France, the United States, and the Netherlands probably all have the sense of mission; but in the flowering of our own garden we beat France; and in impartiality that is above suspicion we beat both. In addition to vocation, these qualities are indispensable.\textsuperscript{16}

As researchers Peter Malcontent and Floribert Baudet argued, the Netherlands started profiling themselves as a morally just and enlightened society because it served national interests. But when it did not, they often chose another path. This makes it difficult to speak of a clear international-idealist tradition as posed by Voorhoeve. When, for instance, the Netherlands had to choose whether or not to become part of the League of Nations (1920-1946), they held serious reservations as this would damage economic relations with Germany. While they hesitantly joined the League, they maintained a policy of caution where protection of its own sovereignty was preferred. On humanitarian matters the Netherlands was also noticeably laid back, for instance on the persecution of Spanish Protestants in the latter half of

\textsuperscript{13} J.J.C. Voorhoeve, \textit{Peace, Profits and Principles – A study of Dutch Foreign Policy}, Martinus Nijhoff 1979: 50-1
\textsuperscript{14} B. De Graaff, D. Hellema & B. van der Zwan 2003: 73
\textsuperscript{15} J.C. Boogman et.al, \textit{Nederlandse buitenlandse politiek – heden en verleden}, Uitgeverij In den Toren, Baarn 1978: 20-21
\textsuperscript{16} C. van Vollenhoven cited in Voorhoeve 1979: 51
the 19th century; they were more concerned with maintaining a policy of neutrality. And while
the government let in almost one million Belgium refugees during the First World War, they
were reserved on making international agreements on the statelessness of Russian and
Armenian refugees.\textsuperscript{17}

The government also differentiated between Dutch citizens and colonial subjects. While
Dutch citizens enjoyed a certain amount of civil and political rights after 1795, the West- and
East Indies would have to wait until 1870 before being granted these rights.\textsuperscript{18} And it was not
before 1863 that slavery was abolished in the Dutch colonies, long after Great Britain (1834)
and France (1848).\textsuperscript{19} This led Malcontent and Baudet to the conclusion that the “Dutch
contribution to international legal order during the 19th century and the first half of the 20th
century as a whole should first and foremost be characterized by words over deeds”.\textsuperscript{20}

The point with the discussion above was not only to give a fuller background context of
Dutch foreign policy; I also argue it has direct relevance for the recent human rights evolution
in the Netherlands. As shown above, and as I will show for the first decades after 1945 too,
national interests often prevailed over other policy objectives. The abovementioned
conclusion of Malcontent and Baudet indeed holds much merit. But the heightening of the
Netherlands to a morally superior and legally focused country, as has been done by several
influential Dutch persons, perhaps, even if accidentally, created real expectations. This
argument was made by researcher Hilde Reiding, who pointed out that; “perception and belief
systems are part of the contextual framework in which foreign policy decisions are made, and
can therefore also be factors of influence.”\textsuperscript{21} The self-image of the Netherlands could help
explain why international human rights have become an official part of Dutch foreign policy
after 1979. Of course, it should not be forgotten that international human rights and its
influence on legal instruments benefitted a small nation like the Netherlands as it restricts
power politics by greater nations. And has therefore been an attractive choice, but I agree with

\textsuperscript{17} de Graaff, Hellema and van der Zwan 2003: 74-77
\textsuperscript{18} Because in 1795 the Declaration of the Rights of Man and of the Citizen was adopted by the Dutch
government (Verklaring van de Rechten van de Mens en Burger), See: M. Kuitenbrouwer & M. Leenders,
\textit{Geschiedenis van de Mensenrechten – bouwstenen voor een interdisciplinaire benadering}, Hilversum Verloren
2000: 157
\textsuperscript{19} G. Oostindie & I. Klinkers, \textit{Decolonising the Caribbean – Dutch Policies in a Comparative Perspective},
Amsterdam University Press 2003: 59
\textsuperscript{20} Own translations (original in Dutch), de Graaff, Hellema and van der Zwan 2003: 77
\textsuperscript{21} Reiding 2007: 14
Reiding in that the sense of reputation, which has been in the making for a long time, also carries some weight.

After the Napoleonic wars in the beginning of the 19th century, the Netherlands lost part of its colonial possessions to Great Britain. By 1945 the Kingdom of the Netherlands consisted of the East Indies (today Indonesia), Suriname and the Netherlands Antilles. The Netherlands had frequently considered the latter two, known then as the West Indies, as a financial burden and even considered to sell it. Therefore, on the onset of post-war decolonization, the government was; [M]ainly guided by the desire to keep Indonesia within the Kingdom. Suriname and the Antilles, small and problematic possessions very far away both geographically and culturally were completely overshadowed by the Dutch-East Indies relationship.

The East Indies had always been viewed as the more profitable colony, and indeed, this would be the hardest to let go of during post-war decolonization. The Netherlands only retained it as a colony for seven years; from the Japanese occupation in 1942, to the official transfer of sovereignty in 1949. This was not a peaceful process, and it shed an unfavourable light on the Netherlands internationally. Two military campaigns were launched by the Dutch government, also called ‘police actions’, to regain control in Indonesia between 1947 and 1949. These happened around the same time as the Universal Declaration on Human Rights (UDHR) and the Genocide Convention (both 1948) were being discussed and adopted by the UN General Assembly. It was also one of the first conflicts to be criticized and monitored by the newly established world organization. On the 27th of December 1949 the Netherlands was pressured by the UN Security Council to hand over sovereignty. Only the territory of

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22 Until 1986 the Netherlands Antilles consisted of six islands; Aruba, Curaçao, Bonaire, St. Eustatius, Saba and St. Maarten; G. Oostindie, Postcolonial Netherlands – Sixty-five years of forgetting, commemorating, silencing, Amsterdam University Press 2010: 23, 37
23 Oostindie & Klinkers 2003: 59-62
24 Ibid
26 Ibid: 272
27 Jensen 2016: 32-33
West New Guinea it held on to, which led to tense Indo-Dutch relations for years, until the Netherlands government had to give it up in 1962. Violence by colonial powers to hang onto former colonies was not particular to the Netherlands; other colonial powers had similar reactions, such as Portugal in Angola and France in Indochina.

Only after the loss of Indonesia did the government shift its attention to the West Indies. They changed their approach, and within nine years after the Second World War, these overseas territories became equal and autonomous partners within the Kingdom. In 1974, Suriname started negotiations with the Dutch government, resulting in them gaining independence on the 25th of November 1975. The decolonization process led to large waves of migration from former colonies to the mother country, which I will get back to in chapter 3. Today the Kingdom of the Netherlands consists of four countries; the Netherlands, Aruba, Curaçao and St Maarten.

Decolonization and the international human rights movement


described as the largest transfer of sovereign power in the history of humankind, deserves greater attention not just as an essential part of the twentieth-century historical experience but also for the emergence of human rights.

In the first post-war decades, the continuous interest in sovereignty and power politics by the countries on both sides of the Cold War hindered real progress in international human rights. Developments in these years were marked by a combination of, as Jensen called it, proclamation and denial. This is visible in for instance the 1945 UN Charter, drafted shortly after the Second World War. Proclamation because human rights were explicitly mentioned and its universality was for the first time recognized in article 55 of the Charter. This marked

29 Baehr, Castermans-Holleman & Grünfeld 2002: 177
30 Oostindie & Klinkers 2003: 64, 91
32 Jensen 2016: 2-3
progress in the human rights evolution, as they had now officially become part of international relations.\textsuperscript{33} Also historian Paul Gordon Lauren recognized the importance of these early progressions in international human right, arguing that the Charter “dramatically challenged and changed some of the most essential parameters of international discourse and behavior”.\textsuperscript{34}

\textit{Denial} because it contradicted itself on the universality of rights as it firmly protected the principle of sovereignty. It also lacked enforceability. Furthermore, the Charter hindered universality of human rights because it protected colonial interests. In chapter 11 of the Charter, which dealt with non-self-governing territories, human rights were not explicitly mentioned. In chapter 12 it established an International Trusteeship system, primarily for German colonies taken after the First World War. The goal of such a system was to promote human rights and self-government in these territories.\textsuperscript{35} As it primarily applied to former League of Nations mandates, it “allowed Britain, France, Portugal, Spain, the Netherlands, Belgium, and the United States to retain and exploit whatever colonial possessions they wished.”\textsuperscript{36}

The Universal Declaration on Human Rights (UDHR), which was adopted by the General Assembly in 1948, seemed to have had the same combination of proclamation and denial. It was a step forward because it did not contain an article on protection of sovereignty. Instead its article 2 confirmed the universality of human rights.\textsuperscript{37} In article 2 of the Declaration colonial territories were also included in the human rights rhetoric. It also furthered the human rights evolution by elaborating and defining the rights more precisely. This is why Lauren argued it “enormously accelerated the evolution of international human rights.”\textsuperscript{38} And although it did not contain legally binding obligations, its visions “struck a chord and rapidly began to take on a life of its own.”\textsuperscript{39} But again it lacked in enforceability, and unlike the Charter it did not include the right to self-determination. In both instruments we can therefore see a continuation of colonial interests. Along with increased tensions between both sides of the Cold War, the human rights evolution seemed to slow down rather than accelerate.

\begin{minipage}{\textwidth}
\begin{footnotesize}
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\item Ibid: 26-7
\item Jensen 2016: 26-7
\item Lauren 2011: 187
\item Lauren 2011: 225
\item Ibid
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Events in the 1950s would lead to a stalemate in the UN. Neither sides of the Cold War seemed prepared to strategically use human rights to undermine the other, as both sides severely violated human rights; racial segregation in the United States, colonialism of European countries and the lack of freedom of movement, religion, thought and expression in the Soviet Union. Furthermore, during discussions on the UDHR, it had been decided to postpone the creation of a legally binding Covenant for later. In 1950 this subject was readdressed by the Third Committee of the UN, which deals with social, humanitarian and cultural issues, and in 1952 it was decided to create two separate Covenants. The progress on the Covenants, one on political and civil rights and the other on economic, social and cultural rights, was severely delayed when the United States opted out in 1953. The human rights evolution seemed to be brought to a halt.

To break this deadlock, Steven Jensen argued, change had to come from a new source; the Global South. In this regard, the decolonization process and the right to self-determination were important. Also Burke argued for “the primacy of decolonization as a political force in the evolution of the UN human rights agenda”. In the book by historian Samuel Moyn, The Last Utopia, the argument is made that anti-colonialism was not a human rights movement. In his opinion, self-determination and anti-racism were closely linked to collective sovereignty, which “would later seem the very barrier the concept of human rights was intended to overcome.” Moyn instead set the breakthrough of international human rights in the 1970s. He did on the other hand acknowledge that the finalization of the Covenants in 1966 was made possible “thanks to the transformative role of the new states.” Steven Jensen agreed with the latter, but argued that Afro-Asian efforts deserve more attention than that.

Not only did Afro-Asian countries focus on self-determination and racial discrimination, they used a broader concept of human rights, for instance by affirming the principles laid down in

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40 Jensen 2016: 42  
41 Jensen 2016: 34, 50  
43 Jensen 2016: 40-41  
44 Jensen focuses especially on the role of Jamaica, stating that “Jamaica became the major broker of progress on human rights in the 1960s”, see Jensen 2016: 4-5  
45 Burke 2010: 4  
46 Moyn 2012: 98  
47 Ibid: 100
the UN Charter and the UDHR. Furthermore they were able to influence the direction of the UN significantly because of their number and rather coherent strategy.\textsuperscript{48} This seems to have originated in the Bandung Conference held in Indonesia in 1955, where representatives from twenty-nine Afro-Asian countries met and discussed human rights related issues. Much attention was given to the right to self-determination, along with “questions of individual freedom, religious liberty and democratic governance.”\textsuperscript{49} Jensen set the breakthrough of international human rights from 1962 to 1968, when human rights were incorporated into international law. He pays much attention to the International Convention on the Elimination of all Forms of Racial Discrimination; making his research especially relevant for my subject.\textsuperscript{50}

Moyn argued that human rights in 1968, outside of the UN, were not seen as a remedy to contemporary global conflicts.\textsuperscript{51} Because of this, he set the breakthrough for human rights in the 1970s, mainly due to the efforts and initiatives by the nongovernmental organization (NGO) Amnesty International (AI, established in Great Britain 1961 by Peter Benenson). Earlier NGOs, except for the International League of the Rights of Man created in 1941, failed to become prominent because they were confined by narrow borders, such as religion, gender or ethnicity.\textsuperscript{52} They also focused on the UN as their primary advocacy, in which human rights seems to have lost much of its credibility because of the ideological and political tension within it. AI did not base its advocacy on the UN; instead it sought to increase participation by seeking “direct and public connection with suffering”.\textsuperscript{53} They also tried to appear apolitical by selecting cases from either side on the Cold War and in Third World countries.\textsuperscript{54} AI’s global prominence increasing in the 1970s, America’s human rights policy shifting dramatically after the inauguration of Jimmy Carter in 1977, and increased human rights activism after the Helsinki Accords of 1975, were the main reasons for Moyn’s focus on the 1970s instead of 1960s.\textsuperscript{55}

I very much agree with Steven that this was a process, and that not one, but many events were relevant to the breakthrough of international human rights. This means that all three major

\textsuperscript{48} Jensen 2016: 55
\textsuperscript{49} Ibid: 43
\textsuperscript{50} Ibid: 71
\textsuperscript{51} Moyn 2012: 3
\textsuperscript{52} Moyn 2012: 124-126
\textsuperscript{53} Ibid: 130
\textsuperscript{54} Ibid: 132
\textsuperscript{55} Ibid: 147-151
periods historians have pointed at as possible breakthroughs (1940s, 1960s and 1970s), were of importance in this evolution. Perhaps the 1960s was a breakthrough in the international, political sphere while the 1970s was a breakthrough in the social sphere. Both can thus be said to have universalized human rights; one on a governmental level, and the other on a non-governmental/social level.

**Human rights in Dutch foreign policy**

In an article on the potential of small states to influence international human rights policies, the Norwegian human rights expert Jan Egeland gives high praise to the Netherlands. The Netherlands has probably become the most effective human rights advocate today, because she ambitiously combines her favourable image as a small state with allocating considerable resources to the planning, implementation and follow-up to an innovative and ambitious policy.56

Indeed, as various researchers have concluded, in the course of the 1960s and especially since the 1970s the Netherlands has given much attention to human rights in its foreign policy.57 As mentioned previously, in 1979 the Dutch government was one of the first countries to publish an official policy paper on human rights and foreign policy which stated that; “The Netherlands Government regards the promotion of human rights as an essential part of its foreign policy.”58 Another example of Dutch interest in human rights is its participation in Amnesty International; in 1995 the Dutch section of AI was the biggest, counting around 181 thousand members.59 The praise is thus not completely undeserved. In practice however, human rights considerations did not always prevail over other interests, such as economic interests or national security.

In an overview-study of Dutch foreign policy and human rights from 1979 to the 1990s, it has been demonstrated that human rights considerations differed from case to case. Reactions to Pinochet’s military dictatorship in Chile set human rights considerations far above economic

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58 Cited in Reiding 2007: 12
59 Kuitenbrouwer & Leenders 2000: 193
or other general foreign policy objectives, and is said to be a “showcase of human rights policy of the Netherlands.” On the other hand, during the period of most severe human rights violations (1976-1978) in General Jorge Rafael Videla’s military regime in Argentina, the Netherlands prioritized economic interests above anything else; being Argentina’s most important exporting country. The Argentina case was seen as the first where the 1979 policy paper could be invoked, with disappointing results. Within the UN the Netherlands has a rather good reputation because, as researchers Peter Baehr, Monique Castermans-Hollem & Fred Grünfeld argued, they are less conflicted with competing foreign policy considerations that exist in bilateral relations.

What about human rights considerations in the first decades after the Second World War? Historians have argued that the end of the Second World War meant a change in Dutch foreign policy, while domestic policies remained largely the same. But this change did not mean human rights got a prominent role. As mentioned, decolonization of Indonesia did not shed a positive light on the Netherlands in the field of human rights. Colonial interests negatively affected human rights considerations in other areas as well.

Because of its colonial interests, the Dutch government voted against the proposal to include self-determination in the UDHR. The Indonesian and New-Guinea questions were for interior affairs, the UN should therefore not interfere. This explains why the government abstained on anti-apartheid resolutions in the UN until 1961, even though it opposed the system of apartheid in principle. Again, South African policies on apartheid were a matter of interior affairs only. It must have also been influential that South Africa supported the Dutch in its policies towards New-Guinea. Furthermore, continued colonial interests meant it could not easily condemn human rights violations of other colonial powers, such as Portugal’s violent reactions in its Southern African colonies. Decolonization also affected Dutch selection of development aid, as they gave most to New-Guinea between 1949 and 1962. The rest primarily went to anti-communist countries.

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60 Baehr, Castermans-Hollem & Grünfeld 2002: 43, 72
61 Ibid: 33-36, 222
62 Ibid: 217
64 Malcontent 1998: 32; de Graaff et al. 2003: 80-81
When it came to human rights violations in Eastern countries, the Netherlands lost some of its reservations, and was often a tad more outspoken than its Western allies. The Dutch government, for instance, accepted a limited amount of Hungarian refugees who fled their country from Soviet oppression in 1956. This, as Malcontent argued, had little to do with humanitarian reasons and more with the on-going Cold War. Anti-communism in Dutch society was used by the government to gather support for its system of “solidarity, industrial peace and stability”, which was so characteristic for the 1950s. As for the first decades after the war, Malcontent argued, one cannot yet speak of a foreign policy in which human rights were of real importance.

**Previous literature, sources and structure**

Throughout this introductory chapter, I have discussed various perspectives on the international human rights movement and on Dutch foreign policy. I will not repeat them here, and instead focus on other literary works which have given me useful perspectives.

Decolonization resulted in the large numbers of postcolonial migrants, also for the Netherlands. In order to understand the process of postcolonial migration, and the effects on Dutch society, the book *Postcolonial Netherlands – Sixty-five years of forgetting, commemorating, silencing* by Gert Oostindie has been very useful. This book gives, among others, attention to the way in which the Dutch government received the postcolonial migrants, showing that there was much reluctance on the side of the Dutch government to admit these migrants. He also accounts for the reactions of the postcolonial migrants themselves, who found out there was little space for their stories in postwar Dutch society.

The prevalence of racial discrimination in the Netherlands from 1950 to 2009 is discussed by Rob Witte in his book *Al eeuwenlang een gastvrij volk: racistisch geweld en overheidsreacties in Nederland (1950-2009)*. He accounts for some of the racially motivated incidents in the Netherlands from the 1950s, and focuses on the reactions of the Dutch

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65 Malcontent 1998: 29
66 Ibid (Own translations from Dutch)
67 G. Oostindie, *Postcolonial Netherlands – Sixty-five years of forgetting, commemorating, silencing*, Amsterdam University Press 2010
government. He argues that the government viewed racial discrimination in the 1950s and 1960s as something “un-Dutch”, while the government was somewhat more willing to acknowledge the existence of racial discrimination in the 1970s, which resulted in a minorities policy. Furthermore he discusses the radicalization of Islam and governmental reactions to this the past decades.68

In order to understand the structure of Dutch society in the 20th century, I have used the book by Arend Lijphart called Verzuiling, pacificatie en kentering in de Nederlandse politiek. This book pays much attention to the period after 1917, when Dutch society became increasingly divided in groups based on their ideologies, rather than their socio-economic position. He calls this verzuiling, which can be translated to pillarization. Lijphart argues such groups, or pillars as he calls them, were increasingly broken down in the 1960s.69 The book by Peter van Dam called Staat van verzuiling – over een Nederlandse mythe, has also been helpful to understand pillarization. He argues that while there existed pillars and politics were often pacified between 1917 and 1967, society was continuously changing and there existed tensions within the pillars itself. He also gives different perspectives on why Dutch society depillarized in the 1960s.70

Other than the book of Joris Voorhoeve, Peace, Profits and Principles – a Dutch Foreign Policy as mentioned previously in this chapter, the book edited by Bob de Graaff, Duco Hellema en Bert van der Zwan called De Nederlandse buitenlandse politiek in de twintigste eeuw has been helpful to understand the role of the Netherlands in the international legal order. The authors of this book give a critical assessment of Dutch contributions to the international legal order in the 20th century, arguing that Dutch contributions were often more words than deeds. From the 1960s onwards this slowly started to change, after which Dutch contributions to the international legal order became more progressive.71

68 R. Witte, Al eeuwenlang een gastvrij volk – racistisch geweld en overheidsreacties in Nederland (1950-2009), Amsterdam University Press, 2010
69 A. Lijphart, Verzuiling, pacificatie en kentering in de Nederlandse politiek, Amsterdam University Press, 2007
70 P. van Dam, Staat van verzuiling – Over een Nederlandse mythe, Uitgeverij Wereldbibliotheek bv Amsterdam, 2011
71 B. De Graaff, D. Hellema & B. van der Zwan, De Nederlandse buitenlandse politiek in de twintigste eeuw, Boom, Amsterdam, 2003
As most of the responsibility for dealing with international human rights instruments goes to the Ministry of Foreign Affairs and the Ministry of Justice, I have focused my archival research on them. Most of the records can be found in the National Archives of The Hague, but as some have not yet been released by the Ministry of Foreign Affairs, I also had to visit their archives. Here I could find records from the period 1966-1971. While I feel confident I have been able to sketch a wholesome picture of the processes, I cannot claim with certainty that nothing has been overlooked. The transfer of records from the Ministry of Foreign Affairs to the National Archives has, as I said, not yet been completed, which makes it easier for records to get ‘lost’/misplaced.

Overall however, the records were relatively easy to find. Those from the Ministry of Justice, to be found in the National Archives, were divided chronologically into five relatively thick folders dealing exclusively with the Declaration and Convention. In the Ministry of Foreign Affairs archives, the records were also well organized into seven folders. Records from Foreign Affairs in the National Archives were a little more dispersed, and forced me to search in those places where it seemed most logical to find material, such as records from the Dutch delegation to General Assemblies and under subjects dealt with by the Commission on Human Rights. In addition to the abovementioned archives, I have used the digital archives of the Dutch Parliament.  

It should be kept in mind that all primary sources were found in Dutch official institutions and in the Dutch digital archives online, and that its accuracy in retelling UN events cannot always be guaranteed. Where possible I have therefore tried to validate my findings both with the master thesis of historian Anette Søberg and published records on the Declaration and the Convention by the UN.

Apart from this introductory chapter, the thesis has been divided into three empirical chapters of which the second chapter deals with the drafting of the Declaration, the third deals with the drafting of the Convention and the fourth with the ratification of the Convention by the Netherlands. Each chapter includes at least one section which elaborates on relevant historical background. The fifth and final chapter gives a conclusion of my findings.

Chapter 2 Declaration

Introduction

Before I start discussing the Declaration on the Elimination of All Forms of Racial Discrimination, hereafter referred to as the Declaration, I would like to elaborate on why the issue of race was that high on the 1962 UN agenda. This has partially been answered in the introduction, where I looked at the rise of a new political force, Afro-Asian countries, since the 1955 Bandung Conference. I wrote how Afro-Asian delegates focused on the right to self-determination to end colonialism, and how they used a broader concept of human rights including equality for all regardless of gender, ethnicity or religion. They also acknowledged the universality of these rights. I will first discuss in more detail which developments, since the Afro-Asian group gained a majority in the UN in 1961, led to the 1962 resolution to create the Declaration on the Elimination of All Forms of Racial Discrimination.  

The right to self-determination, the broader concept of human rights and its universality, were all included in what would become the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples. This Afro-Asian Declaration was a counter-proposal to a Soviet declaration on decolonization. The Soviet proposal was strongly influenced by Cold War strategies, and can be viewed as an attack on European colonialism. It did not seem to further the human rights evolution because of the narrow context in which human rights were used, thus failing to convey its universality. In the Afro-Asian Declaration, human rights were dragged out of the Cold War context and universalized. As colonialism and race are closely linked, the 1960 Declaration on decolonization can be seen as an early human rights instrument in which the problem of race was put before the General Assembly. The Afro-Asian Declaration on decolonization is referenced to in both the Declaration and the Convention on the Elimination of All Forms of Racial Discrimination.  

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74 Lauren 1996: 233  
75 Jensen 2016: 54-55  
76 See paragraphs 4 of the preamble of the Appendices
That same year another resolution, prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, was adopted; a resolution condemning all manifestations and practices of racial, religious and national hatred. The immediate cause for this was the reoccurrence of anti-Semitism in the late 1950s, primarily in European countries.\(^77\)

In Cologne on the 26\(^{th}\) of December 1959, two men defaced a Synagogue by marking it with swastika symbols. Over the next five days similar attacks occurred across West Germany, after which the attacks spread to major cities including London, Vienna, Paris, New York, Hong Kong and Oslo.\(^78\) Similar incidents occurred in the Netherlands. A Dutch newspaper, de Volkskrant, wrote on the 6th of January 1960 about an outburst of anti-Semitism in Amsterdam. Letters were sent to the homes of Jewish people, in which it was stated that Jews were not welcome.\(^79\) In less than two weeks, there had been 500 anti-Semitic attacks in 34 countries. The attacks have also been called the Swastika epidemic. Associate Professor of History and Jewish Studies at the University of Virginia James Loeffler argued this was the first global outbreak of anti-Semitism since the Second World War.\(^80\) These attacks were met with protests from both the population and government in many countries. In an interview with the American poet Carl Sandburg, for instance, it was stated that “the Swastika stands not for the murder of an individual or a few individuals, but for the death of a race. It is the symbol of race murder.”\(^81\) The UN responded by adopting a resolution condemning all manifestations and practices of racial, religious and national hatred, as mentioned above. The issue was to be further discussed in the next year’s General Assembly.

At the 1961 General Assembly the issue did not gain much attention, and nearly fell of the UN agenda. Three African countries, Ghana, Guinea and Ethiopia, did not let this happen, and

\(^77\) Jensen 2016: 104
\(^78\) The Dutch delegation to the 17\(^{th}\) session of the Commission on Human Rights said about these attacks in the Netherlands that «[i]n the Netherlands only isolated «incidents» occurred.» The incidents are not further elaborated. But in response to the Soviet Delegation, who speaks of the widespread movement of revived Nazism or Fascism in Western Europe and America, the Dutch Delegation argued these incidents were isolated phenomena and that in the Netherlands «no Neo-fascist or Neo-Nazism organization has in any way been implicated in any of the few incidents that have occurred in my country.», quoted from: NL-HaNA, 2.05.118, 26003, Statement of the Dutch Delegation on 07.03.1961 at the 17\(^{th}\) session of the Commission on Human Rights in New York held from 20.02.1961-17.03.1961 (F 4726/61); Rob Witte argued the Dutch government’s reactions to anti-Semitic attacks in the 1960s can be characterized as “incidental recognition”, see Witte 2010: 60
\(^79\) Witte 2010: 58
\(^81\) Cited in The Swastika Epidemic: Jewish Politics & Human Rights in the 1960s
ensured it would be further discussed in the 1962 Assembly.\textsuperscript{82} During these discussions priority was given to racial discrimination over religious intolerance, because a group of nine Francophone African countries tabled a resolution to create both a Declaration and a Convention against racial discrimination.\textsuperscript{83} The immediate cause for a Declaration seems to have been the outbursts of anti-Semitism, but there existed a larger international context which placed the issue of race so firmly on the UN agenda. Liberation fighter and politician Nelson Rolihlahla Mandela fought against the racist system of apartheid in South Africa, while African Americans were, under the leadership of civil rights activist Martin Luther King Jr., protesting against racial segregation in the United States.

Racial discrimination had been a part of American society for centuries, starting with the importation of African slaves to the British colonies. After the Civil War in the 1860s slavery was abolished, but racism continued to exist. Most notably through the Jim Crow Laws which institutionalized racial segregation mainly in the Southern States. By the United States opposing Nazi doctrines and promoting democracy and equality during the Second World War, inequalities in American society became more visible. Steps were taken by the government to address the issue of race during and after the War, but these were not nearly enough.\textsuperscript{84}

Resistance against the policy of segregation intensified during the Cold War. Both in- and outside of the United States, critics were appalled by the Great Power’s racist doctrines. In 1954 the NAACP (National Association for the Advancement of Colored People established in 1909) won a case which made segregation in public schools unconstitutional.\textsuperscript{85} Mass protests by African-Americans followed, for instance against segregation in transportation.\textsuperscript{86} These nonviolent protests became collectively known as the Civil Rights Movement. The segregationists strongly opposed these developments, and responded with threats and violence against the protestors.\textsuperscript{87} The government showed its support when American President John F. Kennedy sent the federal armed forces to protect an African American student’s admission to

\begin{footnotesize}
\begin{enumerate}
\item Sæberg 2016: 17
\item Jensen 2016: 105
\item United States Courts, Brown v. Board of Education, \url{http://www.uscourts.gov/educational-resources/educational-activities/history-brown-v-board-education-re-enactment} (last accessed 01.10.2017)
\item Such as the Montgomery Bus Boycott in response to the arrest of Rosa Parks in 1955
\item Aiken, Salmon and Hanges 2013: 386
\end{enumerate}
\end{footnotesize}
the University of Mississippi. This resulted in two casualties and several getting injured. This happened in October 1962, the same month as the delegations met in the General Assembly. The UN diplomats were well aware of racial discrimination in America, the more because of the racism diplomatic representatives from African and Asian countries experienced when they travelled to the General Assembly in New York.\textsuperscript{88}

A system “of separating people by race, with regard to where they lived, where they went to school, where they worked, and where they die” was established in South Africa in 1948, and would last until 1994.\textsuperscript{89} Also known as apartheid, which is the Dutch/Afrikaans word for separateness. Racial discrimination had long been part of its society, ever since the Dutch colonized the Cape of Good Hope in 1652. The Afrikaners or Boeren, a term given to the Dutch, French and German protestant colonizers, created an economy based on the use of slaves from East Africa and Southeast Asia.\textsuperscript{90} In 1806 the British took control of the colony, and they abolished slavery in 1833, but racial discrimination persisted. The Afrikaners migrated away from the Cape of Good Hope and established the Transvaal and Oranje-Freestate. Both these Boer-republics were acknowledged by the British. In all areas of South Africa towards the end of the 20\textsuperscript{th} century, as Dutch historian Stefan de Boer noted, “the original population had lost its political, economic and cultural autonomy”.\textsuperscript{91}

In 1910 the Union of South-Africa, consisting of the Cape-colony, Transvaal, Oranje-Freestate and Natal, gained a dominionstatus within the British Empire. Political leaders attempted in the following decades to gather the Afrikaners and the British under one South Africa. In 1934, the (Gesuiwerde/purified) National Party was established, dissatisfied with the government’s close ties with Great Britain.\textsuperscript{92} In 1948 they won the election, and implemented a strict, more ideological racial segregation than had been the case before. Several laws were created separating, and suppressing the black population from the white Afrikaaners. Cold War anti-communism was used to oppose any attempt to change the social, political and economic situation of the country.\textsuperscript{93}

\textsuperscript{88} Jensen 2016: 111  
\textsuperscript{89} N.L. Clark and W.H. Worger, South Africa - The Rise and Fall of Apartheid, Pearson Education Limited, 2011: 1  
\textsuperscript{91} Ibid: 17-18 (own translations from Dutch)  
\textsuperscript{92} Ibid  
\textsuperscript{93} Ibid: 65-66
Nevertheless, resistance against the system grew. In the late 1940s, India criticized South Africa for their discrimination of Indian citizens who were not given the right to vote. And in 1952, representatives from thirteen Afro-Asian countries stressed that apartheid was “both a threat to international peace and a flagrant violation of the basic principles and fundamental freedoms which are enshrined in the Charter of the United Nations”.94 In 1960, a few years before discussions on the Declaration, 69 protestors were killed and 186 wounded by the Afrikaaner police in Sharpsville, shocking the international community. And in 1962, the year in which the resolution to create the Declaration was passed, Nelson Mandela was imprisoned.95 During discussions on the Declaration in the 1963 General Assembly the system of apartheid would indeed be mentioned several times, and was even recognized as a threat to international peace.96

Developments in these two countries help explain why a resolution to create a Declaration against racial discrimination was passed in the UN. It was, and had long been, a universal problem. With the coming to the fore of a new political force, the Afro-Asian countries, the issue could no longer be ignored.

The final version of the United Nations Declaration on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly the 10th of November 1963.97 The text consists of eleven preambles and eleven articles in which the prevalence of racial discrimination in the world is acknowledged and firmly rejected. It is an international human rights instrument which is not legally binding as opposed to for example a convention. It is a morally loaded instrument in which the members declare their aspirations, in this case the right to be free from racial discrimination. During debates on the draft-Declaration everyone, except South Africa who was absent from the discussions, condemned racial discrimination.

The draft was prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, after which it was sent to the Commission on Human Rights for further elaboration. Finally it was sent to the Third Committee of the General Assembly, which deals with social, humanitarian and cultural issues, where it was discussed at length.

94 Clark and Worger 2011: 5
95 Clark and Worger 2011: 62
96 Jensen 2016: 110; The Tunisian delegation stated that «... it was clear that South Africa represented a potential hotbed of armed conflict.» cited in Jensen 2016: 109
97 See Appendix 1
The Dutch government was an active participant during most of the above processes. The only stage in which they were not present was during discussions of the earliest texts in the Sub-Commission. The Commission on Human Rights (hereafter referred to as the Commission), which the Netherlands became a member of in 1961 they were present at both during discussions on the Declaration and Convention.98

The draft-Declaration received much criticism in both the Commission and the General Assembly. These criticisms were directed both at the structure and the contents of the text. Western countries argued the text was too long and immaterial, and that its content was a threat to freedom of expression and association. The Communist bloc and many of the Latin-American countries on the other hand, preferred far-reaching articles, which strictly forbid any expression of racial discrimination.99 There were also differences of opinion on which forms of racial discrimination should be included.100

**Freedom of expression vs. the right to be free from racial discrimination**

Both during discussions in the Commission and the General Assembly, Western countries feared fundamental freedoms, such as freedom of expression and association would be restricted by the Declaration. Especially article 9 was troublesome. The original version of article 9 of the draft-Declaration, as created by the Sub-Commission, read:

The propagation by individuals or groups of ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin and the incitement of hatred and violence against any race or group of persons of another colour or ethnic origin should be condemned.101

The Dutch delegation came with its own proposal to delete the first part of article 9. They preferred to have everything before “and the incitement of” removed, because they feared this

98 NL-HaNA, 2.05.118, 25625, Netherlands Delegation to the 18th General Assembly of the UN – report from the Third Committee (F 366/64): 1-2; de Graaff et al. 2003: 86
99 Jensen 2016: 113
100 NL-HaNA, 2.05.118, 25993, Telegram from the Delegation to the Ministry of Foreign Affairs, 21.10.1963; NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 12
101 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963, attachment 7: 1
would restrict the freedom of opinion and expression. The delegation argued that the latter two freedoms are “entirely different from dissoluteness and licentiousness.” In other words, freedom of opinion and expression cannot be separated from moral restraint or indifference. They pointed at already existing legislation in the Netherlands which restricted these freedoms, which I will get back to later in this chapter, but argued the text of article 9 went too far. In their opinion there should be a “confidence in the effectiveness of the propagation of our own ideals and convictions.” The delegation further argued that “protecting one human right by killing or at least endangering another” would be incorrect. The American, British and Canadian delegations supported the Dutch proposal, while the Eastern European, Chilean and Lebanese delegations opposed it. The Communist countries argued that free propagation of fascist ideas and racial theories were partially responsible for the outbreak of the Second World War, hence restricting freedom of speech made sense. The Soviet delegation continued to make similar comments in later stages of the process which, as I will show, should be viewed in a Cold War context.

To meet Western objections, the Indian representative proposed to bind the two parts of article 9 by inserting “with a view to justifying any form of racial discrimination” after the words “ethnic origin”. The American delegation further proposed to change the beginning of the first sentence into “all propaganda based on”. After a few other small amendments, the compromise-article was unanimously passed in the Commission.

Article 9 was further discussed at the General Assembly, where it was broadened significantly. The final version of the Declaration’s article 9 read:

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.

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102 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963, attachment 7: 1

103 ibid

104 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 11-12

105 Ibid, The Dutch delegation voted in favour to show its cooperation. The final version of the Commission on Human Rights article 9 read: “All propaganda based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form, and all incitement of hatred and violence against any race or group of persons of another colour or ethnic origin, should be condemned.”
2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.

3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.\textsuperscript{106}

The biggest challenge with this article was its third part. The proposal had come from the Belarus delegation, which asked to include organizations which promote racial discrimination and make these punishable by law.\textsuperscript{107} Afro-Asian, Latin American, the Communist countries and others looked to international law as an instrument to fight racial discrimination. As Jensen writes; “[l]aw was in the air in the Third Committee.”\textsuperscript{108} Western countries, especially the United States, were dissatisfied with this proposal as it threatened freedom of speech. Representative of the American delegation, Jane Warner Dick, warned that approval of the Belarus’ proposal could lead to a negative vote from the United States on the Declaration as a whole.\textsuperscript{109} The United States firmly protects freedom of speech in its First Amendment of the Constitution, where it is stated that ‘Congress shall make no law abridging the freedom of speech, or of the press.’\textsuperscript{110} Their delegation believed that on the “free market of ideas” repulsive or awful ideas would be rejected by the population, and that racist organizations’ membership would only decline.\textsuperscript{111}

The Dutch government, who had hesitantly voted in favour of article 9 in the original draft prepared by the Commission on Human Rights, also feared freedom of expression would be restricted. The same argument as in the Commission was made; while admitting that “this

\textsuperscript{106} See Appendix 1; The original article 9 as drafted by the Commission on Human Rights read; \textit{All propaganda based on ideas or theories of the superiority of one race or a group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form, and all incitement of hatred and violence against any race or group of persons of another colour or ethnic origin, should be condemned}, see Søberg 2016: 21
\textsuperscript{107} NL-HaNA, 2.05.118, 25993, Telegram from the delegation to the Ministry of Foreign Affairs, 16.10.1963: 3
\textsuperscript{108} Jensen 2016: 108
\textsuperscript{109} NL-HaNA, 2.05.118, 25993, Telegram from the delegation to the Ministry of Foreign Affairs, 04.10.1963
\textsuperscript{111} NL-HaNA, 2.05.118, 25993, Telegram from delegation to the Ministry of Foreign Affairs, 21.10.1963 (Own translation from Dutch)
freedom as all other freedoms can be abused,” there should exist a “confidence in the effectiveness of the propagation of our own ideals and convictions”.112 The Netherlands (along with most Western countries) therefore voted against part three of article 9, but as the majority of UN members were in favour it was included.113

Historically, the Netherlands placed much value on freedom of speech. In the first Constitution of the Netherlands (1814) freedom of expression by press was laid down in Article 227. In 1848 the Constitution was revised, and freedom of expression by press was included in article 8 (now article 7).114 This gives the impression that freedom of expression carries much weight in Dutch jurisprudence. Indeed, the Netherlands delegation firmly protects this right during discussions on the Declaration, and will continue to do so during debates on the Convention. But, as I hinted at previously, it should be noted that the Dutch government did not always protect freedom of speech at all costs.

In the Netherlands, legislation against racial discrimination had existed since 1934. The Dutch government, as many other European countries (including Norway), created such legislation in the 1930s to deal with statements from political extremes, such as fascism, national-socialism, communism and racial socialism. Fear of increasingly “dangerous atmospheres” in Dutch society led the government to implement articles 137c and 137d in the Criminal Law.115 The former dealt with public, deliberate and offensive/abusive insults directed at a “group of the population or a group of persons belonging partly to the population”, while the latter dealt with distribution of texts and representations in which such insults appeared.116 This shows that opinions on freedom of speech versus the right to be free from racial discrimination are subject to change, depending on the historical context. In the postwar- and colonial context, in which race played a considerable role, it is perhaps not surprising that

112 NL-HaNA, 2.05.118, 25993, Telegram from delegation to the Ministry of Foreign Affairs, 16.10.1963: 3
113 ibid
114 It reads: “No one shall require prior permission to publish thoughts or opinions through the press, without prejudice to the responsibility of every person under the law.” see H. van Schooten, Freedom of Expression in the Dutch Constitution: Censorship and Sense Construction, International Journal for the Semiotics of Law 16: 139-154 (2003): 144
116 Ibid, it should be noted that the content of an insult did not matter, but the way in which one said it. Only if it was made in an offensive, abusive or reviling way, could such insults be prohibited under the old versions of article 137c and 137d of the Dutch Criminal Law

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many countries opted for new rules for the relationship between these two rights. The extent
to which article 9 would restrict freedom of speech however went much further than previous
Dutch legislation had done; perhaps the biggest difference being that it did not differentiate
between the private and public sphere. This would meet with especially strong objections
during negotiations on the legally-binding Convention.

Once the Belarus proposal was included, the Dutch delegation saw no point in voting against
the amended part three, because of their “general attitude towards the draft-declaration and in
particular towards the elimination of all forms of racial discrimination”\(^\text{117}\) Perhaps more
decisive was the acknowledgement that a far-reaching Declaration text was inevitable given
the general atmosphere in the General Assembly.\(^\text{118}\) For the same reason the delegation voted
in favour of article 9 as a whole, along with 68 others, none were against and 33 abstained.
The whole Soviet bloc abstained, but for different reasons. The Eastern countries also opted
for a strong Declaration and abstained because they felt the text had become too “mild”.\(^\text{119}\)

**Different forms of racial discrimination**

The Soviet and Polish delegations came with their own proposal in the Commission, which
would include a new article after article 9, in which racial and neo-Fascist organizations were
prohibited. The exact proposal-text is missing in the archival folder, but could be found in
published UN records. The Soviet and Polish delegations proposed an article which stated
that;

Racist and neo-fascist organizations and all other organizations propagating racist opinions or
engaging in other activities which provoke or encourage racial discrimination shall be prohibited by
law and made liable to sanctions.\(^\text{120}\)

As the majority opposed its inclusion, of which the Netherlands, the proposal was
dismissed.\(^\text{121}\) The Soviet Union made another attempt at including such an article during

\(^{117}\) NL-HaNA, 2.05.118, 25993, Telegram from the delegation to the Ministry of Foreign Affairs, 16.10.1963: 3
\(^{118}\) NL-HaNA, 2.05.118, 25993, Telegram from the Ministry of Foreign Affairs to the Delegation, 18.10.1963
\(^{119}\) NL-HaNA, 2.05.118, 25993, Telegram from the Delegation to the Ministry of Foreign Affairs, 21.10.1963
\(^{120}\) Commission on Human Rights, Report of the nineteenth session, 11 March – 5 April 1963 (E/3743
discussions in the General Assembly. This met with opposition from the American delegation, which argued that racist organizations should merely be condemned, and not prohibited. The use of the term neo-fascism was also unacceptable as they viewed this as Soviet propaganda.\(^\text{122}\) This was, as historian Anette Søberg rightfully pointed out, certainly directed towards Western Germany and the reoccurrence of fascist groups there.\(^\text{123}\)

There thus seems to have existed Cold War tensions during discussions on the Declaration. From what is written in Jensen’s book this becomes even more visible. Both the Soviet and American delegations were exchanging words on the human rights situation in each other’s country. Racial segregation was criticized by the Soviet delegation, who pointed at the racism Afro-Asian and Latin-American diplomats experienced in Washington DC. In return the American delegation pointed at the discrimination of Jews in the Soviet Union, and criticized the ideology of Communism.\(^\text{124}\) Racial discrimination would continue to be used by these two powers to undermine one another and to direct attention away from human rights issues in their own countries during the drafting of the Convention.

The Netherlands was also influenced by Cold War tensions, which can help explain why they sided with the Western countries whenever disagreements came up with the Communist bloc. Since 1949, the Netherlands had tried to protect themselves from Cold War threats by relying heavily on the United States within the North Atlantic Treaty Organization (NATO). They also joined the military Pact of Brussels in 1948, which included France, Great Britain and the Low Countries, in order to maintain peace and security in Europe. The Dutch government did this, Voorhoeve argued, not only to side with France and Britain but “also to make a clear sign to the U.S. that Western Europe was ready to take steps for its security.”\(^\text{125}\) The government was convinced that Western Europe could not protect itself against a possible Soviet invasion, for which they need the United States. This explains why, for instance, the Netherlands left the main responsibility of nuclear protection in Europe in the hand of the United States, and rejected an independent European nuclear force. It also helps understand

\(^{121}\) NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 12
\(^{122}\) NL-HaNA, 2.05.118, 25993, Telegram from the Delegation to the Ministry of Foreign Affairs, 04.10.1963
\(^{123}\) Søberg 2016: 23
\(^{124}\) Jensen 2016: 107-8
\(^{125}\) Voorhoeve 1979: 105
why Minister of Foreign Affairs Joseph Luns was unwilling to criticize American involvement in Vietnam in the 1960s.126

During discussions in the Commission, the inclusion of another form of racial discrimination was proposed; apartheid.127 The term apartheid was included in article 5 of the final version of the Declaration which read:

An end should be put without delay to government policies of racial segregation and especially policies of apartheid as well as all forms of racial discrimination and separation resulting from such policies.128

In the Commission no one seemed to oppose the inclusion of the term apartheid, except for the Netherlands. The Dutch delegation, while stating they were “entirely against” apartheid, argued the term did not fit in “an instrument of a universal and long-lasting character”; The policy of apartheid was, hopefully, to be of a temporary character only.129 In addition, South Africa was not the only country in which “human rights are trampled under foot”. The Dutch delegation was the only one to abstain on the article, none were against and 18 were in favour.130 The article was therefore passed despite Dutch objections.

The Dutch delegation did vote in favour on paragraph 4 of the preamble of the Declaration, in which colonialism was condemned. It also included a reference to the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960). They again voted in favour of paragraph 4 during discussions on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).131 The Dutch colonial past did not seem to influence their stance on the Declaration or the Convention.

127 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 3-4
128 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 8
129 NL-HaNA, 2.05.118, 26005, Statement by the Dutch delegation (date unknown), attachment 6
130 NL-HaNA, 2.05.118, 26005, Report of the 19th session of the Commission on Human Rights held in Genève 11.03.1963-05.04.1963: 8
131 NL-HaNA, 2.05.118, 25625, Report of the delegation to the 18th session of the General Assembly of the UN – report from the Third Committee (F 366/64): 4; NL-HaNA, 2.05.313, 23521, Report of the delegation to the
After debates on articles 5 and 9 had ended and the rest of the treaty text was passed, the Declaration as whole was put up for vote in the Third Committee before being sent to the Plenary. The United States, who had firmly resisted any amendments that would endanger freedom of speech, lobbied Western states to abstain on the Declaration.\footnote{NL-HaNA, 2.05.118, 25993, Telegram from the Delegation to the Ministry of Foreign Affairs, 25.10.1963} This was, as the Dutch delegation argued, a tactical move to try and remove the Belarus amendment. Norway, the Netherlands and 15 other countries thus abstained in the Third Committee vote on the Declaration. As 89 voted in favour of the Declaration, the Belarus amendment was not removed. While the Dutch government sided with America and abstained in the Committee, they had no intentions to abstain on the Declaration in the Plenary.\footnote{NL-HaNA, 2.05.118, 25993, Telegram from the Ministry of Foreign Affairs to the Delegation, 18.10.1963} Both the Norwegian and Dutch government instructed their delegations to vote in favour in this final stage.\footnote{NL-HaNA, 2.05.118, 25993, Telegram from the Delegation to the Ministry of Foreign Affairs, 21.11.1963: Søberg 2016: 25} On the 20\textsuperscript{th} of November 1963 the Declaration on the Elimination of All Forms of Racial Discrimination was adopted by standing ovation.\footnote{See Appendix 1}

The abstention on the inclusion of apartheid in article 5 of the Declaration in the Commission begs the question; did the special, historical relations between South Africa and the Netherlands affect their reactions? In order to answer this I will first give some context and discuss the Dutch-South African relationship, focusing on the period after the late 19\textsuperscript{th} century.
Dutch-South African relations and ‘stamverwantschap’

For a long time there was little interest in Southern Africa in the Netherlands. As Stefan de Boer argued, the biggest reason for its disinterest was to maintain friendly relations with the British in order to secure its position in Asia. The lack of interest is visible in the Dutch government not recognizing the Boer-republics before 1869. The image of Afrikaners in the Netherlands was not particularly positive either; a Dutch preacher wrote in 1869 that the Boeren were “dumb and cruel” and not following religion correctly.136

After the British annexed the Transvaal in 1877, and the Afrikaaners retook it in 1881, what is today called the first Anglo-Boer war, the reaction of the Dutch population was surprisingly strong. The negative image of the Boeren seemed to have been replaced with a positive one, in which feelings of nationality played a decisive role. The old-fashioned and orthodox Boeren were viewed as an example for the weakened Dutch empire. When the Afrikaaners retook and secured Dutch presence in Transvaal, this might even have been viewed as a safe-haven if the mother country fell. Two organizations were established in the Netherlands in the late 19th century; the Netherlands South-African Movement (Nederlandsch Zuid-Afrikaansche Vereeniging (NZAV)) and the Netherlands South-African Railway-company (Nederlandsche Zuid-Afrikaansche Spoorwegmaatschappij (NZASM)). Both organizations aimed to improve relations between the two countries and increase feelings of ‘stamverwantschap’ (kinship). The government, still afraid of angering Great Britain, stayed largely aloof.137

A figure that strongly influenced Dutch-South African relations was the Dutch Calvinist theologian and politician Abraham Kuyper (1837-1920). As leader of the Anti-Revolutionary Party (ARP), he viewed the Afrikaaners as like-minded kinsmen and had high hopes for cultural and economic expansion for a more Dutch South Africa.138 Kuyper is also known as one of the primary architects of pillarization (verzuiling) of Dutch society, which was characteristic for the Netherlands from around 1917 to 1967.139 Pillarization refers to a society which is strongly divided into “several vertical blocs based on common ideologies rather than on socio-economic class loyalties”140 Resulting in a pluralist society, able to remain politically

136 de Boer 1999: 21
137 Ibid: 23
138 Ibid: 26; The ARP was the third biggest party in the Netherlands from 1918-1959, see for more info: https://www.parlement.com/id/vh8lnhroguw/anti_revolutionaire_partij_arp (last accessed 01.10.2017)
139 Lijphart 2007: 27
stable because of cooperation between the elite in each pillar, and a high degree of passivity in the population at large. In the Netherlands there existed four major blocs-pillars; the catholic, the protestant, the liberal and the socialist. In the 1960s this system slowly fell apart, something I will get back to in more detail in chapter 4.

Professor in modern European history at the University of Amsterdam Michael Wintle linked pillarization with apartheid. He argued that;

The theologico-political basis of apartheid owes much to the Dutch Reformed Church in South Africa, which in turn derived many of its ideas from the Gereformeerde Kerken [founded by Kuyper] in the Netherlands. 141

The difference was that the system of apartheid differentiated on the grounds of race, instead of ideology, and its social groups were inherently unequal. 142 Historian Bart de Graaff on the other hand cast doubt on the link between pillarization and apartheid, and pointed at the increased South African nationalism in the beginning of the 20th century. The Afrikaaners were interested in creating their own, unique nationality and seemed to oppose Dutch influences, including Dutch Kuyperism. 143

As discussed in the introduction, the foreign policies of the Dutch government between 1945 and 1962 were largely influenced by its colonial interests. This affected its relations with South Africa, as the South African government continuously supported the Netherlands in its policies towards Indonesia. The Dutch government, afraid of offending their kinsmen, was the only one to abstain when South Africa proposed to annex South-West Africa in 1945, and in 1946 they even voted in favour of this proposal. During UN discussions on the situation of the Indian population in South Africa in 1946, the Dutch government also sided with the Afrikaaners. The government pointed at article 2.7 of the UN Charter, in which a nation’s

141 M. Wintle, Pillarisation, consociation and vertical pluralism in the Netherlands revisited: A European view, West European Politics, 23:3, 139-152 (2000): 144
142 Ibid
143 B. De Graaff, ‘Onbeantwoorde liefde. Nederlandse betweters en Afrikaner Boeren’, Groniek 188 (2015) 43, 277-288: 282-283; Also from the Dutch side interest in South-Africa became less in the first decades of the 20th century. The government had successfully stayed out of the First World War by following a policy of neutrality, and there was less polarization between the political parties with the rise of pillarization. There was thus less need for the concept of kinship to bind the population together, see: de Boer 1999: 34
sovereignty was firmly protected, the UN could therefore not interfere even if South Africa’s policies were discriminatory. The Dutch government used the same sovereignty-argument to defend its policies towards Indonesia in the UN.\textsuperscript{144}

After the Dutch government lost Indonesia in 1949, they became more interested in close ties with South Africa. In 1953 the Ministry of Foreign Affairs Joseph Luns argued that in the interest of Dutch air traffic, shipping industry, trade and industry the government should focus on South Africa, who would seek to reach out as it had become more isolated by the international community. In addition, the perceived similar values between the Dutch and Afrikaaners were recognized. This lead to the signing of the 1951 Cultural Accord, which as de Boer argued, can be viewed as “an outing of old feelings of solidarity.”\textsuperscript{145}

Reactions of the Dutch government to apartheid 1952-1963

Article 2.7 of the Charter also affected Dutch reactions to apartheid within the UN. When in 1952 thirteen Afro-Asian countries created a resolution that condemned apartheid in the UN, the Dutch government abstained. The government abstained again in a resolution by the fourth committee of the UN (the Special Political and Decolonization Committee) in 1959, but this time they were more outspoken. They argued that while apartheid was “incompatible with the sense of justice within the Kingdom of the Netherlands”, the issue still fell within the limitations of article 2.7.\textsuperscript{146} In 1961 the Dutch government, for the first time, voted in favour of a resolution condemning apartheid in the General Assembly.\textsuperscript{147} Something had thus changed between 1952 and 1961, but what?

In 1952 the Dutch government stated that the historical and economic relation with South-Africa were important factors in shaping its policy. There also existed a sense of understanding on the policy of apartheid in parts of the government. Luns argued that “more was being done for the welfare of the coloured population than most of its critics know” and

\textsuperscript{145} de Boer 1999: 70-72 (Own translations from Dutch)
\textsuperscript{146} Ibid: 75-79
\textsuperscript{147} Ibid: 91
that the racial situation was a difficult/complex one.148 While sympathizing with the South African government, both the Prime Minister Willem Drees and Luns concluded that it would be unwise to support them, largely because they feared reactions by the Dutch population.149

The more critical reaction of the government in 1959 can be explained by a change its colonial structure. Both the Netherlands Antilles and Suriname were given a representative in the Dutch delegation to the UN. The Surinamese Prime Minister S.D. Emanuels, while recognizing Dutch interests in South Africa, objected to the Dutch government’s abstentions in the UN and argued a disapproving statement on apartheid should be made by a Dutch representative.150

The Sharpeville massacre in 1960, as mentioned previously, shocked the Dutch population. Several newspapers condemned apartheid and exerted pressure on the Dutch Parliament. Also in Suriname anti-apartheid movements increased, and its government decided to stop all trade to South Africa. The Dutch government argued this was unacceptable, but the Surinamese government, while its trade was of minor importance, refused to listen. As de Boer noted, Sharpeville raised awareness in Suriname and increased dissatisfaction with the Dutch government.151 Due to increased opposition against apartheid in the population and Parliament, and pressure from its colonies, the government voted in favour of the 1961 resolution condemning apartheid. This was not without its hesitations, and the government refused to accept a paragraph which requested to take action. When the first UN resolution was passed to initiate sanctions against South-Africa that same year, the Netherlands voted against.152 This fit into the Dutch government’s policies of retaining as good economic and cultural ties with South Africa as possible.153

International involvement, especially from Afro-Asian countries, increased in 1963. The UN Security Council called for an arms embargo against the South African regime. Recognizing the international pressure behind the resolution, and a fear of reactions from the Dutch population, the Dutch government viewed it necessary to support the embargo. But they did so only partially, only stopping arms trade which could be used to suppress the black minorities.

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148 Ibid: 75 (Own translations from Dutch)
149 Ibid: 76
150 Ibid: 80
151 Ibid: 85
152 Ibid: 95
153 Ibid: 105
population and support the apartheid regime. Minister Luns stated the Dutch government “can not lead the way” in anti-apartheid policies.\textsuperscript{154}

When the Dutch delegation objected to the inclusion of the term apartheid in article 5 of the draft-Declaration in the Commission, the government was still influenced by its historical and economic relations with South Africa, which they wished to retain as much as possible. Its anti-apartheid policies were primarily verbal, and the government was reluctant to take action in the form of sanctions. Given this background, its argument that the draft-text should not include the term apartheid because this did not fit into a universal text loses some of its credibility. The delegation might have viewed it as an unnecessary inclusion which only served to distance the South African government from the Dutch more.

\textsuperscript{154} Ibid: 97-98 (Own translations from Dutch)
Chapter 3 Convention

Introduction

After adoption of the Declaration on the Elimination of All Forms of Racial Discrimination, the United States underwent a transformation in its policies on racial discrimination. Ending racial discrimination in the United States became the priority of President Lyndon B. Johnson, who was inaugurated in 1963 after John F. Kennedy was assassinated. To eliminate racial discrimination, the American government opted for new legislation. Within two years after the adoption of the Declaration, the United States had adopted the Civil Rights Act (1964) which included social and economic rights, and the Voting Rights Act (1965).\[155\]

The new President, Johnson, held a speech on voting rights the 15th of March 1965. In this speech he connected the right to be free from racial discrimination to the human rights movement at large, stating that; “There is no issue of state’s rights or national rights. There is only the struggle for human rights.” The result was the swift signing of the Voting Rights Act by Johnson on the 6th of August 1965. Developments in the United States were significant because they were closely followed by UN members. Discussions on the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) started shortly after the Voting Rights Act was adopted. Therefore, as Jensen argued, “it [the Convention] was an agenda item that carried real political weight and came with political momentum behind it.”\[156\] It was perhaps no wonder the United States was tasked with opening the debate on the Convention in the Third Committee the 11th of October 1965.\[157\]

Like the Declaration, the Convention was first drafted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Thereafter it was sent to the 20th session of the Commission on Human Rights, where it was discussed further. The Netherlands, as

\[155\] Jensen 2016: 114-115
\[156\] Jensen 2016: 117
mentioned in the previous chapter, was part of this Commission. Due to a financial crisis in
the UN in 1964, the 20th session of the Commission was initially postponed to 1965. At the
1963 summer session of the Economic and Social Council a large number of countries voted
against this, because they viewed the agenda as important and overburdened; the decision to
postpone it was therefore revoked. With almost all attention going to the draft-text on the
Convention on the Elimination of All Forms of Racial Discrimination, the 20th session of the
Commission was held from the 17th of February to the 13th of March 1964 in New York.158

While the Commission worked on the draft-Convention in 1964, the financial crisis postponed
discussions on the Convention in the General Assembly. Instead these were discussed with
“absolute priority” at the 20th session of the General Assembly in 1965; evident in 43 of the
86 Third Committee meetings that went to the subject.159 As the preamble and substantive
articles were based on those in the Declaration, discussions were primarily directed at tabled
amendments. Discussion on the implementation articles, for which there had been little time
in the Commission on Human Rights, gave way for discussions of a more general nature. The
final version of the Convention contained a preamble, seven substantive articles, nine
implementation articles and eight closing articles. Noteworthy is that it was the first UN
international instrument to include a facultative individual complaint system.

Freedom of expression vs. the right to be free from racial discrimination

Both in the Commission and the General Assembly, much time went to discussing the
appropriate line between freedom of speech and the right to be free from racial discrimination.
Western countries, as they had during discussions on the Declaration, opted for a text in
which fundamental freedoms such as freedom of expression and the right to organize were
least possible restricted, while the Communist countries opted for a strongly worded, far-
reaching text in which little attention was paid to the protection of the abovementioned
freedoms. The Afro-Asian and Latin-American countries were often somewhere in the
middle, and came with compromise-articles in which both Western and Communist views
were included. One of the most controversial articles of the draft-Convention, coming as no

158 NL-HaNA, 2.05.118, 26006, Letter from the Minister of Foreign Affairs to the Minister of Justice, 15.01.1964
159 NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20th General Assembly of the United Nations,
Third Committee, Nr.7 Agenda item 58 (F/1272/66) (Own translation from Dutch): 2
surprise, had to with this friction between East and West.\textsuperscript{160} The final version of article 4 by the Commission read:

States Parties condemn all propaganda and organizations which are based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin, or which justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to such discrimination, and to this end,

\textit{Inter alia:}

(a) Shall declare an offence punishable by law all incitement to racial discrimination resulting in acts of violence, as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin;

(b) Shall declare illegal and prohibit organizations or the activities of organizations, as appropriate, and also organized propaganda activities, which promote and incite racial discrimination;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.\textsuperscript{161}

Article 4 of the Convention was based on article 9 of the Declaration, and contained only a few differences. During discussions on article 9 of the Declaration, as shown in the previous chapter, the Belarus proposal was the hardest to swallow for Western countries. Belarus proposed to make organizations that promote or incite racial discrimination punishable by law. In the current session of the Commission, the United States representative proposed to alter part 4b, which deals with this same issue, and prohibit the activities of an organization only. Their representative argued that the provision to prohibit organizations in general, instead of its activities only, could be abused by totalitarian governments. Representatives from both the Communist countries and most of Afro-Asian countries protested the American amendment. In their opinion article 4b should have a preventative function in order to prevent the damage from already being done.\textsuperscript{162}

\textsuperscript{160} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 11

\textsuperscript{161} NL-HaNA, 2.05.118, 26006, Report of the delegation to the 20th session of the Commission on Human Rights held from 17.02.1964-18.03.1964 (Attachment 5)

\textsuperscript{162} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 13
In order to find common ground between the two sides, the Costa Rican representative came with a proposal to; “prohibit organizations or the activities of organizations” In this way countries could choose whether or not to prohibit the organizations in general or their activities only. The Dutch and American representatives supported this compromise-proposal, but the Soviet representative wished to replace “or” with “and”. The Soviet proposal did not find enough support, and the Costa Rican proposal was passed with 15 in favour (of which the Netherlands, 4 against (India, Ukraine, Poland and the Soviet Union) and 2 abstentions (Chile and Lebanon). On the subject of organizations, compared with article 9 of the Declaration, this text was thus more restricted.

The Netherlands delegation continuously voted against attempts of Communist countries to strengthen the text. They supported both the American and Costa Rican compromise-article. This is in line with their position on article 9 of the Declaration; the Netherlands preferred a weaker text in order to safeguard freedom of speech and expression.

Discussions on article 4 were reopened in the General Assembly in 1965. Dissatisfied with the weakened article 4 of the Commission, the Czech and Polish delegations tabled their own amendments which aimed to strengthen the text. The former wanted to change 4a to;

Shall declare an offence punishable by law all dissemination of ideas and doctrines based on racial superiority or hatred, incitement to racial discrimination [taken out: resulting in acts of violence], as well as acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin

The Polish delegation instead focused on 4b, which they wanted to change to;

Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.

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163 Ibid: 13-14
164 NL-HaNA, 2.05.118, 26006, Statement by the Dutch delegate L.J.C. Beaufort on the 2nd of March 1964 (Attachment 8)
165 NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20th General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 20
166 Ibid
Both amendments strengthened the text; the biggest change being racially discriminative organizations, once again, became prohibited. America and the Scandinavian countries found a new way to moderate the text. America proposed to include “with due regard for the fundamental right of freedom of expression” in 4a and “with due regard for the right to freedom of expression and association” in 4b. The Scandinavian countries instead proposed to include a reference in the introductory part of article 4 which said; “without limiting or derogating from the civil rights expressly set forth in Article 5 [of the Convention].” France proposed to refer to the Universal Declaration on Human Rights (UDHR), instead of article 5 of the Convention. The Communist countries opposed such an inclusion, and the discussions led nowhere. In order to find common ground, the Nigerian delegation made a compromise-text, in which virtually all proposals were included. Both the Czech and Polish proposals were included, the Scandinavian/American and French proposals were included and a few other, smaller amendments. The Argentinian delegation made a last attempt to weaken the text in order to safeguard fundamental freedoms when they tabled sub-amendments to 4a and b of the Nigerian proposal. Both were rejected. The new text of article 4 was passed with 88 in favour (of which the Netherlands), none against and 5 abstentions (Argentina, Chile, Austria, Peru and Spain).

The Netherlands delegation preferred the original text of the Commission on Human Rights. The Dutch delegation recognized the difficulties of drawing a line between the right to be free from racial discrimination and the freedom of opinion and expression, and the Commission was, in their opinion, able to do this rather well. Therefore the Dutch delegation opposed amendments, such as the Czech and Polish ones, “which have for purpose to curtail the right to freedom of opinion and expression as such in an excess[ive] way for the better protection of the right to be free from racial discrimination.” The delegation therefore abstained on these amendments.

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167 NL-HaNA, 2.05.313, 24289, Telegram from the delegation to the Ministry of Foreign Affairs, 22.10.1965
168 NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20th General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 20
169 Ibid: 21-25, see for article 4 Appendix 2
170 NL-HaNA, 2.05.313, 23521, Statement by J.A. Mommersteeg on the 22th of October 1965 (attachment 3 F.12576/65), Report of the delegation to the 20th General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 2
171 See for the final version of article 4 Appendix 2; NL-HaNA, 2.05.313, 23521, Explanation of vote by J.A. Mommersteeg on the 25th of October 1965 (attachment 4)
In a telegram from Luns to the delegation, he noted that a principled stance on the protection of fundamental freedoms is not always right; sometimes a “certain relativization” is fully justifiable.\textsuperscript{172} He then referred to the laws created in the 1930s to deal with discrimination against Jews in the Netherlands. It should however be noted that Luns viewed the Convention as a treaty for the international situation, and not the national. In the telegram, he referred to what a colleague from the Ministry of Justice had said concerning the Declaration: “the problem [of racial discrimination] in our country is not current and will surely stay this way in the unforeseeable future”.\textsuperscript{173}

Luns further instructed the Dutch delegation to pay close attention to the stance of the Western countries, and to avoid isolation.\textsuperscript{174} As only a few seemed to prefer the original version of article 4 as proposed by the Commission, the Dutch delegation gave their support to the inclusion of a reference to both article 5 of the Convention and the UDHR. They voted in favour of the Nigerian compromise-text, and abstained on the Argentinian sub-amendments. These sub-amendments would improve 4a and 4b, the delegation stated, but they “did not want to upset the precarious compromise on Article IV.” The Netherlands was especially pleased with a reference to the UDHR, and seemed to view this as a step forward in international juridical thinking on human rights.\textsuperscript{175}

**Postcolonial migration and racism in the Netherlands**

As mentioned above, Luns viewed the Convention as a treaty for the international situation, and stated that no problems of racial discrimination existed in the Netherlands. Such comments had been made previously by representatives of the Dutch government. For instance during a meeting between W.J. van Eijkern from the Ministry of Justice, C.W. van Santen from the Ministry of Foreign Affairs and another representative of the Ministry of Foreign Affairs (name is missing in the archival folder) held the 5\textsuperscript{th} of February 1964, in which the agenda of the 20\textsuperscript{th} session of the Commission on Human Rights was discussed. As most attention went to the draft-Declaration on religious intolerance, the draft-Convention

\textsuperscript{172} NL-HaNA, 2.05.313, 24289, Telegram from the Ministry of Foreign Affairs to the delegation, 22.10.1965
\textsuperscript{173} Ibid (Own translation from Dutch)
\textsuperscript{174} Ibid
\textsuperscript{175} NL-HaNA, 2.05.313, 23521, Statement by J.A. Mommersteeg on the 22\textsuperscript{nd} of October 1965 (attachment 4)
was discussed only briefly. Another reason for why the latter was discussed only briefly was that “the issue of racial discrimination for the Netherlands [was] primarily of a theoretical nature”\(^{176}\).

I feel historical background is necessary to better understand these comments by the government. In line with a major theme of my thesis, decolonization, I will focus on postcolonial migration from Indonesia after 1945 and the existence of racial discrimination in Dutch society in the 1950s and 1960s.

In the wake of worldwide decolonization movements, an estimated five to seven million people were repatriated to Europe over a thirty-five-year period that began during World War II\(^{177}\).

In the case of the Netherlands, post-colonial immigrants arrived in large waves from the East Indies immediately after the war; Around 300,000 migrants from the Indies left for the Netherlands between 1945 and 1963. The immigrants legally classified as “European” included around 80,000 individuals born in the Netherlands or in the Indies of Dutch parents, 170,000 “Indo-Europeans” of mixed ancestry, 14,000 individuals of different indigenous origins, 12,000 Moluccans who had served in the Dutch colonial army and 7,000 Peranakan-Chinese.\(^{178}\) The Dutch government was not too excited to receive these immigrants, especially those that were “East oriented”. By “East oriented”, Historian Wim Willems argued the government meant those of mixed descent who were lower on the hierarchy of colonial society.\(^{179}\) The government thus encouraged Indonesian born Dutch to opt for Indonesian citizenship. When the Indonesian government under the leadership of Sukarno nationalized Dutch companies from 1957 as a response to the New-Guinea conflict, Dutch citizens were increasingly stigmatized. The Dutch government, after strong political pressure, finally agreed to give free passage to these citizens.\(^{180}\)

An important figure was Tjalie Robinson, born in Indonesia from a Dutch father and a mother of so-called “mixed” descent. After himself experiencing difficulties with being admitted to

\(^{176}\) NL-HaNA, 2.05.118, 26006, Letter within the Ministry of Foreign Affairs, DIO/SC, DIO/EZ and DIO, 20\(^{\text{th}}\) session of the Commission on Human Rights, no.6/64, 06.02.1964, only the first page of the information letter could be found in the folder, the rest was missing (Own translations from Dutch)
\(^{178}\) the Dutch colonial army was called the Royal Dutch East-Indian Army (KNIL), Ibid: 14
\(^{179}\) Ibid: 39
\(^{180}\) Between 1957 and 1965 around 25,000 “late” Dutch refugees went to the Netherlands from Indonesia, where they no longer felt welcome because of discrimination against Dutch by Sukarno government, Ibid: 37
the Netherlands, he helped mobilize the Dutch population against governmental policies on the *spijtoptanten*. The term was used to describe those who had become Indonesian citizens, but regretted this after increased anti-Dutch sentiments in Indonesia.\textsuperscript{181} Robinson and others created the Comité Nationale Actie Steunt Spijtoptanten Indonesië (Committee National Campaign for Support of Spijtoptanten Indonesia (NASSI)) in 1960.\textsuperscript{182} With the help of this organization, the government finally caved and allowed all applicants with visas to come to the Netherlands. The same reluctance of the Dutch government to admit postcolonial migration can be seen after the loss of New-Guinea in 1962.\textsuperscript{183} What caused this reluctance?

The government holds the view, that the customs, social views and the physical and mental condition of the Ambonese [Moluccans], and the climate circumstances in which they will come to live do not dispose them for permanent residence in a Dutch community that is unknown and foreign to them.\textsuperscript{184}

In this statement by the Minister of Union Affairs and the Overseas Territories L.A.H. Peters in Dutch Parliament in 1951, perceived differences between Moluccans and Dutch are expressed. As historian Ulbe Bosma pointed out, the political discourse on Moluccans and Indonesian Dutch was rather different before Indonesia’s independence in 1949. At this point the latter two groups were generally seen as part of the Kingdom. A Member of Parliament stated in 1949:

> During the occupation of Japan, these people [Moluccans] […] sacrificed their lives by hundreds, as an expression of their loyalty to our nation and queen. Make sure that they can’t accuse us of ingratitude, because they don’t deserve this. After all they are, as Christians, more closely connected to us than a lot of other people.\textsuperscript{185}

The reluctance of the Dutch government to allow migration of the *spijtoptanten*, and its policies towards the Moluccans in the 1950s, as Dutch historian Gert Oostindie rightly pointed out, “suggests […] that colonial prejudices had found their way into postcolonial

\textsuperscript{181} ‘Spijt’ stands for regret in Dutch, Ibid: 30
\textsuperscript{182} Ibid 40
\textsuperscript{183} Smith 2003: 40
\textsuperscript{184} U. Bosma, *Post-colonial Immigrants and Identity Formations in the Netherlands*, Amsterdam University Press, 2012: 35
\textsuperscript{185} Ibid: 32-33
Netherlands.” Associate Professor of Anthropology Andrea L. Smith too stated that “negative ideas about colonials with a (partly) Asian background […] played a role.” However, she also pointed at the government’s fear of overpopulation in the beginning of the 1950s as a cause for its resistant immigration policies.

Both nationally and internationally, as researcher Rob Witte noted, the recipient of postcolonial migrants by the Dutch government was “long viewed as a model of gradual integration.” In the 1970s and 1980s, when postcolonial migration gained more attention in the public, this image became distorted. Governmental policies on these immigrants can, as has been argued by both Smith and Witte, seen as one of “forced assimilation”. The government paid little attention to the “suitcase full of history, culture and different experiences” of the immigrants. Their approach was instead quite patronizing. For many “repatriates”, as the government termed them, the Netherlands was rather different than expected. The financially drained country with its cold weather and overcrowdedness left many disappointed. Experiences of Nazi occupation also left little room for the newcomers to express their own wartime experiences in the eastern part of the Dutch kingdom. Historian Martin Bossenbroek agrees with the latter, but argued that even the experiences of Jewish survivors fell on deaf ears. And that it was not before the 1960s, when more time had passed and a new generation came to the fore that such taboos were increasingly broken down.

Assimilation of the Moluccans proved especially difficult. The Moluccans were neither interested in Dutch or Indonesian citizenship, but fought for the creation of their own independent republic on the Maluku Island (Republik Maluku Selatan). Indonesian nationalists opposed such a republic, and gave the Moluccans two choices; army discharge to

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186 G. Oostindie, Postcolonial Netherlands – Sixty-five years of forgetting, commemorating, silencing, Amsterdam University Press, 2010: 52
187 Smith 2003: 35
188 Ibid
189 R. Witte, Al eeuwenlang een gastvrij volk: racistisch geweld en overheidseracties in Nederland (1950-2009), Amsterdam University Press, 2010: 51
190 Witte 2010: 53 (Own translations from Dutch); Smith 2003: 42
191 Smith 2003: 42-43
192 Smith 2003: 41
193 Oostindie 2010: 82
194 Smith 2003: 41
195 Oostindie 2010: 28
Java or migration to the Netherlands. They chose the Netherlands, but saw this only as a temporary solution, as did policy-makers in The Hague. This, and their relatively weak knowledge of the Dutch language and low social capital, severely delayed integration and resulted in violent conflicts, primarily in the 1970s. These “unique events” were one of the reasons why the Dutch government adopted a national minorities policy in the late 1970s.

Integration of postcolonial migrants, as discussed above, did not occur smoothly. And while, as Historian Christopher Bagley pointed out, many in the Netherlands welcomed the arrival of postcolonial immigrants, there certainly existed friction between the Dutch population (autochtonen) and the immigrants (allochtonen). Indonesians were by the Dutch stereotypically viewed as unreliable, lazy and lacking of initiative and economic sense. In return, many immigrants felt the Dutch were slothful, exploitative, short-tempered and rude.

At times this friction resulted in racial violence, for instance between the Moluccan and Dutch youth in The Hague and Den Helder in the 1950s. The cause was rivalry over girls between groups of boys, which at times resulted in official statements by the government. In the British newspaper Daily Telegraph the 1st of October 1958, the Dutch minister of Cultural Affairs, Recreation and Social Work, Marge Klompé stated that;

[A] problem which we do not have in the Netherlands is racial tension like you in Britain have experienced. Once there was some jealousy between our teenagers and so-called Teddy Boys, when they saw young Dutch girls going out with coloured Indo-Dutch. But that was only natural, and nothing serious really happened.”

Klompé likely referred to the 1958s so-called ‘race riots’ in Great Britain. Groups of ‘whites’ attacked persons, homes and pubs of postcolonial West Indian immigrants in Nottingham and Notting Hill, Shepherd’s Bush, Kensal New Town, Paddington and Maida Vale in London. Such incidents had not previously occurred in these areas, and the British labour movement,

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196 For example the two violent train hijackings, one at Wijster in 1975 and another at De Punt in 1977, Ibid: 86-87
197 Ibid: 42
199 Ibid: 90
200 Cited in Witte 2010: 53-54
including much of the public, reacted with shock and anger. While Oostindie argued there were almost no ‘race riots’ in the Netherlands, “as in all other countries, migrants met a great deal of incomprehension and silent, everyday racism”

In his book *Al eeuwenlang een gastvrij volk: racistisch geweld en overheidsreacties in Nederland (1950-2009)*, Rob Witte discussed the prevalence of racial violence and the government’s reactions in the Netherlands since the 1950s. Witte argued that racism in the 1950s and 1960s was, by the government, viewed as something “un-Dutch”. Only of anti-Semitic violence there were some exceptional cases; racism in general, the government stated, did not exist in the Netherlands. This is very accurate with my findings on Dutch governmental reactions towards the Declaration and the Convention.

**Different forms of racial discrimination**

The same pattern where Western representatives aimed to restrict the text in order to protect fundamental freedoms, while Communist and at times Afro-Asian and Latin-American representatives aimed to strengthen the text was visible in debates on many paragraphs and articles. But this time another issue became more visible too; the question of which forms of racial discrimination should be included in the Convention. This question had come up shortly in the drafting of the Declaration, and would become especially challenging for the drafting of the Convention.

The previous chapter addressed a Soviet and Polish proposal to create a new article after article 9, in which the term “neo-fascism” was included. This time the American representative wished to include and condemn anti-Semitism as a specific form of racial discrimination in its own, separate article. This proposal was made partially due to a

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202 Oostindie 2010: 212
203 Witte 2010: 59-60 (Own translations from Dutch)
204 American proposal for article 8: “States Parties condemn anti-Semitism and shall take action as appropriate for its speedy eradication in the territories subject to their jurisdiction”, see: NA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 20
suggestion by the NGO Agudas Israel World Organization.\textsuperscript{205} A reason for this suggestion was the publication of the anti-Semitic book \textit{Judiasm without Embellishment} by the Ukrainian Academy of Sciences in 1963.\textsuperscript{206} This book was mentioned in an intervention by the Israeli observer at the Commission, who gave examples on the discrimination of Jews in “a certain country” (the Soviet Union).\textsuperscript{207}

More importantly, as researcher Ofra Friesel pointed out, was the need for America to find “new ways to call attention to religious persecution in the Soviet Union.”\textsuperscript{208} As Friesel rightly noted, the American delegation had lost the upper hand after the issue of racial discrimination had been given priority over religious intolerance in the UN. The Soviet Union had taken advantage of this decision from the start to undermine the United States because of its racial discrimination of Afro-Americans. In addition, by criticizing the United States, they were able to deflect attention from the persecution of religious groups in their own country. An inclusion of anti-Semitism, which is understood as both religious- and racial discrimination, in the Convention posed a threat to the Soviet Union. It would shed more light on discrimination of Jews, and possibly other minorities, in their country.\textsuperscript{209}

The Soviet representative replied by stating Jews occupied important positions in the political, scientific and cultural sectors and claimed that the Jewish population was better treated than in most other countries of the free world. In addition, the Soviet representative made a counter-proposal in which the terms Nazism and neo-Nazism were included.\textsuperscript{210} The Israeli observer argued that the practice of anti-Semitism was much older than Nazism and also occurred loose from it. He was therefore of the opinion that anti-Semitism should have its

\textsuperscript{205} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 10
\textsuperscript{206} The Book is written by Trofim K.Kichko. See: O.Friesel, Equating Zionism with Racism: The 1965 Precedent, \textit{American Jewish History}, Volume 97, Nr.3, July 2013, pp. 283-313: 288; NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 21
\textsuperscript{207} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 20
\textsuperscript{208} Friesel 2013: 286
\textsuperscript{209} Ibid: 286-287
\textsuperscript{210} The Soviet Union version of article 8 would have read: “States Parties condemn nazism, including all its new manifestations (neo-nazism), genocide, anti-Semitism and other manifestations of atrocious racist ideas and practices and shall take action as appropriate for their speedy eradication in the territories subject to their jurisdiction”, see: NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 20
own article, and that Nazism, neo-Nazism and other types of racial discrimination could be laid down in separate articles or paragraphs.\textsuperscript{211}

The Netherlands had already shown her support for the American proposal to include anti-Semitism in article 3 of the draft-Convention in the Commission. This had not happened, as the majority of representatives argued that its inclusion was unfit for article 3. The Netherlands representative Prof. Dr. L.J.C. Beaufort agreed with the latter, but uttered hopes for the inclusion of anti-Semitism elsewhere in the draft-Convention.\textsuperscript{212} Beaufort argued that if the Commission preferred its inclusion, Dutch objections to the inclusion of the term apartheid would “at least partly disappear.”\textsuperscript{213} These reactions by the Dutch representative, I argue, undermine their earlier argument against the inclusion of apartheid as being unfit for a universal, long-lasting document.

There was not enough time to come to a conclusion on article 9 in the Commission; it was therefore decided to send the proposal by the United States, the amendments of the Soviet Union and the report of the discussions to the next years General Assembly for further discussion.\textsuperscript{214}

As planned, the issue on what forms of racial discrimination to include in the Convention was further discussed at the 20\textsuperscript{th} session of the General Assembly. This time however, political motives more strongly influenced the discussion. The debate started before the Assembly reached article 9, because of a Polish proposal to change paragraph 6 of the preamble of the draft-Convention to;

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples as evil racial doctrine and nazist practices have done in the past,\textsuperscript{215}

\textsuperscript{211} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 20
\textsuperscript{212} Ibid: 10-11
\textsuperscript{213} NL-HaNA, 2.05.118, 26006, Statement by the Dutch delegate L.J.C. Beaufort on the 28\textsuperscript{th} of February 1964, (Attachment 7)
\textsuperscript{214} NL-HaNA, 2.05.118, 26006, Report of delegation to the 20th session of the Commission on Human Rights held in New York, from 17.02.1964-18.03.1964: 22
\textsuperscript{215} NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20\textsuperscript{th} session of the General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 4, 6
The delegation wanted to include Nazism as a specific form of racial discrimination in the text. Their traumatic experience of Nazi occupation during the Second World War and/or Cold War political considerations certainly influenced this proposal. The amendment found much support from other Communist countries, including the Soviet Union. Those who argued against, including delegations from Greece, Afghanistan, France, Nigeria, Canada, Tanzania, Jamaica, New Zealand, India, Kuwait and Saudi-Arabia, rejected its inclusion as it was unfit for a legal document which should be kept as general as possible. Especially the Saudi-Arabian delegation opposed its inclusion.216

With the American proposal to include anti-Semitism in its own article (article 8) still on the table, the Saudi-Arabian delegation now argued to include fascism, colonialism, Zionism and anti-Semitism somewhere in the Convention if the Polish proposal went through. And on the United States’ proposed article 8, the Soviet delegation tabled a sub-amendment. Article 8 should have, in their opinion, read;

States Parties condemn anti-Semitism, Zionism, Nazism, neo-nazism and all other forms of the policy and ideology of Colonialism, national and racial hatred and exclusive superiority and shall take action as appropriate for the speedy eradication of these hate-inspired ideas and practices in the territories subject to their jurisdiction217

Politically motivated proposals to include various forms of racial discrimination had been made before, but this time the discussion seemed to get out of hand. The Afro-Asian countries having enough of East-West tensions asked all delegations that tabled amendments which included various forms of racial discrimination to withdraw these. The Soviet delegation made their withdrawal dependent on the withdrawal of the American amendment, which they refused. The discussions were abruptly brought to a halt with a motion of order, in which Greece and Hungary tabled a resolution not to include any forms of racial discrimination in the Convention, except for apartheid in article 3 which inclusion had already been approved. The resolution was passed as 80 countries voted in favour, 7 against (of which the United States and Israel) and 18 abstentions (of which the Netherlands). Israel made a last attempt to convince other delegations to include Nazism and anti-Semitism, but with a Ghanaian proposal to end the debate being passed, there was nothing they could do.218

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216 Ibid: 7
217 Ibid: 8
218 Ibid: 9-10
The Dutch delegation was in favour of including both the terms Nazism and anti-Semitism in the Convention. In an explanation of vote given by the Dutch delegate J.A. Mommersteeg, the preference was given to a “clean” text without reference to any forms of racial discrimination. But this ship had already sailed, as the term apartheid had been included in article 3 of the Convention, and the Dutch delegation saw no point in leaving out both the term Nazism and anti-Semitism. In addition, if they opposed the inclusion of anti-Semitism, Mommersteeg argued, they would fail in their obligations towards the more than 100,000 Dutch Jewish victims of the Second World War.219

In a telegram to the Dutch delegation, the Minister of Foreign Affairs Joseph Luns wrote that on the grounds of both “political and moral considerations” the Dutch delegation should vote in favour of the term anti-Semitism.220 Zionism, fascism, neo-Nazism and imperialism however should not be included; as these can be interpreted in different ways and “it in certain groups is bon ton to pin these terms on each political opponent”221 Cold War considerations thus played a role in the Dutch delegation’s stance on the ‘-isms debate’. Indeed, Dutch foreign policies were still strongly influenced by Cold War politics in 1965, evident in the governmental policies towards America’s involvement in Vietnam. Luns, who had just been reelected as the Minister of Foreign Affairs, argued that the American interventions were justified because the Vietnam question was part of a “more general pattern of communist expansion”.222

The Dutch delegation had no chance to voice their opinions because of the motion of order and the abrupt halt of the discussions. This was a major disappointment. The Dutch delegation expressed their disappointment when the resolution to end the debate had already been passed, and a large majority had voted in favour of excluding specific forms of racial discrimination in the Convention. It is fair to assume the Dutch delegation was not convinced they, or other delegations which had yet to express their views, could have changed the outcome. Instead it seems it was important for the Dutch delegation that all were given the

219 NL-HaNA, 2.05.313, 23521, Explanation of vote by J.A. Mommersteeg on the 20th of October 1965 (attachment 1 F.12001/65)
220 NL-HaNA, 2.05.313, 24289, Telegram from the Minister of Foreign Affairs to the delegation, 20.10.1965 (Own translation from Dutch)
221 Ibid (Own translation from Dutch)
222 Indeed, verbally Luns fully supported the Americans, but he refused to lend any practical support. This would go against national interests; Dutch-Indonesian relations were improving, and Dutch involvement in Southeast-Asia would threaten this. In addition, Luns had not forgotten the lack of support from America during the decolonization of Indonesia and New-Guinea, see: R. van der Maar, Weltrusten mijnheer de president, Boom – Amsterdam, 2007: 34-36 (Own translation from Dutch)
chance to voice their opinions. The delegation went as far as to call it a “guillotine procedure” that cut out any chance of democratic discussion.\textsuperscript{223} For the Netherlands, Rob de Wijk argued, a “preoccupation with consensus building [is] centuries old.\textsuperscript{224} He said this in connection with the heterogeneous nature of the Seven Provinces in the 16\textsuperscript{th} and 17\textsuperscript{th} centuries, in which regents from different Provinces had to seek consensus among each other, as discussed in more detail in the introduction. As for Dutch pillarized society from around the 1920s to the 1960s, consensus-building too was necessary in order to keep the pillars from ‘falling’. It seemed important too during discussions on the Convention.

Both the United States and Israel had, the Dutch delegation argued, overestimated their influence in the General Assembly. And the Arabic countries had been given the opportunity to attack both Zionism and Israel’s legitimacy as a state.\textsuperscript{225} During the 1955 Bandung Conference, Zionism had already been linked with racial discrimination by some delegations. They had argued that the state of Israel, “in the name of a “chosen race”, exhibited dangerous manifestations of discrimination directed against Palestinians […] , non-Jews and non-Westerners […], and Arabs throughout the Middle East.”\textsuperscript{226} But as the majority of the participants at the Conference disagreed with the notion that Zionism equaled racism, the issue was dropped. Ten years later, the Arabic countries and the Soviet Union referred to Zionism as racism once again, for the first time within the UN framework.\textsuperscript{227} In the end, Zionism was not included in the Convention, but the issue would not be forgotten. In 1975 the UN adopted an “explosive” resolution in which Zionism officially became a form of racial discrimination in the UN.\textsuperscript{228}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{223} NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20\textsuperscript{th} General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 11-2
\item \textsuperscript{224} de Wijk 2003: 168
\item \textsuperscript{225} NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20\textsuperscript{th} General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58 (F/1272/66): 12
\item \textsuperscript{227} Friesel 2013: 303
\item \textsuperscript{228} P.G. Lauren, \textit{Power and Prejudice – the Politics and Diplomacy of Racial Discrimination}, Westview Press, 1996: 259
\end{enumerate}
\end{footnotesize}
Far-reaching implementation machinery

There was even less time for discussing article 10 which dealt with a reporting system, and an additional implementation measure as proposed by the Philippines delegate in the Sub-Commission; a Fact-Finding and Conciliation Committee “responsible for seeking the amicable settlement of disputes between States Parties concerning the interpretation, application or fulfillment of the present Convention.” State Parties could, if dissatisfied with the follow-up of the Convention by another member, send a written complaint first to the Party itself, and if nothing had been resolved to the Committee.

In the short discussion that was held, it became visible that the Soviet Union was less unwilling to a fact-finding commission than it had been in the past discussions on the two covenants (one on civil and political rights and one on economic, social and cultural rights). As for the Dutch position, as Beaufort argued, the Netherlands often “emphasized the need for an effective machinery of international implementation of human rights, a machinery that goes beyond a reporting system.” He reminded the Commission of their suggestion, although unsuccessful, to create a fact-finding commission for the Convention against Discrimination in Education (1960) by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1962. A permanent UN fact-finding organ, the Netherlands believed, could promote friendly relations among countries. The Netherlands representative also noted Austria’s plea for an individual complaint system during discussions in the Commission.

As there was no time to come to a conclusion, the Commission decided to further discuss the subject during the 20th session of the General Assembly.

As stated above, several implementation measures had been proposed during the discussions in the Commission on Human Rights; a reporting system, a Fact-Finding and Conciliation Committee and an individual complaint system. These and similar measures were further
discussed in the General Assembly. Worried the Convention “would become a “Dead Letter” law, two countries took the lead; the Philippines and Ghana.233

The Philippines proposed a draft-text consisting of nineteen articles, in which two of the abovementioned implementation measures were included; a reporting system and an individual complaint system. In addition, the Philippine delegation proposed a Conciliation and Good Offices Commission, practically identical to the one in the UNESCO Convention against discrimination in education.234 Ghana also proposed their own draft-text consisting of twelve implementation articles. These included three somewhat different methods. The first was a Committee of eighteen countries, which would consider periodic reports and deal with state complaints. Secondly, they proposed to create ad hoc conciliation commissions to resolve conflicts between State Parties. And last, the creation of national commissions to which individuals could turn with complaints. These two draft-texts formed the basis of the discussion.235

The delegations were well aware of the force behind the issue of racial discrimination. Many therefore saw this as an opportunity to, for the first time in UN history, create a strong implementation machinery within the context of human rights. The delegations were also aware of the effect of these discussions on the upcoming debate on the two covenants.236

Some Arabic and Asian delegations opposed strong implementation, and preferred a reporting system only. But they found little support from others, even Eastern European countries which had so often opposed implementation measures in the past were willing to accept many of the Philippine/Ghanaian proposals. Four implementation measures were passed with relative ease; a Committee of experts tasked with monitoring the implementation of the Convention (Committee on the Elimination of Racial Discrimination (CERD)), a periodic reporting system, a state-to-state complaint system and a system of ad hoc conciliation commissions.237

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233 Jensen 2016: 121
235 NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20th General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58, B. Implementation articles (F/1046/66): 1-2
236 Ibid
237 Ibid: 2-6
More discussions went to article 14 concerning an individual complaint system. Article 14, as prepared by the Philippines, Ghana and Mauritania, gave individuals the right to send complaints to the CERD on some conditions. First, the country of which the individual was a citizen had acknowledged the competence of the CERD to receive such complaints. Second, members were given the option to create a national organ tasked with receiving and handling individual complaints. If this proved unsatisfactory, these individuals could still go to the CERD. And third, if their country had acknowledged the individual complaint system, all national legislation had to be exhausted first and complaints could not be anonymous. Due to the Lebanese delegation a few amendments were made which clarified and strengthened the original article-text. These ensured, among others, that the CERD could make concrete suggestions and recommendations. Most support for an individual complaint system came from various Western countries, including Scandinavia and the Netherlands, and the majority of the Afro-Asian and Latin American Countries. Eastern European countries fully opposed its inclusion in the Convention. In the end, article 14 was passed with 66 in favour (of which the Netherlands), none against and 19 abstentions (East-European countries, Cuba, France, India, Irak, Mali, Upper Volta, Portugal, Yemen and Yugoslavia).  

The final version of the Convention contained a total of nine implementation articles, these included; the CERD (article 8), a system of periodic reports (article 9), a system of state-to-state complaints (article 11), the possibility for ad hoc conciliation commissions (article 12), and a facultative individual complaint system (article 14).  

The Netherlands wanted effective international implementation machinery for this Convention and were instructed to firmly support the Philippine draft-text. The Dutch delegate J.A. Mommersteeg stated that;

Measures of implementation are considered by my delegation – I repeat – indispensable as a more effective means of combatting racial discrimination than is possible under the Declaration…”

In addition, they wanted the Convention to be ratified by as many countries as possible. “This blended firm principles with a sense of moderation that sought consensus”, as Steven Jensen

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238 Ibid: 9-10
239 See Appendix 2
240 NL-HaNA, 2.05.313, 24289, Telegram from the Ministry of Foreign Affairs to the delegation, 28.10.1965
241 NL-HaNA, 2.05.313, 23521, Intervention by J.A. Mommersteeg on the 16th of November 1965 (Attachment 1 F 13078/65): 8
put it to describe the efforts of the Philippines and Ghana on the implementation measures.\textsuperscript{242} The Dutch delegation played an active role in the discussions and was part of an informal workgroup tasked with creating draft-texts based on the Philippine and Ghanaian proposals.\textsuperscript{243} The Dutch delegation was also well aware of the implications of these discussions on the Covenants and other UN international human rights instruments;

any decision which will be taken with regard to the implementation of this Draft Convention should not only be considered in the sole context of the Draft Convention itself but also in the broad framework of the totality of the activities of the United Nations in the field of human rights and fundamental freedoms. […] there are good reasons to assume that any decisions concerning the implementation of the Draft convention […] will have a certain effect upon the attitude of this Committee towards the implementation of the Draft International Covenants on Human Rights which is also an urgent vital and essential question to be dealt with.\textsuperscript{244}

The delegation split the implementation measures into three generalized categories; a reporting system, allegations by States and petitions from individuals, groups and non-governmental organizations. While the Dutch delegation preferred all three methods included in the Convention, they placed most value on the right of individual petition. Periodic reports the delegation argued, carried the disadvantage of being biased and State complaints were often made only if the victim was a citizen of the complaining state or if a complaint was of political use.\textsuperscript{245} The third method was preferred because of these reasons and, as the Dutch delegation stated, because;

We consider it a matter of principle that the human being whose rights are violated or who is the victim of discrimination may by himself – if necessary without the goodwill or the mercy of the State – seek for redress.\textsuperscript{246}

\textsuperscript{242} Jensen 2016: 122
\textsuperscript{243} NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20\textsuperscript{th} General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58, B. Implementation articles (F/1046/66): 2
\textsuperscript{244} NL-HaNA, 2.05.313, 23521, Intervention by J.A. Mommersteeg on the 16\textsuperscript{th} of November 1965 (Attachment 1 F 13078/65): 1
\textsuperscript{245} Ibid: 5-6
\textsuperscript{246} NL-HaNA, 2.05.313, 23521, Statement by J.A. Mommersteeg on the 16\textsuperscript{th} of November 1965 (Attachment 4 F 13377/65): 1
The Dutch delegation would have preferred a much stronger article 14; one in which the right of individual petition would lead to a semi-judicial procedure before an international body. Aware of the lack of support this would receive in the General Assembly, and wanting to make the article acceptable to as many delegations as possible, the delegation did not try to push this through. They also proposed to make article 14 optional, thereby respecting those who had reservations on the matter.\(^\text{247}\)

For article 12, concerning ad hoc conciliation commissions, the Netherlands would have also preferred a stronger article text. The Dutch delegation aimed to create a permanent conciliation commission, which in time would develop its own jurisprudence. The problem with ad hoc conciliation commissions, they argued, was that it “may cause problems of composition any time such an ad hoc body is to be set-up.”\(^\text{248}\) They voted for the article because of an addition to subparagraph (b), which seemed to solve this problem; the addition meant that members of the CERD would be appointed to the ad hoc commission in case State Parties in the dispute failed to come to an agreement on the composition themselves.\(^\text{249}\)

The Netherlands voted in favour of article 22 of the Convention, which gave State Parties the opportunity to invoke the International Court of Justice if disputes on the interpretation or application of the Convention arose. The Dutch government viewed the inclusion of the court as a “remarkably favourable development”.\(^\text{250}\)

Interest in the international legal order during discussions on the drafting of the Convention is perhaps no surprise. The Netherlands has a long history of interest in the international legal order, with the Dutch Hugo Grotius being one of the founders of international law in the 17\(^{th}\) century. This was built on when Dutch politicians and academics increasingly promoted the role of the Netherlands as a supporter of the international legal order in the 19\(^{th}\) century. The Netherlands was destined to maintain the international legal order; professor in law C. van

\(^{247}\) The Dutch delegation came with their own proposal to article 16 (on the individual complaint system) of the Philippine draft-text, identical to their proposal for a new article after article 43 of the draft Covenant on Civil and Political Rights. In the archival folder the amendment is not clearly stated. Their goal with the amendment was to make the article acceptable to more delegations however, therefore it is likely it contained restrictions, see: NL-HaNA, 2.05.313, 24289, Telegram from the delegation to the Ministry of Foreign Affairs, 27.10.1965

\(^{248}\) NL-HaNA, 2.05.313, 23521, Statement by J.A. Mommersteeg on the 25\(^{th}\) of November 1965 (Attachment 3 F 13378/65)

\(^{249}\) Ibid

\(^{250}\) NL-HaNA, 2.05.313, 23521, Report of the delegation to the 20\(^{th}\) General Assembly of the United Nations, Third Committee, Nr.7 Agenda item 58, B. Implementation articles (F/1046/66): 17
Vollenhoven wrote around 1900. Dutch jurists were also active to further this image of the Netherlands, such as T.C.M Asser. Therefore, in the beginning of the 20th century, the Netherlands had become an important international center for legal order, visible in that the Dutch government was tasked with hosting two Peace Conferences held in 1899 and 1907.\(^{251}\)

When the United Nations was founded in 1945 the Netherlands’ first goal, as Voorhoeve noted, was to support the development of the international legal order. During the organization’s creation, the Netherlands was disappointed in the limitedness of its goal; to maintain international peace and security. They preferred the inclusion of international law in order to achieve these goals, which led them to propose the inclusion of a reference to law and justice in article 1, and a reference to justice in article 2 of the UN Charter.\(^{252}\) Both these proposals were accepted. They also proposed to give the General Assembly the right to request advisory opinions from the International Court of Justice. This right would however only be used rarely, to the disappointment of the Dutch government.\(^{253}\)

However, the Netherlands quickly became occupied with its Eastern colonies, and interest in the UN lessened. When the UN Security Council pressured the Dutch government to give up its Eastern colonies, the organization was even viewed as somewhat of an annoyance. The fact that Afro-Asian countries now featured strongly in the UN, meant that the Netherlands could rely on less support for its colonial policies. Luns argued the UN was, “thanks to the absurdity of the broadening of the membership of Afro-Asians”, threatening to grow into an anti-Western platform.\(^{254}\) When the General Assembly strongly criticized the military intervention of Great Britain and France in the Suez Canal in 1956, Luns even considered stepping out of the UN. He wondered why the Netherlands should “cooperate with an organization in which just the European countries oblige, and the Afro-Asians only have rights.”\(^{255}\)

On a regional level, the Netherlands showed little enthusiasm when the European Convention on Human Rights was proposed in 1950. This included an individual complaint system, which the Dutch government objected to. The government was afraid such a procedure would

\(^{251}\) It should be noted that the Dutch government reacted unenthusiastically to the first Peace Conference. Concerned with national interests, they worried the guest list might not be to everyone their liking (for example the dissatisfaction of Great Britain with the presence of South Africa), see de Graaff et al. 2003: 72-73


\(^{253}\) Voorhoeve 1979: 202-203

\(^{254}\) Cited in De Graaff et al. 2003: 81 (Own translation from Dutch)

\(^{255}\) Cited in De Graaff et al. 2003: 82 (Own translation from Dutch)
demand too much time and money. The Prime Minister Willem Drees also worried such a complaint system might be abused by quarrelsome persons.  

In comparison to the above, during the drafting of the Convention the Dutch government was involved in the discussions and warmly welcomed the possibility of creating far-reaching implementation measures, including an individual complaint system. As researchers Peter Malcontent and Floribert Baudet stated, the Netherlands became more interested in promoting the international legal order during the 1960s. This had to do with the loss of its last East Indies colony in 1962; New-Guinea. They no longer had colonial interests shaping their foreign policy, removing an important barrier that blocked the promotion of the international legal order and human rights. Another reason, Malcontent and Baudet stated, was the start of Cold War détente after the 1962 Cuban Missile Crisis, when tensions between the United States and the Soviet Union lessened. This gave space for other issues to receive the attention of the government. In addition, and as I will elaborate on in the next chapter, society underwent a transformation in the 1960s, which slowly increased interest in foreign policies and pressured the Dutch government to change direction.  

256 De Graaff et al. 2003: 81
257 Ibid: 83-84
Chapter 4 Ratification

Introduction

From the 7th of March 1966, countries could start signing the Convention on the Elimination of All Forms of Racial Discrimination (ICERD). This “qualifies the signatory state to proceed to ratification” and “expresses the willingness of the signatory state to continue the treaty-making process.” Nine countries signed the Convention on the 7th of March, primarily Communist states. The Dutch government would have preferred to wait with signing the Convention until its ratification had been dealt with at home. This meant the adaptation of national legislation to meet the Convention’s obligations. This was preferred because it would avoid the large gap, usually of several years, between signing and ratifying. As the government “had to show the U.N. is to be trusted”, the decision was made to sign first.

In addition, the Dutch delegation argued signing the Convention quickly would strengthen their position during discussions on the implementation articles of the two general human rights covenants; the one on civil and political rights and the one on social and economic and cultural rights. As Steven Jensen noted, during the debate on the two covenants in 1966, the Convention was mentioned 120 times by forty-nine countries, thus declaring what stance one held on the Convention became a “measure of credibility” during discussions on the Covenants. On the 24th of October 1966 the Netherlands therefore signed the Convention.

Other Western countries had the same reasoning; to sign the Convention prior to the discussions on the two Covenants was preferred. Therefore, the American UN Ambassador Arthur Goldberg successfully pressured the Johnson administration to sign the Convention, which they did the 28th of September 1966. The Norwegian delegation, which was like the
Netherlands most concerned with the ratification process, also recognized the importance of signing swiftly. The same day the American government signed the Convention, the Norwegian delegate Leif Edwardsen stated “it could leave an unfortunate impression” if the Norwegian government did not sign in time for the 1966 General Assembly.\textsuperscript{264} Therefore Norway decided to sign the Convention the 22\textsuperscript{nd} of November 1966.\textsuperscript{265}

The Soviet Union went beyond merely signing the Convention, and published for the first time ever a human rights article in the official foreign policy journal \textit{International Affairs}. In this article, the Soviet Union emphasized the efforts of the Eastern countries in the drafting of the Convention and criticized, as it had done many times before, racial problems in the United States and apartheid in South Africa.\textsuperscript{266}

Now that the Netherlands had signed the Convention, which had strengthened their position in the 1966 General Assembly, they had yet to implement the Convention into Dutch national legislation. The main goal of the Dutch government was to follow the Convention loosely, and create more general legislation. This was preferred in order to avoid restrictions of freedom of expression and association and to avoid creating rules for problems (racial discrimination) that, in the opinion of the government, did not exist. The first step of the government was to set up an interdepartmental workgroup, in which the immediate challenges of the ratification process were identified and tasks were divided among the Dutch ministries.

\textbf{Initial reactions of the Dutch government}

The Ministry of Foreign Affairs reasoned that it was of political interest to speedily ratify the Convention. They argued the Convention was “the most important international instrument since the UDHR [Universal Declaration on Human Rights] and the Genocide Convention from 1948”.\textsuperscript{267} Especially noteworthy was the elaborate implementation machinery, on which the Dutch delegation had actively cooperated. They thus recommended the Ministry of Justice

\begin{flushright}
\textsuperscript{264} Søberg 2016: 57 (Own translations from Norwegian) \\
\textsuperscript{265} Ibid \\
\textsuperscript{266} Jensen 2016: 127 \\
\textsuperscript{267} Archive MFA, dve/1945-1984/04564 (VN 4595), Memorandum from DIO to DVE of the Ministry of Foreign Affairs, 8.2.1966 (Own translations from Dutch)
\end{flushright}
Researchers Peter Baehr, Monique Castermans-Holleman and Fred Grünfeld stated, in their overview-study of human rights in the Netherlands between 1979 and the 1990s that the Dutch Ministry of Foreign Affairs has generally been more willing to take into account human rights than other ministries. This was apparent also during the ratification of the Convention, where it was the Ministry of Foreign Affairs that seemed most occupied with having a good reputation in the UN.

In order to facilitate a timely ratification process, an interdepartmental workgroup was established towards the end of 1966. The suggestion for this came in a letter from the Minister of Foreign Affairs to the Minister of Justice. The workgroup met up at least four times during the ratification process. Notes were made of the first two and filed in the archive of the Ministry of Foreign Affairs and the National Archives in The Hague. Notes were either not made of the remaining meetings, or they never made their way to into the archives. In any case, what I could find on these first two meetings gave me useful information on the initial challenges of the government.

The first workgroup meeting was scheduled the 11th of October 1966, before the Convention was signed on the 24th the same month. During the first workgroup meeting, the participants quickly agreed that some form of national implementation was necessary to meet the Convention’s obligations. Representative of the Ministry of Foreign Affairs, J.H. Kramer noted this was not the type of treaty, unlike for example the European Convention on Human Rights (1953), which could be directly applied to the citizen. Instead, the Convention’s obligations were directed towards the government. This meant an implementation law had to be drafted, followed by an explanatory memorandum in which the former was thoroughly explained. The Ministry of Justice would be given most of the responsibility to draft these.

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268 Archive MFA, dve/1945-1984/04564 (VN 4595), Memorandum DIO/EZ to DVE of the Ministry of Foreign Affairs, 4.4.1966
269 Reiding 2007: 36-7
270 Archive MFA, dve/1945-1984/04564 (VN 4595), Letter from the Minister of Foreign Affairs to the Minister of Justice, 27.9.1966
271 Present at the workgroup were representatives; W.J. van Eijkern (Ministry of Justice), M.C. Burkens (Ministry of Interior Affairs), C.H. Geel (Ministry of Education, Culture and Science), F.J. Beurke (Ministry of Housing, Spatial Planning and the Environment), T.M. Pellinkhof (Ministry of Social Affairs), W.A. Panis (Culture, Leisure and Social Work (later to become the Minister of Health, Welfare and Sports)), P.L. de Haseth (Netherlands Antilles), D. van der Geld (Cabinet G.M. Surinam). From Ministry Foreign Affairs; J.H. Kramer, F.Y. van der wal (Legal Advisor (abbreviation in Dutch JURA)), E.J.N. Brouwers (DIO), Dr. A.Alberts (DVE/PA), see Archive MFA, dve/1945-1984/04564 (VN 4595), Report of the workgroup meeting 11.10.1966
addition a law of approval had to be drafted, also accompanied by an explanatory memorandum. The Ministry of Foreign Affairs would be given most of the responsibility to draft those.272

The biggest question with regards to implementation for the workgroup was to which extent the Convention should interfere with and change national legislation. Representative of the Ministry of Justice W.J. van Eijkern was of the opinion adaptation of Dutch laws was challenging. To follow the Convention by the letter would be a mer à boire; in other words a nearly impossible task. W.A. Panis from the Ministry of Culture, Leisure and Social Work viewed it as the opening of Pandora’s Box. He thus seemed to be afraid of creating problems where there were none, which he feared would happen if the Convention was applied firmly. Kramer suggested that a more general legislation might be the way to go. He also argued that becoming too specific in the implementation and paying too much attention to something (racial discrimination) which does not occur often could be dangerous.273

Furthermore, the group touched upon the issue of implementation in the territories of the Kingdom of the Netherlands; Suriname and the Netherlands Antilles. Present at the workgroup were representatives D. van der Geld from Suriname and Mr. P.L. de Haseth from the Netherlands Antilles. When asked about the occurrence of racial discrimination in Suriname and the Netherlands Antilles, they replied no racially discriminative customs, attitudes or provisions existed in these parts of the Kingdom.274

After the initial challenges with the ratification of the Convention had been discussed, the workgroup ended its meeting by dividing tasks in between the involved ministries. As mentioned, chief responsibility for the draft-laws and their explanatory memorandums went to the Ministry of Justice and the Ministry of Foreign Affairs. Other ministries were instructed to prepare texts for those articles relating specifically to them; such as article 7 on education, which was to be prepared by the Ministry of Education, Culture and Science and article 5e iii on housing which was to be prepared by the Ministry of Housing, Spatial Planning and the Environment.275

272 Ibid: 4-5
273 Ibid: 1-3
274 Ibid: 2
275 Ibid: 5
The second interdepartmental workgroup meeting was held on the 15th of November 1966.\textsuperscript{276} The main part of the discussion was on the draft-implementation law prepared by van Eijkern and M.C. Burkens from the Ministry of Interior Affairs. Eijkern was concerned about what he saw as a quarrelsome climate in the Netherlands. In his opinion, compared to the 1930s, the climate in the Netherlands had worsened in which there was tension around the right to demonstrate. He pointed at the eagerness of the population to criticize those who demonstrated, and to view these demonstrators as being discriminative. Several articles of the Convention, he feared, could intensify this quarrelsome climate. Among others, implementation of article 4 of the Convention could be problematic. This article, as could be expected, posed a challenge to the workgroup. Kramer suggested including a statement in the explanatory memorandum on the implementation law; “that this [article 4], as far as the Netherlands is concerned, does not force all too binding/precise regulations.”\textsuperscript{277} Van Eijkern, referring once again to the quarrelsome climate in the Netherlands, argued such an inclusion would help avoid citizens from using the contents of the article to bully each other.\textsuperscript{278}

Representative from the Ministry of Foreign Affairs, Theo van Boven, tried to stir the discussion into a more general direction. He pointed out that the Convention should be looked at as a whole and stated that; “a State guarantees a certain level of law and order. On the basis of this, he is prohibited to discriminate”.\textsuperscript{279} Furthermore he stated that the Convention was intended for the public and not the private sphere. Where to draw the line between the private and public, as van Boven rightfully stated, was however no easy task. Take for instance a hotel owner who denies access to someone based on their race, should the owner be punished? The hotel is a private establishment, but its use is intended for the public. In the opinion of van Boven, racial discrimination as meant above should not explicitly be prohibited in the implementation law. The matter was discussed a little further, and after no clear solution has been reached, van Boven suggested taking a look at the British Race

\textsuperscript{276} Present at the workgroup were: Chairman H.J. Kramer, W.J. van Eijkern (Ministry of Justice), M.C. Burkens (Ministry of Interior Affairs), C.H. Geel (Ministry of Education, Culture and Science), H.M. de Savornin Lohman (Ministry of Housing, Spatial Planning and the Environment), T.M. Pellinkhof (Ministry of Social Affairs), W.A. Panis (Culture, Leisure and Social Work (later to become the Minister of Health, Welfare and Sports)), D. van der Geld (Cabinet G.M. Suriname). From Ministry Foreign Affairs; J.H. Kramer (Chairman of the workgroup), F.Y. van der wal (Legal Advisor (abbreviation in Dutch JURA)), Th. C. van Boven (DIO), Dr. A.Alberts (DVE/PA), see NL-HaNA, Justitie/Wetgeving/Internationale Organisaties, 2.09.84, inv.nr. 44, Report of the workgroup meeting 15.12.1966

\textsuperscript{277} Ibid: 1-2 (Own translation from Dutch)

\textsuperscript{278} Ibid

\textsuperscript{279} Ibid (Own translations from Dutch)
Relations Act, adopted the 9th of December 1965, which aimed to eliminate racial discrimination in public accommodations like hotels.\textsuperscript{280}

The Dutch government was not alone in looking at other countries for inspiration; the Nordic-countries did the same. Representatives from the Nordic countries, except Norway, travelled to Great Britain in 1967 to discover the effects of the Race Relations Act of 1965. Here the Race Relations Board argued the Act was not enough to eliminate racial discrimination, but that it inspired others in society to work against racial discrimination.\textsuperscript{281} The Netherlands did not draw from this Act for the first implementation law. As I will get back to, they would first look at British legislation against racial discrimination at a later stage in the ratification process.

The remainder of the meeting repeated discussions on not taking a too literal stance towards the Convention, the dangers of creating rules and regulations for problems that did not yet exist, and questions about terminology. With regards to article 1 of the Convention, in which racial discrimination was defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin”, the workgroup decided to solely use the term “race”.\textsuperscript{282} The other terms, such as descent or national origin could lead to a restrictive interpretation, van Eijkern argued. In addition, the participants decided not to create a national commission tasked with receiving individual complaints as meant in article 14, section 2 of the Convention. Van Eijkern argued that recommendations by this commission could put the government in a difficult position. He also expected such complaints to be rare, and therefore leave the commission without a continuance in jurisprudence.\textsuperscript{283}

What becomes clear during these two workgroup meetings is that the Dutch government viewed the implementation of the Convention as somewhat of a burden. As mentioned before, they viewed the Convention as a treaty meant for the international situation. This is also visible during the above meetings. No comments were made on the possibility of the Convention to eliminate racial tendencies in Dutch society which, as discussed in chapter 3,

\textsuperscript{280} Ibid: 2-3
\textsuperscript{282} See Appendix 2
\textsuperscript{283} Ibid: 3, 5
did exist. Rather it would intensify a so-called quarrelsome climate, where implementation of article 4 of the Convention was seen as especially worrisome.

The transformation of Dutch society during the 1960s

During the first two workgroup meetings, Dutch society was characterized as being ‘quarrelsome’. What caused such statements? As I will show, Dutch society underwent a transformation in the course of the 1960s.284 A combination of factors influenced this change. One of these factors was the weakening of societal ‘pillars’.

The term pillarization, as described in chapter 2, is used to describe Dutch society when it was divided into various groups or ‘pillars’ based on their ideologies. The Netherlands had four large pillars; the catholic, the protestant, the liberal and the social. Such a division of society is not unique to Dutch history; other countries such as Belgium and Austria had similar pillars.285 In the case of the Netherlands, political scientist A. Lijphart set the period of pillarization to around 1917 to 1967, although he acknowledged these were gradual processes and no definite start or end point can be given.286 How did this period start?

In the 19th century, the pillars increasingly organized in separate groupings.287 By the end of the century, tension existed between the pillars as they were divided on a number of issues. One of these was on whether or not private schools should be given financial support of the state. The elite of the various pillars were able to find peaceful solutions to these issues in 1917.288 This started a period of ‘pacificatie politiek’, which meant that the elite of each pillar aimed to pacify political processes. While cooperation increased between the elite, the pillars at large were increasingly isolated from one another. The decision in 1917 to give equal funding to private schools seemed to have intensified, rather than slowed down pillarization. Between 1917 and 1976, the pillars also became increasingly institutionalized, with each pillar having their own political parties, trade unions and newspapers.

284 Boogman et al. 1978: 37
285 Belgium for instance had catholic, socialist and liberal ‘familles spirituelles’ and Austria had catholic, socialist and liberal-national ‘Lager’ pillars, see Lijphart 2007: 77
286 Ibid: 27
287 Ibid: 87
288 Ibid: 102-106
Pillarization gives a rather static impression of society. This, historian Peter van Dam argued, is a misconception. In his book *Staat van Verzuriling – over een Nederlandse mythe*, van Dam argued Dutch society was continuously changing, also during the height of pillarization. He pointed at, among others, tensions within the political parties of the protestant pillars. 289

From the 1960s, the Netherlands became less pillarized and politics more polarized. What caused depillarization? Historian Hans Righart emphasized the growth of the welfare system as a cause for depillarization. Increased welfare meant more spare time and technological advancements including better transport and communication options. In addition, since the Second World War, van Dam argued, more responsibility was laid on the individual. These factors combined led to a reassessment of one’s position in society; for many one’s position in his or her pillar. 290

A second cause for depillarization was the weakening of religion in society. People believed they were living in a time where religion lost its grip on society, which van Dam argued worked as a self-fulfilling prophecy. Because they believed society was secularizing, they helped bring secularization along. Many also started looking for new forms of religion which would fit into a modern society. An example is the book *Honest to God* by Bishop John A.T. Robison from 1963, in which the individual was encouraged to seek a more subjective outlook on his or her religion, and take more responsibility for his or her own beliefs. 291

The weakening of the pillars, affected the Dutch political system. Political parties could no longer rely on the same amount of support from members in the pillars. The stability that had existed in Dutch politics was now threatened. In the elections for the House of Representatives in the Netherlands in 1967, the political party Democrats 66 (Democrats 66 (D66)) gained seven out of the 150 seats. The party had been established only one year before, the results were therefore shocking. The Catholic People’s Party (Katholieke Volkspartij (KVP)), which had been one of the biggest parties during pillarization, on the other hand went down in votes. Between 1963 and 1972, voting on the KVP went down from 32 to 17.7 per

289 Between the Anti-Revolutionary Party (Antirevolutionaire Partij ARP) and the Christian Historical Union (Christelijk-Historische Unie CHU), see van Dam 2011: 16-17
290 van Dam 2011: 77-78
291 van Dam 2011: 83-85
cent. These developments in politics help explain why Lijphart marked 1967 as the end of pillarization and pacification of political processes.

Other factors contributed to the transformation of Dutch society in the 1960s. As mentioned previously, society became more technologically advanced. More people now owned a television. This led to increased awareness and interest in political affairs, both in and outside of the Netherlands. The harsh realities in Vietnam were harder to ignore; as Heldring rightfully stated, the extent of the revolt against the Vietnam War would have been unthinkable without the television. In addition, a new generation had come to the fore. This generation did not share the wartime experiences of the older generation, and were less affected by Cold War policies. They criticized the government’s close alliance with the United States, and preferred a more independent foreign policy with a strong focus on peacemaking.

Together, these developments led to tensions in Dutch society and mistrust in the authorities. In fact, one of the primary characteristics of the 1960s, J.C. Kennedy argued, was the crisis of authority. Many journalists, who were now less tied to the pillars, wanted to prove their newfound independence and changed their approach to journalism. Instead of approaching subjects in careful service to their pillar, journalists became more critical and direct. Their criticism was often directed at the behaviour of the Dutch authorities, for instance towards the harsh actions of the police against protestors in Amsterdam.

Between 1965 and 1966, several protests were held in Amsterdam, including protests against the government’s support of the United States’ policies in Vietnam and the engagement of crown princess Beatrix to Claus von Amsberg. Trust in the police force was already shaky, and the police force was rather poorly organized and lacking in manpower. This led to harsh treatment of the demonstrators by the police. But also large sections of the population reacted

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292 Boogman et al. 1978: 38
293 Lijphart 2007: 11
294 Boogman et al. 1978: 38
295 Boogman et al. 1978: 40
297 Kennedy 2016: 154
strongly to the protestors, and preferred a forceful handling of them by the police. 298 How did the government react to these developments?

Many politicians and leaders were reluctant to admit the system was “fundamentally wrong”, and viewed harsh police actions more as isolated events. 299 At the same time they were surprised by the societal developments, and wished to minimize the gap between the generations. In the opinion of the government, the causes for the quarrelsome climate were clear; society was rapidly changing and this came into conflict with old structures. Many politicians and leaders started to realize times were changing, and that they had adapt. 

Minister of Justice from 1965 to 1966, Ivo Samkalden, therefore expressed that his government stood open to new ideas. The Cabinet-de Jong from 1967 to 1971 held the same view. The new Minister of Justice C.H.F. Polak and the Minister of Interior Affairs H.H.J. Beernink made the promise to quickly adapt to changing circumstances, if means of the protestors remained “honest”. 300

In this historical light, reactions of the workgroup’s participants become easier to understand. The representatives at the workgroup feared Dutch implementation of the Convention could lead to appeals from Dutch citizens who felt they were wronged. Which, given society’s climate, was viewed as a real concern.

The first draft of the implementation law

While Dutch ministries were discussing how to implement the Convention, the consultative assembly of the Council of Europe suggested drafting a regional convention against racial, national and religious hatred instead. This resolution was made on the 27th of January 1966. 301 Arguments in favour of a regional convention were put forth in a working paper prepared by the Directorate of Legal Affairs of the Council of Europe. Among others, the reasons were; the European alternative would not deal with incitement, it would include religion which

298 Protests were directed against Claus von Amsberg, mainly because he had served in the Wehrmacht, see Kennedy 2016: 156-159
299 Kennedy 2016: 160 (Own translation from Dutch)
300 Kennedy 2016: 163 (Own translation from Dutch)
301 NL-HaNA, 2.05.313, inv.nr 22913, Information on Recommendation 453 (1966) by the Ministry of Foreign Affairs, 31.01.1966
ICERD did not, it would not punish mere participation in an offending organization, and it would create a more detailed “model law”. 302

Several representatives of the Dutch Ministry of Foreign Affairs strongly rejected the proposal to make a regional alternative to the worldwide arrangement. In a letter sent within the Ministry of Foreign Affairs, from the division dealing with social-judicial subjects to the division on matters related to the European Council, several arguments in favour of a worldwide arrangement were made. 303 Among others, creating a separate European arrangement could damage the “political goodwill” of the Council of Europe. In addition, a convention on religious intolerance was being drafted in the UN. In addition, The Ministry of Foreign Affairs, and especially the Ministry of Justice, already viewed some aspects of ICERD too detailed. Therefore a detailed European “model law” would be a disadvantage, rather than an advantage. Representative of the Ministry of Foreign Affairs C.W. Santen sent another letter to the division dealing with matters of the European Council, in which he also argued in favour of a worldwide arrangement. In his opinion, creating a European Convention could give the impression that European countries, more than other UN members, were in need of measures against racial discrimination. 304 In a letter to the Minister of Justice, Luns also opted for the worldwide arrangement. In his opinion, the fact that a worldwide arrangement on the subject was at all possible should be celebrated. He argued;

“Although the first attempt is not faultless, this does not justify the propagation of a regional arrangement on the subject, which can merely give a partial solution, and indeed will encourage to the establishment of regional arrangements elsewhere, which either will be below par or want to set a misleading and inimitable “example”, of which the enforcement in practice in the concerned “region” is not guaranteed.” 305

The government thus rejected a regional arrangement, although they kept an eye on developments in the European ‘model-law’, which could give ideas on how to implement the ICERD. After the Second World War, the Dutch government had looked to the UN for the promotion of the international legal order, which they hoped could secure peace and stability.

302 NL-HaNA, 2.05.313, inv.nr 22913, working paper prepared by the Directorate of Legal Affairs of the Council of Europe, on Recommendation 453 of the Consultative Assembly of the Council of Europe, Strasbourg 19.04.1967
303 NL-HaNA, 2.05.313, inv.nr 22913, Memorandum from DIO/SC to DRW/RE via DIO, 06.01.1967
304 NL-HaNA, 2.05.313, inv.nr 22913, Representative of the Ministry of Foreign Affairs C.W. van Santen to DRW/RE, 12.01.1967
305 Archive MFA, dve/1945-1984 04565 (VN 4596), Letter from the Minister of Foreign Affairs to the Minister of Justice, 31.01.1967: 2 (Own translation from Dutch)
They had rejected bloc formation, except for economic arrangements such as the Benelux Customs Union of 1948. Only when the UN seemed incapable of securing peace and stability with the on-going Cold War, did the Netherlands turn to regional settlements by entering the Brussels Treaty of 1948 and the North Atlantic Treaty Organization (NATO) of 1949. With the Cold War détente, and a proliferation of the human rights movement in the UN, the Netherlands again seemed to prioritize the UN over regional arrangements to promote the international legal order and create stability.

Throughout the ratification preparation process, there seemed to have been a sense of urgency. The government aimed to quickly ratify the Convention. Thus, in the summer of 1967, the government had finalized an implementation law including an explanatory memorandum, and a law of approval including an explanatory memorandum. As was the case during the workgroup meetings, the biggest challenge had been drafting the implementation law; in what way, and to which extend, did the Convention require implementation?

In the Convention racial discrimination was defined as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life

An action was thus racially discriminative when it happened at the expense of human rights and fundamental freedoms. As the enjoyment of human rights and fundamental freedoms to a large extent depended on the authorities, this is where the Dutch government argued the Convention should first and foremost be implemented. But the government recognized this interpretation was too restricted. Especially with regards to 2(d) of the Convention;

Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization

306 Voorhoeve 1979: 103-108
307 See Appendix 2
308 NL-HaNA, 2.09.84, inv.nr. 44, Explanatory memorandum for the draft-implementation law, F/7241/67: 3
309 See Appendix 2
The government was of the opinion new legislation was necessary for implementation of articles 2-5 of the Convention.\textsuperscript{310} The draft-implementation law thus included articles in which intentional, public insults towards groups of persons belonging to a certain race, or incitements to racial discrimination, racial hatred or violence against person or property on the grounds of their race were prohibited. The spreading of objects in which such insults appeared was also prohibited. In addition, each activity or other collective performances which was racially discriminative were prohibited in three ways; 1) by creating a penalty clause against participation in racial discriminative activities, and prohibiting financial or other material support for such activities, 2) by stating that organizations which are or have as their goal to act, promote or maintain racial discrimination are against the public order, and 3) making any provisions in collective agreements which are racially discriminative are non-binding. And lastly, the draft-law included an article which prohibited racial discrimination by public bodies.\textsuperscript{311} What the Dutch government did not create a penalty clause for in this first implementation draft was racial discrimination in the use of public facilities, such as hotels and resorts.

In the explanatory memorandum of the implementation law, the government stated especially actions of private individuals, groups or organizations of private individuals, “which in their effect stand equal to racially discriminative acts of the authorities or get close to such acts of the authorities” were prohibited by the government.\textsuperscript{312} Discriminatory acts by individuals in the private sphere were not viewed as an encroachment of human rights and fundamental freedoms.\textsuperscript{313} The memorandum gave no answer to where racial discrimination of the individual or the collective started. This, as van Eijkern stated, had been avoided on purpose.\textsuperscript{314} As van Eijkern argued in a letter to the Minister of Justice, the implementation law was drafted in such a way that it left reasonable space for the freedom of speech and kept “purely” private discriminative acts out of the implementation law. In his letter, he mentioned incidents of Surinamese and North-African workers who had been denied access to nightclubs. According to the workgroup, van Eijkern stated, such discriminatory acts did not

\textsuperscript{310} NL-HaNA, 2.09.84, inv.nr. 44, Explanatory memorandum for the draft-implementation law, F/7241/67: 3
\textsuperscript{311} NL-HaNA, 2.09.84, inv.nr. 44, Draft-implementation law for deliberation in the Cabinet meeting, F/7243/67: 2-5
\textsuperscript{312} Ibid: 7
\textsuperscript{313} Such acts could however be punished if they were directed against person or property, see NL-HaNA, 2.09.84, inv.nr. 44, Explanatory memorandum for the draft-implementation law, F/7241/67: 7
\textsuperscript{314} NL-HaNA, 2.09.84, inv.nr. 43, Letter from W.J. van Eijkern to the Secretary-General of Justice, 7.12.1966
reach into the sphere of human rights and were thus outside of the law’s scope.\textsuperscript{315} In the workgroup a suggestion to follow the British Race Relations Act of 1965 had been made, which would make racial discrimination in the use of public places punishable. But this did not gain the majority in the workgroup, and was therefore dismissed.\textsuperscript{316} In addition, to defend the freedom of expression, information and scientific practice further, a statement was included in the implementation law which read; “other than for the purposes of formal reporting”\textsuperscript{317}

In a cabinet meeting the 20\textsuperscript{th} of July 1967, the law of approval and implementation law including the explanatory memorandums were approved. The laws were to be submitted for approval by Parliament next, where the cabinet expected a swift decision.\textsuperscript{318} This did not happen. Advice from the Raad van State, dated the 1\textsuperscript{st} of November 1967, delayed the process significantly. The Raad van State (hereafter referred to as the Raad) is the highest advisory body of the government, consisting primarily out of previous parliament members, ex-ministers and lawyers. It is chaired by the monarch, although most matters are in practice handled by the vice-president. In the Netherlands the government is obliged to seek advice from the Raad on draft legislation. The council primarily looks at the quality of the draft, and sees to it that it is not in opposition to already existing legislature.\textsuperscript{319} What were the main challenges for the Raad?

The main challenges for the Raad had to do with the implementation law. They argued the provisions of the Convention applied directly to the citizen; no additional national legislation was therefore needed. If “against all expectations” lower public-law establishments made rules that were racially discriminative, then this would go against the public order and could be prohibited. The Raad also believed no real difficulties of racial discrimination existed in

\textsuperscript{315} NL-HaNA, 2.09.84, inv.nr. 44, Letter from W.J. van Eijkern to the Secretary-General of Justice, 2.6.1967
\textsuperscript{316} NL-HaNA, 2.09.84, inv.nr. 43, Letter from W.J. van Eijkern to the Secretary-General of Justice, 7.12.1966
\textsuperscript{317} NL-HaNA, 2.09.84, inv.nr. 44, Explanatory memorandum for the draft-implementation law, F/7241/67: 8
\textsuperscript{318} Archive MFA dve/1945-1984/04565 (VN 4596), Letter from DVE to the Minister of Foreign Affairs (via substitute Secretary-General), 05.06.1967; Archive MFA dve/1945-1984/04566 (VN 4597), DIO to DVE of the Ministry of Foreign Affairs, 04.01.1968
the Netherlands, and they feared creating national legislative measures would give the wrong impression to outsiders.\textsuperscript{320}

If the government was to implement the Convention into national legislation however, the current implementation law went too far. A minimalistic approach should be taken. To give effect to article 4 of the Convention, the Raad recognized that articles 137c and 137d of the Dutch Criminal Law were unsatisfactory. These articles, as mentioned in chapter 2, dealt with public, deliberate and offensive/abusive insults directed at a “group of the population or a group of persons belonging partly to the population” and with distribution of texts and representations in which such insults appeared.\textsuperscript{321} Instead of creating a separate law in order to give effect to article 4 of the Convention, the Raad proposed to broaden the abovementioned articles of the Criminal Law. These articles dealt with similar subjects after all, the Raad stated.\textsuperscript{322}

The Raad also pointed at the unsatisfactory way in which article 4a of the Convention was implemented which, among others, prohibited the “assistance to racist activities, including the financing thereof”.\textsuperscript{323} To give effect to article 4a of the Convention, participation in racially discriminative activities was prohibited in article 5 of the implementation law. Article 5 also prohibited supporting such activities either financially or through other material support. The Raad argued this was too narrow. The Convention required State Parties to prohibit support for racially discriminative activities in general, not only financial or material support. The Raad preferred if the government followed the text of the Convention in this part. The Raad concluded their advice by discouraging the government to send the implementation law in its current state for approval by the House of Representatives.\textsuperscript{324}

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{320} NL-HaNA, 2.09.84, inv.nr. 50, Advice of the Raad from State, The Vice-President of the Raad van State to the Queen, No.37, 01.11.1967: 1-2
\item\textsuperscript{321} Rosier 1997: 11-2
\item\textsuperscript{322} NL-HaNA, 2.09.84, inv.nr. 50, Advice of the Raad from State, The Vice-President of the Raad van State to the Queen, No.37, 01.11.1967: 3
\item\textsuperscript{323} See Appendix 2
\item\textsuperscript{324} Ibid: 4-6
\end{enumerate}
\end{footnotesize}
Changing the implementation law

In the meantime, the chairman of the House of Representatives F.J.F.M. van Thiel, sent a letter to the Luns. In this letter he urged the government submit the draft-laws as quickly as possible, preferably prior to the International Conference on Human Rights to be held between April and May 1968. Luns sent a letter back, in which he explained the delay that had occurred due to the advice of the Raad, to which the government would seek a “satisfactory solution”.

This solution was to change the way in which the Convention was implemented in the Netherlands. The Ministry of Foreign Affairs was, as mentioned earlier, of the opinion that some national implementation of the Convention was necessary. They disagreed with the argument of the Raad that the Convention was self-executing. A treaty was only self-executing, Foreign Affairs argued, if it directly granted citizens’ rights which they could call upon in front of a judge. This was not the case with the Convention, which put obligations on the government. Some form of implementation was thus necessary, and the Ministry of Justice was tasked with creating a new implementation law. This would not be done in its separate law, but instead the new implementation law aimed to change and include new articles in the Criminal Law.

The Ministry of Justice followed the advice of the Raad and broadened articles 137c and 137d of the Criminal Law. These would now include discrimination on the grounds of race, religion and on the basis of their worldview. In addition article 137e was created, which sought to give effect to article 4 of the Convention. The article read:

1. Any person who, for any reason other than the provision of factual information:
   1° makes public a statement which he knows or should reasonably suspect to be insulting to a group of persons because of their race, religion or the basis of their worldview, or incited hatred of or discrimination against persons or violence against their person or property because of their race, religion or on the basis of their worldview;

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325 Archive MFA, dve/1945-1984/04566 (VN 4597), Letter from the chairman of the House of Representatives F.J.F.M. van Thiel to the Minister of Foreign Affairs J.M.A.H. Luns, 29.03.1968
327 Archive MFA, dve/1945-1984/04566 (VN 4597), From DIO to DVE of the Ministry of Foreign Affairs, 04.01.1968
2° sends or distributes, without request, an object which he knows or should reasonably suspect to contain such a statement to another person, or has such object in store for public disclosure or distribution; 328

Religious discrimination had been included in the above-mentioned articles. The Netherlands were therefore running ahead of the Convention on Elimination of All Forms of Religious Intolerance, which had yet to be finalized. The Dutch government had on several occasions stressed the necessity of equal prioritization of racial discrimination and religious intolerance. 329 Both the issues on race and religion had been placed on the UN human rights agenda for 1963 and 1964, with prioritization going to race. The issue of religion was to be discussed after, but for this there was often little time; the more because of Communists countries which “managed to filibuster debate on religious intolerance.” 330 A draft Convention on religious intolerance was finally created by the Commission on Human Rights, and to be discussed at the 1967 General Assembly. Because international relations deteriorated when the Convention on religious intolerance was to be discussed, the Convention was never finalized. Jensen pointed especially at the Six Day War in the Middle East in 1967 as a cause for its failure. 331

The government further removed the article of the first implementation law, which stated that public bodies were prohibited to racially discriminate. They argued the non-discrimination principle was connected to fundamental rights, and would fit better in the Dutch Constitution. The Minister of Interior Affairs therefore submitted a request to a commission which gave advice on constitutional changes. 332 The request would be approved, as the non-discrimination principle was added to the Constitution in 1983 (Article 1). 333

The new implementation law also prohibited participation in racially discriminative activities or the supporting thereof financially or with any other material support, in a new article of the

328 NL-HaNA, 2.09.84, inv.nr. 50, Draft-implementation law for the Convention on the Elimination of All Forms of Racial Discrimination, J.1357.68.: 2 (Own translations from Dutch)
329 See for instance, NL-HaNA, 2.05.313, 23521, Statement by J.A. Mommersteeg on the 13th of October 1965 (Attachment 1 F 11658/65)
330 Only two out of thirty-five meetings were held on religion during the 1963 session of the Commission on Human Rights, see Jensen 2016: 149-152
331 Ibid: 165
332 In Dutch called the Staatscommissie van Advies inzake de Grondwet
333 Rosier 1997: 77
Criminal Law; article 429ter. Thus, the government did not follow the advice of the Raad to prohibit support for racially discriminative activities in general. 334 No reason was given for why the government did not follow the Raad’s advice, but I can imagine the government did not include immaterial support to protect freedom of speech. After article 429ter, another article was added to the Criminal Law; article 429quater. The government came to an agreement on all of the abovementioned articles, except for article 429quater;

Any person who, in the practice of his profession or business, offers goods or services and thereby, or by the making of his offer, discriminates against persons on the grounds of their race, shall be liable to a term of detention not exceeding one month or a fine of thousand guilder at the most. 335

This article aimed to give effect to article 5 (iii) of the Convention which ensured equal access to housing. Article 429quater would for instance punish a hotel owner who refused to rent rooms to persons based on their race. In the first implementation law such a provision had not been included. As discussed previously, the workgroup was of the opinion that racial discrimination in the use of public facilities like hotels, fell within the private sphere and were outside the reach of basic human rights and fundamental freedoms. Article 429quater would prohibit racial discrimination in public facilities, but could also prohibit racial discrimination by for instance landlords/ladies. The Raad had not given a clear opinion on article 429quater, and had not criticized the absence of such an article in the implementation law. 336 In fact, the overall message of the Raad was to implement the Convention less, not more. Article 429quater would mean broadening the implementation of the Convention. Then why was such an article included in the implementation law now?

One of the reasons for its inclusion was a change of actors. The 5th of April a new government was elected, Cabinet-de Jong with Piet J.S. De Jong as the prime Minister. 337 This was significant, because a new Minister of Justice was appointed; C.H.F. Polak. Polak was

334 NL-HaNA, 2.09.84, inv.nr. 50, Draft-implementation law for the Convention on the Elimination of All Forms of Racial Discrimination, J.1357.68.: 3
335 NL-HaNA, 2.09.84, inv.nr. 50, Draft-implementation law for the Convention on the Elimination of All Forms of Racial Discrimination, J.1357.68.: 3 (Own translations from Dutch)
336 NL-HaNA, 2.09.84, inv.nr. 50, Advice of the Raad from State, The Vice-President of the Raad van State to the Queen, No.37, 01.11.1967: 2
strongly in favour of the inclusion of article 429quater. Another significant change was that van Eijkern, who had been very active during the drafting of the first implementation law and strongly in favour of a restricted implementation of the Convention, left his position as Principal Advisor of the Public Law Legislation Division of the Ministry of Justice in July 1967.

Polak was actively involved in the discussions on the implementation law, and was strongly in favour of the inclusion of article 429quater. In a letter to Prime Minister de Jong, Polak argued for the inclusion of article 429quater. Drawing on a consultation with representatives from the Ministry of Justice, Foreign Affairs and Interior Affairs, he recognized there were different viewpoints on the matter. Some, he did not specify who, felt the article went too far. Those who favoured a more restricted article text argued that landlords/ladies, who maintained a personal connection with the tenants, should not fall under the penalty clause. This was preferred to protect those who denied renting out a room to a person based on their race because they expected difficulties with other tenants. Another proposal was made to restrict the text, where the penalty clause would only prohibit such discrimination for services intended for the public. Polak objected to both of the above proposals. The provisions of the Convention, he argued, did not allow for such restrictions. Besides, it was not always clear whether or not a service was meant for the public, Polak argued.

During a cabinet meeting the 5th of July 1968, Polak gave another reason for including article 429quater in the Dutch Criminal Law. Parliament would suggest such an article either way if the government did not. As discussed previously, distrust in the government increased during the 1960s. The government could therefore expect Parliament to closely follow their actions. And as both the United States and Great Britain had included such an article in their national legislation, it was likely Parliament would expect the same from the Dutch government. In the United States such an article was included in the Fair Housing Act of 1968, and Great Britain in the Race Relations Act of 1968.

338 Archive MFA, dve/1945-1984/04566 (VN 4597), Letter from the Minister of Justice C.H.F. Polak to the Prime Minister, 19.06.1968
340 Archive MFA, dve/1945-1984/04566 (VN 4597), Letter from the Minister of Justice to the Prime Minister, 19.06.1968
341 Archive MFA, dve/1945-1984/04566 (VN 4597), Report on the Cabinet meeting of 05.07.1968, written by DVE of the Ministry of Foreign
The Race Relations Act had first been adopted in 1965, largely to reduce discrimination between post-colonial migrants and the British population. This Act prohibited discrimination of the use of public accommodations like hotels, public resorts or movie theaters. It did not yet include an article on discrimination in housing. This was added in 1968, when the British government adopted a broader Race Relations Act. The British government now prohibited to refuse housing, employment and public services on the basis of race.\(^\text{342}\) The government had suggested following the British example before, primarily to prohibit discrimination in places intended for the public, but this suggestion had been dismissed. Now Great Britain once again adopted further going legislation against racial discrimination. The Netherlands, like Britain had experienced large-scale postcolonial migration. Great Britain had also been the Netherlands’ close ally during and after the Second World War. Reactions of the British government to racial discrimination in their society was therefore of relevance to the Dutch government. In addition, racial discrimination in housing also occurred frequently in the Netherlands. Reports of racial discrimination in housing, often against Surinamese or Indonesians, appeared in several newspapers in the Netherlands throughout the 1960s.\(^\text{343}\)

In the United States the civil rights movement resulted, among others, in the Civil Rights Act of 1964. This Act included equal access to public facilities, and prohibited discrimination in employment. The American government adopted the Voting Rights Act one year later, which ensured equal rights to participate in elections. Racial discrimination in housing had not been prohibited yet, but with an increase in migration of African Americans to urban areas, and the continuation of civil rights demands, the Fair Housing Act was adopted in 1968 to eliminate racial discrimination in housing. The United States was one of the Netherlands’ closest allies, especially within NATO, what legislative steps the American government made to eliminate racial discrimination in their society was therefore also of interest.

Before the meeting ended, the representatives agreed on sending the new implementation law to the Raad for advice a second time. There were still objections to article 429quater, especially from the Minister of Culture, Recreation and Social Work Marga Klompé, but the majority seemed to believe Parliament would include such an article if the government did

\(^{342}\) Connerly 2006: 345

not. However, many still hoped the article would be somewhat reformulated after the advice of the Raad.\(^{344}\)

The Raad came with advice for the second time the 23\(^{rd}\) of July 1968. In comparison to last time, they could now unite around the new implementation law overall. But they had some objections. One of their main objections was to better explain in the explanatory memorandum why in articles 429ter and 429quater there was only attention to racial discrimination, and not religious intolerance. Both religion and had after all been included in the proposed articles 137c, 137d and 137e of the Criminal Law.\(^{345}\) Regarding article 429quater, the Raad also wondered if the limitation “in the practice of his profession or business” followed the Convention’s requirements. The explanation as to why such a limitation had been made in the explanatory memorandum was, they argued, unsatisfactory. However, they did not oppose the article itself.\(^{346}\)

The advice of the Raad led to some changed in the explanatory memorandum, and none in the new implementation law. The Ministry of Justice added an explanation for why only 137c, 137d and 137e took into account different types of discrimination. This, the Ministry of Justice argued, was because not all types of discrimination required the same measures. There was no reason to include for example religion or the basis of someone’s worldview, because the situation in the Netherlands did not ask for it.\(^{347}\) On the other hand, religion and worldview were included in the abovementioned articles, because of the Convention on religious intolerance, which was thought to be finalized soon. In addition, the original articles 137c and 137d had been created in the 1930s to fight anti-Semitism in the Netherlands, including religion and worldview the Ministry of Justice argued, therefore was the logical thing to do.\(^{348}\) The explanatory memorandum also changed, so that it explained in more detail why article 429quater concerned only those who discriminated in the “practice of his

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\(^{344}\) Archive MFA, dve/1945-1984/04566 (VN 4597), Report on the Cabinet meeting of 05.07.1968, written by DVE of the Ministry of Foreign

\(^{345}\) Archive MFA, dve/1945-1984/04566 (VN 4597), Letter from the Vice-President of the Raad van State to the Queen, 23.07.1968

\(^{346}\) Archive MFA, dve/1945-1984/04566 (VN 4597), Letter from the Vice-President of the Raad van State to the Queen, 23.07.1968

\(^{347}\) Archive MFA, dve/1945-1984/04566 (VN 4597), Report of the Minister of Justice to the Minister of Foreign Affairs, 21.08.1968

\(^{348}\) NL-HaNA, 2.09.84, inv.nr. 50, Explanatory memorandum of the draft-implementation law (number on the document is faded and cannot be read): 6
profession or business”. This was done, the Ministry of Justice argued, because without such a limitation the article would cause unsolvable difficulties.\(^{349}\)

As mentioned, the Raad could unite with the implementation law this time around. After the government had paid attention to the Raad’s objections, and somewhat changed the explanatory memorandum, the draft-laws were agreed upon by all involved departments. They were ready to be sent for approval by Parliament.\(^{350}\)

**Reactions by the Dutch Parliament**

For the draft-laws to be approved, they had to go through Parliament. The Dutch Parliament is a bicameral system, consisting of the Senate (de Eerste Kamer) and the House of Representatives (de Tweede Kamer). The draft-laws including the explanatory memorandums were first sent to the House of Representatives and thereafter the Senate, where special commissions were created to discuss the drafts. The commissions presented the government with preliminary reports, to which the government created responses. When the commissions were satisfied with the deliberations, the matter was further discussed in the general debates of the House of Representatives and the Senate. I have focused on the former; the deliberations between the special commissions and the government. The general debates of the Parliament I have looked at only briefly, and then only at the responses of governmental representatives.

During the whole process, criticism was raised to various parts of the draft-laws and explanatory memorandums, and a few amendments were proposed. However, the House of Representatives unanimously passed the law of approval the 27\(^{th}\) of August and the implementation law the 2\(^{nd}\) of September 1970. The Senate passed the law of approval the 9\(^{th}\) of February and the implementation law, with 44 in favour and 21 against, the 16\(^{th}\) of

\(^{349}\) Ibid: 12
\(^{350}\) Archive MFA, dve/1945-1984/04566 (VN 4597), Memorandum from DVE to the Secretary-General of the Ministry of Foreign Affairs, 06.09.1968
February 1971. The law of approval remained unchanged, and only the implementation law included a minor amendment.

Both the law of approval and the implementation law met with much enthusiasm from the special commission of the House of Representatives. Several members stated that both nationally and internationally the Convention was a step in the right direction. This was a legally binding treaty, and not merely a resolution or declaration, which many viewed as an advance in the human rights development in the UN. Especially noteworthy to many was the international guarantee system, including the facultative individual complaint system.

As several members (it is not stated who) of the House of Representatives recognized the existence of racist tendencies in society, they were disappointed the government had decided not to create a national organ competent with receiving individual complaints, in accordance with the optional article 14, section 2 of the Convention. Members of the House of Representatives argued the Netherlands could make one that fit into their government, as creating a national organ was optional. Such an organ could thus differ from the one meant in article 14, section 2 of the Convention. These members proposed a Commission of Enquiry and Advice, which could investigate the sociological and psychological reasons for racial discrimination in the Netherlands. Penalty clauses against racial discrimination could have a preventative function, they argued, but its function should not be overestimated; statistics on criminal offences could only give a limited explanation of racist tendencies. In addition, these members stated this commission could send reports to the Committee on the Elimination of Racial Discrimination (CERD), as meant in article 9 of the Convention. The advantage with this, they argued, was that such reports would be loose from governmental bias.

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352 The government changed articles 137c, 137d and 137e of the implementation law so that it prohibited discrimination of “their worldview”, instead of “on the basis of their worldview”. The latter was thought to lead to different interpretations. See Kamerstuk Tweede Kamer 1969-1970 kamerstuknummer 9724, ondernummer 7, NOTA VAN WIJZIGINGEN Nr. 7

353 Kamerstuk Tweede Kamer 1986-1969 kamerstuknummer 9723, ondernummer 4, VOORLOPIG VERSLAG Nr. 4

354 Kamerstuk Tweede Kamer 1986-1969 kamerstuknummer 9723, ondernummer 4, VOORLOPIG VERSLAG Nr. 4
Many members of the Senate also preferred a national organ; one which could supervise “all kinds of behaviours that could be influenced by racial prejudices”. Whether or not they meant a national organ competent to receive individual complaints as meant in article 14, section 2 of the Convention, or a commission of Enquiry and Advice as proposed by members of the House of Representatives, was not clear. They preferred a national organ because they had low expectations of the individual complaint system of the Convention. They referred to the, in their opinion, disappointing experience of the individual complaint system of the European Convention on Human Rights (1953). These members feared procedural difficulties such as language, financial costs, duration, difficulties to obtain legal aid, and the requirement that all national measures had been exhausted, would limit its effectiveness.

The responses by the government were primarily drafted by the Ministry of Justice and the Ministry of Foreign Affairs. In response to the proposal to create a Commission of Enquiry and Advice which could send reports to the CERD, the government stated this was the responsibility of the government. To prevent the reports from becoming biased however, the government supported making the reports public. They also argued a commission on Enquiry and Advice was not (yet) needed given the situation in the Netherlands. However, they stated that such a commission might be an option for the future. They also recognized Dutch society was becoming more ethnic and ideological diverse. These responses by the government seem to indicate that something had changed from when the Declaration and Convention were being drafted. As discussed above, Dutch society was going through many changes in the 1960s. The population became increasingly interested in politics, and the government could expect more critical reactions from Parliament. In addition, racial discrimination in housing continued to feature in Dutch newspapers, something which other countries like Britain and the United States experienced as well. The Dutch government had, like the above two countries, acknowledged this and created legislation (article 429quater) to solve the issue.

The government objected to a national organ competent with receiving individual complaints because such an organ would fit badly in the Dutch legal system. In addition, they felt such an

355 Kamerstuk Eerste Kamer 1970-1971 kamerstuknummer 9723, ondernummer 22, 9723: 2 (Own translations from Dutch)
356 Ibid
357 Kamerstuk Tweede Kamer 1969-1970 kamerstuknummer 9723, ondernummer 5, MEMORIE VAN ANTWOORD Nr. 5: 2
358 Document is missing on the Staten-Generaal Digitaal website, for the document see: NL-HaNA, 2.09.84, inv.nr. 50, Tweede Kamer zitting 1969-1970 – 9724, MEMORIE VAN ANTWOORD, Nr.6: 4
In the preliminary report on the implementation law by the House of Representatives, among others, criticism was uttered to articles 137c, 137d and 137e of the Criminal Law. Some members felt that, compared to the original articles 137c and 137d, the text had become too restricted. In the new articles, including article 137e, insults were only prohibited when directed at race, religion or someone’s worldview. Insults towards for instance homosexuals would have been prohibited by the original articles, but not by the proposed articles. These members wondered why the government was running ahead of the UN convention on religious intolerance, which still had to be finalized. Several members of the Senate also wondered why religion and worldview had been included in these articles.

The government responded to these objections by referring to the cause of the original articles. These had been created to prevent anti-Semitism in the Netherlands in the 1930s. Hence, including religious intolerance and worldview in the new articles, the government argued, made sense.

Other members of the House of Representatives argued the articles 137c, 137d and 137e had become too broad. The original articles 137c and 137d were formulated in such a way that only the manner in which an insult was made could be prohibited. If the insult was made in an abusive, hurtful or reviling way, this could be punished, but what one said did not matter. The proposed articles did not make such a division, which worried these members. Both the
way in which an insult was made and the contents of the insult could now be prohibited. An amendment was proposed for articles 137c and 137e, in which insults were prohibited in their manner only. Especially members from the political parties D’66 (Democrats 66) and PvdA (Labour Party) voted in favour of this amendment. As the majority at the general debate voted against, the amendment was dismissed.

The government acknowledged the judge was given more room to punish racial discrimination. On the other hand, they argued, the articles limited the areas in which such punishments could be made; only on the grounds of race, religion and worldview. In addition, it would be unjust, the government argued, to prohibit each racially discriminative statement in both its manner and content. The articles only punished deliberate and public insults; criticism of ideas and behavior in whichever manner, the government argued, fell outside the reach of the penalty clauses. Some members of the Senate wondered how the government could state that criticism of ideas and behavior fell outside the penalty clauses. The government further explained insults were only prohibited when they were an encroachment of the “honor and reputation of, or the incitement of hatred against or discrimination of the group” solely because they are part of a certain religion or have a certain worldview. Polak argued in the general debate of the Senate that restrictions of the freedom of speech should be done carefully, and that “the whole government is of the opinion that freedom of speech is the most important fundamental right of the citizen and also the most essential fundamental right for the continuance of the existence of a democratic society.” When it came to the final vote on the implementation law in the Senate, many members were still dissatisfied.

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367 NL-HaNA, 2.09.84, inv.nr. 50, Tweede Kamer zitting 1969-1970 – 9724, MEMORIE VAN ANTWOORD, Nr.6: 4
368 Kamerstuk Eerste Kamer 1970-1971 kamerstuknummer 9723, ondernummer 22, 9723
369 Kamerstuk Eerste Kamer 1970-1971 kamerstuknummer 9723 ondernummer 22a: 4
370 Handelingen Eerste Kamer 1970-1971 09 februari 1971, 50ste Vergadering: 555 (Own translations from Dutch)
Ratification

However, as stated above, both the law of approval and the implementation law were approved by both the House of Representatives and the Senate. With the laws approved by Parliament, the Netherlands was almost ready to ratify the Convention. The Dutch government planned to ratify the Convention in 1971, preferably the 21st of March. 1971 was the International Year for Action to Combat Racism and Racial Discrimination, and March 21st was the International Day for the Elimination of Racial Discrimination. But one last step remained; the implementation of the Convention in the Netherlands Antilles and Suriname. Just after approval by the Senate, the Ministry of Foreign Affairs urged these parts of the Kingdom to finalize the implementation swiftly. They also notified the governments of the intention of the Dutch delegation to acknowledge the individual complaint system of the Convention. However, neither the Netherlands Antilles nor the Surinamese government finished implementation in time for ratification the 21st of March.

Theo van Boven, who had been active throughout the ratification process, was of the opinion that the Kingdom in Europe (the Netherlands) should ratify first if the remainder of the Kingdom did not implement in time. For the Dutch position in the UN and for politics at home, he argued, it was preferred to ratify in 1971. Any later would be politically unacceptable. In addition, the Dutch government wished to present a candidate for the CERD before the new term started. Again, the government had the UN Covenant in mind. The procedures in the CERD could “give the direction and the tone for the performance of the Human Rights Committee” as meant in article 28 of the Covenant on Civil and Political Rights. For a chance to participate in the CERD, they had to ratify the Convention before the 11th of December 1971. The Netherlands Antilles and Suriname were asked to implement before this date, if they could not the Dutch government decided to ratify alone,

371 Archive MFA, dve/1945-1984/04568 (VN 4599), Letter from the Secretary-General (E.L.C. Schiff) to the civil servant in the Cabinet of the Prime Minister (D.M. Ringnalda), 16.02.1971
372 Archive MFA, dve/1945-1984/04568 (VN 4599), Letter from the Ministry of Foreign Affairs to the Governors of the Netherlands Antilles and Suriname, 18.02.1971
373 Archive MFA, dve/1945-1984/04568 (VN 4599), Memorandum from DIO to DVE of the Ministry of Foreign Affairs, 16.09.1971
374 Archive MFA, dve/1945-1984/04568 (VN 4599), Letter from the Minister of Foreign Affairs to the governor in the Netherlands Antilles, 10.01.1971
375 Archive MFA, dve/1945-1984/04568 (VN 4599), Letter from DVE/PA to DIO of the Ministry of Foreign Affairs, 09.03.1971
with an explanation that ratification of the remaining parts of the Kingdom would follow as quickly as possible.

The Surinamese government finished implementing the Convention the 8th of September 1971. The Netherlands Antilles had yet to discuss the implementation in Parliament, and the Dutch government prepared themselves to ratify the Convention without them. In what seemed a rather dramatic last couple of days, the Netherlands Antilles confirmed, first over the telephone and thereafter by mail, that the Netherlands Antilles had approved the implementation law. The Dutch government was therefore able to ratify the Convention for the whole Kingdom on international Human Rights Day the 10th of December 1971.

To implement the Convention in Dutch legislation had been no easy task. The ratification process was delayed twice, first by the Raad and thereafter by Suriname and the Netherlands Antilles. The government finalized a draft-implementation law rather early, which was its own separate law and did not prohibit racial discrimination in public facilities. The Raad, dissatisfied with this draft, argued the penalty clauses fit better in the Dutch Criminal Law, and that these clauses should be more restricted. The government followed the Raad on the former, but ended up with a second draft-implementation law that was broader. This draft prohibited racial discrimination by persons which did so “in the practice of his profession or business” and included penalty clauses against discrimination of religion and worldview. The government removed the article from the first draft which prohibited racial discrimination by public bodies, but submitted a request to add the non-discrimination principle in the Dutch Constitution.

After approval by the Raad this time around, the government sent all the appropriate documents to the Dutch Parliament. While these received much criticism, especially from the Senate, all laws and explanatory memorandums were passed without any significant delays or changes. The Netherlands was almost ready to ratify the Convention, and had to wait for Suriname and the Netherlands Antilles to finalize implementation. The government, particularly Theo van Boven, preferred to ratify swiftly even if this meant doing so for the

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376 Archive MFA, dve/1945-1984/04568 (VN 4599), the plenipotentiary Minister of Suriname (J.D.V. Polanen) to the Ministry of Foreign Affairs, 02.12.1971
377 Archive MFA, dve/1945-1984/04568 (VN 4599), Letter from the plenipotentiary Minister of the Netherlands Antilles to the Ministry of Foreign Affairs, 10.12.1971
378 Archive MFA, dve/1945-1984/04568 (VN 4599), Telegram from the delegation in New York to the Ministry of Foreign Affairs, 10.12.1971
Kingdom in Europe in the first place. As stated above, Suriname and the Netherlands Antilles were able to implement in time and the Netherlands could ratify the Convention for the whole Kingdom.
Chapter 5 Conclusion

The issue of racial discrimination was high on the 1960s UN human rights agenda for a variety of reasons. First off, decolonization led to the Afro-Asian states gaining a majority in the UN in 1961. Having had enough of colonialism and racial discrimination, these countries looked to the UN for solutions. Not only did these countries firmly set the right to self-determination on the UN agenda, they also promoted a broader concept of human rights; including equality for all regardless of gender, ethnicity or religion. Second, racial discrimination was, and had long been, a universal problem; with racial segregation in the United States and the system of apartheid in South Africa. And third, the outburst of anti-Semitism in the late 1950s shocked the population and governments of many countries. For these reasons, a group of nine Francophone African countries tabled a resolution to create both a Declaration and a Convention on the Elimination of All Forms of Racial Discrimination in 1962. As Steven Jensen argued, the issue of race and the Convention enabled the finalization of the two covenants, one on civil and political rights and one on economic, social and cultural rights. The issue of race therefore helped further the international human rights movement.

Throughout the drafting process of the Declaration and the Convention, the Netherlands was an active participant. The government was interested in the discussions in the UN, and often tried to influence their direction. What were the Dutch government’s main objectives for the Convention?

One of the Dutch government’s primary goals for the Convention was to create a universal human rights instrument, in other words, to create a treaty which would be ratified by as many countries as possible. This led them to compromise on more than one occasion. The biggest compromise was on the nature of the individual complaint system. The government preferred far-reaching, judicial implementation measures. This is evident from their official statements in the UN, and from the reactions within the Ministry of Foreign Affairs.
Since the 19th century, Dutch efforts for a strong international legal order had been more words than deeds. Membership of the League of Nations was seen as a threat to national interest, which included staying neutral and maintaining good economic relations with Germany. During the drafting of the UN Charter in 1945, the Dutch delegation successfully included a reference to international law in the first article of the Charter. But they quickly became occupied with maintaining their colonies, and did little more to further promote the international legal order. The government even went against the will of the UN Security Council, when they authorized two ‘police actions’ against Indonesian nationals between 1947 and 1949.

Maintaining its colonies was indeed the primary objective of the Dutch government after the Second World War. This meant that article 2.7 of the UN Charter, which protects a country’s sovereignty, was important for the government. The Indonesian and New-Guinea questions were interior affairs protected by the State’s sovereignty. For this reason the Dutch government was reluctant to condemn human rights violations in other countries, like in the Southern African colonies of Portugal or the system of apartheid in South Africa. They were afraid this would draw the attention of the UN to their own policies in the East Indies. If human rights were taken into account, then this was because they served Dutch national interests. This was the case when the Dutch government reacted to Russia’s suppression of Hungarian opposition in 1956 in order to foster anti-communist feelings in Dutch society and promote solidarity.

The government was forced to give up Indonesia in 1949 and New-Guinea in 1962, losing both of its much valued Eastern colonies. This resulted in article 2.7 of the Charter losing its grip over the Dutch government, and it created space for promotion of the international legal order and human rights. The Cold War détente after 1962 also gave the government more space to focus on the above issues. And lastly, the Dutch population became increasingly aware of/and interested in political affairs, pressuring the government to change direction.

Increased interest in the UN in which the international legal order and human rights were progressing from the 1960s, is visible in the Dutch government’s reactions to the Convention. These reactions stand in sharp contrast to the abovementioned examples. They actively participated in the discussions, they voted in favour of including a reference to the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) in the preamble,
and they tried to bring about a treaty which strengthened the international legal order. They did not do this for this Convention alone; they knew the effect the results of this Convention would have on the two Covenants, especially the Covenant on Civil and Political Rights. They were thus aware of the implications of this Convention on the human rights movement at large, which shows that the Dutch government became increasingly interested in human rights already in the 1960s.

When faced with the option to create either a European convention on racial, national and religious hatred or a worldwide convention on the elimination of racial discrimination, the Netherlands chose the latter. The Dutch government had the same priority when the UN was first created, at which point they had also looked at the UN to promote the international legal order and create stability.

I mentioned in the introductory chapter that the Netherlands lost Belgium in 1831, which undermined their Middle Power status. After suffering an identity crisis, the government accepted their ‘smallness’. They compensated for their loss, so it seemed, by heightening themselves to a morally superior country which was destined to promote peace and security. Perhaps the reactions of the Dutch government after the loss of the East Indies resulted in similar reactions. They seemed to fall back on the so-called international-idealistic tradition when they promoted the international legal order and human rights in the Convention, which could continue to give them some international prestige.

Was the government no longer affected by previous foreign policy goals when discussing the Convention? Reactions by the Dutch government on which forms of racial discrimination should be included in the documents showed that Cold War policies continued to play a role. The Minister of Foreign Affairs Joseph Luns, who objected to the inclusion of the terms Zionism, fascism, neo-Nazism and imperialism, did so both on moral and political grounds. In addition, during discussions on the Declaration, the government’s relations with South Africa might have played a role; given the Netherlands was the only country to abstain on the inclusion of the term apartheid during discussions in the 19th Commission on Human Rights.

Neither did the Dutch government opt for a far-reaching text in all aspects. Afraid of endangering fundamental freedoms, such as freedom of speech and association, they often voted against Eastern and Latin-American countries’ proposals. The same goes for other
Western countries, especially the United States opposed articles which threatened fundamental freedoms. However, in order to create an acceptable treaty-text for as many countries as possible, the Dutch government was willing to compromise. When the United States lobbied them to abstain on the Declaration in the Third Committee, the Dutch government had no intentions to abstain in the Plenary too.

During discussions on the Convention, it became clear the Dutch government viewed this as a treaty meant for the international, rather than the national situation; racial discrimination was something un-Dutch. This was visible in statements during the drafting process of the Declaration and the Convention, which were made by representatives from both the Ministry of Justice and the Ministry of Foreign Affairs. In reality, the Netherlands experienced large waves of postcolonial migrations, causing friction in society. Especially within housing postcolonial migrants experienced racial discrimination, which was frequently written about in newspapers. But the government remained reluctant to admit it had a problem of racial tension, and compared the situation in the Netherlands to the situation in Great Britain, which experienced violent race riots in 1958.

When the Dutch government was tasked with implementing the Convention in the Netherlands, the treaty was even seen as somewhat of a burden. The quarrelsome climate in the Netherlands was cause for concern. The Netherlands was losing its pillarized shape, as society secularized and the population experienced more welfare and spare time. More people owned a television which confronted them with the consequences of politics, especially with the harsh realities of the Vietnam War. Trust in the authorities weakened, and more people started to protest. Afraid implementing the Convention would intensify the quarrelsome climate, and occupied with protecting fundamental freedoms, the government opted for a minimalistic approach to implementation.

Even if the government created a rather vague first implementation law, the Raad van State was dissatisfied, which delayed the ratification process. The Raad’s main objections were; the Dutch government had implemented the Convention too broadly, the Convention did not need implementation because it applied directly to Dutch citizens, and the inclusion of an article which prohibited racial discrimination by public bodies was to be discouraged. If the
government had to implement the Convention this should be done by broadening already existing articles in the Dutch Criminal Law.

Following this advice of the Raad, the government created a new implementation law which broadened and added articles to the Criminal Law. The further reaching implementation law can to a large extent be explained by a shift of actors. W.J. van Eijkern left his position as Principal Advisor of the Public Law Legislation Division of the Ministry of Justice and C.H.F. Polak, who was strongly in favour of article 429quater, became the new Minister of Justice. In addition, new international efforts against racial discrimination were made, for instance by Great Britain and the United States, which seem to have affected the Dutch government’s stance on implementation. The government, in addition to including article 429quater which aimed to prohibit racial discrimination in housing, included discrimination of race, religion or worldview in articles 137c, 137d and 137e of the Criminal Law. The government also removed the article of the first implementation law which prohibited public bodies from racially discriminating, but suggested the principle of non-discrimination be included in the Dutch Constitution, which it was in 1983.

Parliament had several objections to the new implementation law and the law of approval, especially the Senate. Both the House of Representatives and the Senate worried the new articles would restrict freedom of speech. They also proposed to create a national commission which, among others, could look for sociological and psychological reasons behind racial discrimination. The government rejected such a commission, but kept the option open for the future. They were also more willing to admit the existence of racial tendencies in Dutch society, at least in front of Parliament. In addition, the government argued freedom of speech was only restricted when discrimination occurred on the grounds of race, religion or worldview. They further stated the new/amended articles of the Criminal Law, 137c, 137d and 137e, only punished deliberate and public insults; criticism of ideas and behavior in whichever manner fell out the penalty clauses. Parliament did not seem convinced, especially the Senate, visible in that the implementation law was passed with 44 in favour but 21 against.
After approval by Parliament, the ratification process was delayed for the second time by the Netherlands Antilles and Suriname, which had yet to finalize the implementation of the Convention. Theo van Boven pressured the government to ratify swiftly, knowing this would strengthen their position in the UN. He further argued to ratify the Convention for the Kingdom in Europe first if Suriname and the Netherlands Antilles were unable to finalize implementing in time. In the end, the government decided to ratify the Convention the 10th of December 1971, and was able to do so for the whole Kingdom as both Suriname and the Netherlands Antilles concluded their implementation process.
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Appendices

Appendix 1. Declaration on the Elimination of All Forms of Racial Discrimination, 1963

Resolution adopted by the General Assembly

1904 (XVIII). United Nations Declaration on the Elimination of All Forms of Racial Discrimination

The General Assembly,

   Considering that the Charter of the United Nations is based on the principles of the dignity and equality of all human beings and seeks, among other basic objectives, to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

   Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out in the Declaration, without distinction of any kind, in particular as to race, colour or national origin,

   Considering that the Universal Declaration of Human Rights proclaims further that all are equal before the law and are entitled without any discrimination to equal protection of the law and that all are entitled to equal protection against any discrimination and against any incitement to such discrimination,

   Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples proclaims in particular the necessity of bringing colonialism to a speedy and unconditional end,

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382 UN Documents, United Nations Declaration on the Elimination of All Forms of Racial Discrimination, http://www.un-documents.net/a18r1904.htm (last accessed 01.11.2017)
Considering that any doctrine of racial differentiation or superiority is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination either in theory or in practice,

Taking into account the other resolutions adopted by the General Assembly and the international instruments adopted by the specialized agencies, in particular the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization, in the field of discrimination,

Taking into account the fact that, although international action and efforts in a number of countries have made it possible to achieve progress in that field, discrimination based on race, colour or ethnic origin in certain areas of the world continues none the less to give cause for serious concern,

Alarmed by the manifestations of racial discrimination still in evidence in some areas of the world, some of which are imposed by certain Governments by means of legislative, administrative or other measures, in the form, inter alia, of apartheid, segregation and separation, as well as by the promotion and dissemination of doctrines of racial superiority and expansionism in certain areas,

Convinced that all forms of racial discrimination and, still more so, governmental policies based on the prejudice of racial superiority or on racial hatred, besides constituting a violation of fundamental human rights, tend to jeopardize friendly relations among peoples, co-operation between nations and international peace and security,

Convinced also that racial discrimination harms not only those who are its objects but also those who practise it.

Convinced further that the building of a world society free from all forms of racial segregation and discrimination, factors which create hatred and division among men, is one of the fundamental objectives of the United Nations,

1. Solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person;
2. Solemnly affirms the necessity of adopting national and international measures to that end, including teaching, education and information, in order to secure the universal and effective recognition and observance of the principles set forth below;

3. Proclaims this Declaration:

**Article 1**

Discrimination between human beings on the ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

**Article 2**

1. No State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms in the treatment of persons, groups of persons or institutions on the ground of race, colour or ethnic origin.

2. No State shall encourage, advocate or lend its support, through police action or otherwise, to any discrimination based on race, colour or ethnic origin by any group, institution or individual.

3. Special concrete measures shall be taken in appropriate circumstances in order to secure adequate development or protection of individuals belonging to certain racial groups with the object of ensuring the full enjoyment by such individuals of human rights and fundamental freedoms. These measures shall in no circumstances have as a consequence the maintenance of unequal or separate rights for different racial groups.

**Article 3**

1. Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civil rights, access to citizenship, education, religion, employment, occupation and housing.

2. Everyone shall have equal access to any place or facility intended for use by the general public, without distinction as to race, colour or ethnic origin.
Article 4

All States shall take effective measures to revise governmental and other public policies and to rescind laws and regulations which have the effect of creating and perpetuating racial discrimination wherever it still exists. They should pass legislation for prohibiting such discrimination and should take all appropriate measures to combat those prejudices which lead to racial discrimination.

Article 5

An end shall be put without delay to governmental and other public policies of racial segregation and especially policies of apartheid, as well as all forms of racial discrimination and separation resulting from such policies.

Article 6

No discrimination by reason of race, colour or ethnic origin shall be admitted in the enjoyment by any person of political and citizenship rights in his country, in particular the right to participate in elections through universal and equal suffrage and to take part in the government. Everyone has the right of equal access to public service in his country.

Article 7

1. Everyone has the right to equality before the law and to equal justice under the law. Everyone, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution.

2. Everyone shall have the right to an effective remedy and protection against any discrimination he may suffer on the ground of race, colour or ethnic origin with respect to his fundamental rights and freedoms through independent national tribunals competent to deal with such matters.

Article 8

All effective steps shall be taken immediately in the fields of teaching, education and information, with a view to eliminating racial discrimination and prejudice and promoting understanding, tolerance and friendship among nations and racial groups, as well as to propagating the purposes and principles of the Charter of the United Nations, of the Universal
Article 9

1. All propaganda and organizations based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin with a view to justifying or promoting racial discrimination in any form shall be severely condemned.

2. All incitement to or acts of violence, whether by individuals or organizations against any race or group of persons of another colour or ethnic origin shall be considered an offence against society and punishable under law.

3. In order to put into effect the purposes and principles of the present Declaration, all States shall take immediate and positive measures, including legislative and other measures, to prosecute and/or outlaw organizations which promote or incite to racial discrimination, or incite to or use violence for purposes of discrimination based on race, colour or ethnic origin.

Article 10

The United Nations, the specialized agencies, States and non-governmental organizations shall do all in their power to promote energetic action which, by combining legal and other practical measures, will make possible the abolition of all forms of racial discrimination. They shall, in particular, study the causes of such discrimination with a view to recommending appropriate and effective measures to combat and eliminate it.

Article 11

Every State shall promote respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and shall fully and faithfully observe the provisions of the present Declaration, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

1261st plenary meeting
20 November 1963

International Convention on the Elimination of All Forms of Racial Discrimination

Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19

The States Parties to this Convention,

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,


Desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

Have agreed as follows:
PART I

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
(c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

**Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

**Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or
incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

**Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

(d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one's own, and to return to one's country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;

(v) The right to own property alone as well as in association with others;

(vi) The right to inherit;

(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;

(ix) The right to freedom of peaceful assembly and association;

(e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

**Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

**Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.
PART II

Article 8

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen experts of high moral standing and acknowledged impartiality elected by States Parties from among their nationals, who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee;

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.
6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

**Article 9**

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention: (a) within one year after the entry into force of the Convention for the State concerned; and (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

**Article 10**

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

3. The secretariat of the Committee shall be provided by the Secretary General of the United Nations.

4. The meetings of the Committee shall normally be held at United Nations Headquarters.

**Article 11**

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

Article 12

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention;

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

**Article 13**

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

**Article 14**

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its
jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Any State Party which makes a declaration as provided for in paragraph I of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications;

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7.
(a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;

(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph I of this article.

Article 15

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies;

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering
Powers within the Territories mentioned in subparagraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

**Article 16**

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

**PART III**

**Article 17**

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

**Article 18**

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention. 2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
Article 19

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 20

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

Article 21

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary General.
**Article 22**

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

**Article 23**

1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 24**

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

(a) Signatures, ratifications and accessions under articles 17 and 18;

(b) The date of entry into force of this Convention under article 19;

(c) Communications and declarations received under articles 14, 20 and 23;

(d) Denunciations under article 21.

**Article 25**

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.