The Netherlands Gradually Changing Views on International Economic and Social Rights Protection

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ABSTRACT

This article contests the argument that Daniel J. Whelan and Jack Donnelly put forth in the November 2007 issue of the Human Rights Quarterly, thus joining the debate about the truth or myth of Western opposition to economic and social rights. Their statement that Western states considered these rights as equal to civil and political rights in importance is challenged through analysis of the Netherlands policies and attitudes towards the economic and social rights. Their view that the West has strongly and consistently supported economic and social rights is displaced by a picture of a gradual process in which economic and social rights became increasingly accepted as a full-fledged category of human rights.

I. INTRODUCTION

This article aims to contribute to the discussion Daniel J. Whelan and Jack Donnelly started in 2007 concerning what they have called “the myth of Western opposition” to economic and social rights.1 Whelan and Donnelly

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1. For contributions to the discussion, see Daniel J. Whelan & Jack Donnelly, The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight, 29 HUM. RTS. Q. 908 (2007) [hereinafter Whelan & Donnelly, The West]; Alex

should be praised for their original contributions, as their arguments, and the
counterarguments of those who have responded to them, have compelled
scholars to sharpen their minds and reevaluate their views on the West’s
(and others’) position towards this category of rights.

So far, the debate has been focused almost exclusively on the United
States and, to a lesser extent, the United Kingdom. These are important and
leading Western nations, but they, of course, do not necessarily account for
all Western states. This article supplements the dominant discussion with
an analysis of the Netherlands attitude towards economic and social rights.
Whelan and Donnelly are correct, from the Netherlands point of view, when
they argue that it is a one-sided representation of reality to suggest that the
West was forced to accept a category of rights that they actually preferred
to reject. Nonetheless, their conclusion that Western states’ support for
economic and social rights has been “strong, consistent and increasing” is
challenged in this article. As illustrated below, the attitude and policies of
the Netherlands support Susan L. Kang’s view that the West has “an ambigu-
ous and unsettled relationship” towards these rights.

Western states concededly spend considerable sums of money on the
realization of social goods that are incorporated into international treaties on
economic and social rights. As Whelan and Donnelly argue, this indicates
that the policy goals represented in these treaties are indeed considered
important and that serious efforts are made to realize them, too. Western
states’ attitude towards economic and social rights, however, is much more
nuanced than these simple facts imply, for measures considered disadvanta-
geous to the implementation of economic and social rights exist alongside
more favorable policies and considerable social spending by these very same
governments. Moreover, it is important to acknowledge that subscribing to the
idea that social expenditure is needed, or even to the idea that food, shelter,
work, and education are important for human dignity, does not necessarily
mean that these social goods’ status as human rights is fully recognized.

Whelan and Donnelly would perhaps argue that this statement ignores
that economic and social rights are a different category of rights. From a

Kirkup & Tony Evans, The Myth of Western Opposition to Economic, Social and Cul-
tural Rights? A Reply to Whelan and Donnelly, 31 Hum. Rts. Q. 221 (2009); Daniel J.
Whelan & Jack Donnelly, Yes, A Myth: A Reply to Kirkup and Evans, 31 Hum. Rts. Q.
239 (2009) [hereinafter Whelan & Donnelly, Yes: A Myth]; Susan L. Kang, The Unsettled
Relationship of Economic and Social Rights and the West: A Response to Whelan and
of Western Support for Economic and Social Rights: A Reply to Susan L. Kang, 31 Hum.

2. Whelan & Donnelly, The Reality of Western Support, supra note 1, at 1035.
3. Kang, supra note 1, at 1029.
4. See, e.g., Whelan & Donnelly, The Reality of Western Support, supra note 1, at 1032–38.
purely legal point of view, this reasoning is airtight. Nevertheless, political factors and the realities behind a theory of different human rights categories should be taken into consideration as well. To form a complete picture and proper judgment, it is important to look not only at the question of whether Western states were willing to include economic and social rights in binding human rights treaties—as Whelan and Donnelly argue—but also how these states thought this should be done. In this respect, the different supervisory regimes created for economic and social rights, as opposed to civil and political rights, are highly relevant. As Kang has pointed out in her response to Whelan and Donnelly, the bifurcation of human rights categories was the result of a conscious political decision. The preference of Western states to adopt a less legalized supervisory regime for economic and social rights and a stronger supervisory regime for civil and political rights reveals something about the attitude of these states towards both categories of rights.

Whelan and Donnelly convincingly demonstrated that non-Western states involved in negotiating the United Nations basic human rights treaties did not speak out in favor of more enforcing supervisory mechanisms for social and cultural rights either. Hence, in this respect, there was general agreement which indisputably proves that the prevailing idea of “Western opposition” is a myth. Yet, it is something else entirely to claim that Western states promptly embraced economic and social rights as human rights that were just as important as civil and political rights—the category of rights that they were already more familiar with—and readily accepted all the consequences that follow them. The most that can be said is that, in the first decades of the postwar period, Western countries’ attitude towards economic and social rights was no more ambivalent than that of other states. The negotiating states recognized that “freedom from want” was a crucial element of human dignity and a necessary precondition for peace and prosperity, and they were prepared to take this into account when drafting the Universal Declaration of Human Rights and the human rights Covenants. At the same time, however, these states were not prepared to accept, or even contemplate, supervisory procedures that would seriously threaten their sovereignty in this field of policy.

Judged by the standards of that time, their position was completely acceptable. Nevertheless, due to the increasing prominence of the individual in international law, it became only a matter of time before conflicts would arise that were caused by the gap between proclaimed ideals and reality, and

6. Kang, supra note 1, at 1012.
8. No opposition can occur, of course, without a position to oppose.
distress about the practical limitations of rights that one could not actually claim. In the light of this, it was only logical that the differences between the supervisory procedures for civil and political human rights treaties on the one hand, and economic and social rights treaties on the other became a topic of discussion too. In light of these facts, the actual and full-fledged acceptance of economic and social rights as human rights appears to be a long and indeterminate historical process, which is still progressing today.

The drafting period following the Second World War was an important phase in this process, but for a better understanding of a state’s position in the economic and social rights debate, it is necessary to look at later years as well. In the decades that followed the adoption of the basic human rights treaties, the discussion about international supervision of economic and social rights recurred several times, and a state’s position in these discussions reveals a great deal about the extent to which that state was or has become prepared to give up state control, and about its perception of the bounds of possibility in the field of economic and social rights.

In this article, the Netherlands position on economic and social rights leads to a partial endorsement of Whelan and Donnelly’s view that the prevailing idea of outright Western opposition is incorrect, but it also shows that the Netherlands has not always wholeheartedly supported the creation of international mechanisms for the protection of these rights. Instead, the acceptance of economic and social rights as a full-fledged category of human rights has been a gradual process. When new initiatives were taken on the international level, the Netherlands was often torn between hesitancy to support and hesitancy to oppose. A somewhat ambivalent, but gradually changing, attitude was the result.

II. DEVELOPMENT OF IDEAS CONCERNING THE INTERNATIONAL PROTECTION OF CIVIL AND POLITICAL RIGHTS

In international and comparative research, the Netherlands has often been characterized as a country that takes human rights seriously in both domestic and foreign policy. Dutch policy makers and politicians have fostered this favorable image, and have congratulated themselves for representing what, in their eyes, is a model human rights country. Over the last decades, however, a series of studies on the Netherlands human rights policies have been

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published which have demonstrated that the Netherlands actual performance in this arena does not support its appearance as an idealistic human rights country. These studies do not suggest that human rights were considered unimportant in the Netherlands, or that such rights failed to play any role at all in the country’s foreign and domestic policies, but rather that there have been many situations in which other interests have prevailed.

In the context of the present article, it is important to note that in the period shortly after the Second World War, the Netherlands did not belong to the group of states that actively supported the creation of an international human rights regime. At that time, the Netherlands foremost foreign policy concern was gaining support for the country’s efforts to retain control over its colonial territories in Indonesia and New Guinea. It was only after the Netherlands gave up these colonies in 1949 and 1962, respectively, that an active human rights policy became feasible. Before that time, the Netherlands attitude towards various human rights initiatives was quite reserved. It did not, for instance, attach great importance to the Universal Declaration of Human Rights (UDHR), and contributed minimally to its drafting process because it expected little from a document that was not legally binding and lacked an implementation system.

Nor did this lack of confidence in the UDHR imply enthusiastic support for binding human rights treaties with strong supervisory procedures. For instance, the Netherlands did not initially favor the idea of drawing up a European human rights convention. It agreed to engage in the treaty-making activities only because it did not want to be isolated and, despite its involvement, remained opposed to creating a procedure that allowed individuals to lodge complaints against their governments. The Netherlands government


12. In 1942, Japan occupied the Netherlands East Indies. After Japan’s capitulation, the leader of the Indonesian nationalists, Sukarno, proclaimed the independent Republic of Indonesia on 17 August 1945. The Netherlands did not accept Indonesia’s independence and sent its military forces to regain control. Not meeting with success and under increasing international pressure, it finally accepted Indonesia’s independence on 27 December 1949. The Indonesian claims on New Guinea were, however, not agreed to. It would not be until 1962 that sovereignty over this area was, again under great international pressure, transferred to the United Nations, which in turn transferred it to Indonesia in 1963. See, e.g., Ducco Hellema, Dutch Foreign Policy: The Role of the Netherlands in World Politics162–68, 183–87 (2009).

thought that this latter proposal would be costly and time-consuming, and it feared that quarrelsome citizens with suspect intentions, or supporters of communist ideologies, would abuse the ability to lodge a complaint and disgrace the government’s reputation. Apart from that, great uncertainty and concern existed regarding the consequences of this novelty in international law; if an individual were able to start a procedure, domestic law might be challenged. Obviously, the Netherlands government did not like that idea.  

In the United Nations, the Netherlands took a similar attitude with respect to the individual complaints procedures. Unlike Egypt, India, Uruguay and Sweden, the Netherlands refused to support such proposals. However, in the course of the 1960s the Netherlands changed its views and, in 1965, instructed its delegation to aim for agreement on a procedure for individual petitions in relation to violations of the International Covenant on Civil and Political Rights (ICCPR), and to submit a proposal to that end. The Netherlands preferred the adoption of an optional implementation article in the treaty, but eventually all that appeared to be possible was the adoption of an optional protocol to the Covenant.  

The Netherlands simultaneously ratified the International Covenant on Civil and Political Rights and its Optional Protocol in 1978. In the meantime, the Netherlands also accepted the petition procedure of the European human rights convention. Even though it had refused to accept the complaints procedure when it became a party to the European Convention on Human Rights and Fundamental Freedoms in 1954, the Netherlands reconsidered its position and, in 1960, formally withdrew its reservations concerning the individual complaints procedure.

A number of conclusions can be drawn from the facts just mentioned. First, the idea that Western states championed civil and political rights, while they resisted economic and social rights, is a myth not only because all instead of only Western states were reluctant to accept infringement of their sovereign prerogatives in relation to the latter category of rights, as Whelan and Donnelly have cogently demonstrated, but also because the assumption that the West—or in any case the Netherlands—was immediately prepared to do so with respect to civil and political rights is incorrect too.

15. See generally, Castermans-Holleman, supra note 13, at 213–21.
The Netherlands position concerning civil and political rights protection was in fact less rosy than one might have expected on the basis of both this myth and the Netherlands later image as a champion of human rights.

A second conclusion that can be drawn is that the Netherlands position, at least as it related to the question of what mechanisms should be created to control the implementation of civil and political rights, changed considerably over the course of fifteen years. Whereas the Netherlands was initially wary of accepting the individual complaint procedures, beginning in the second half of the 1960s it advocated for them. In 1966, the Netherlands made it clear to the other UN member states that, as a matter of principle, the country felt it was important that a person whose rights were violated could seek redress, if necessary even without the goodwill of the state concerned.18 “The term human rights can only be rightfully used, if the human being—the beneficiary of these rights—is able to claim his rights and has remedies at his disposal,” said the Netherlands representative to the Third Committee of the General Assembly.19

The Netherlands government has defended this position ever since. In its policy papers on human rights and foreign policy that have appeared every few years since 1979 it has repeatedly maintained that reporting procedures are insufficient for truly effective human rights implementation and that they should be supplemented with individual complaints procedures.20 Another element that the Netherlands government considered crucial for a human rights treaty’s supervisory procedure was its independence from state interference. Knowing that governments often take into account policy considerations that are not necessarily from a human rights perspective, the Netherlands thought that it would be better if the supervisory organs were composed of independent experts, rather than government representatives.21

In regard to this principled position, the Netherlands government did not differentiate between categories of rights, thus implying that independent

20. Ministry of Foreign Affairs of the Kingdom of the Netherlands, Human Rights and Foreign Policy; Memorandum Presented to the Lower House of the States General of the Kingdom of the Netherlands on 3 May 1979 by the Minister for Foreign Affairs and the Minister for Development Co-operation 77 (1979). Similar statements can also be found in later memoranda that have not been published in English. See, e.g., Appendices to the Reports of the Second Chamber, 1990–1991, 21 800, ch. V, no. 91, 7; Appendices to the Reports of the Second Chamber, 2002–2003, 28 600, ch. V, no. 2, 45; Appendices to the Reports of the Second Chamber, 2007–2008, 31 263, no. 1, 16.
21. See, e.g., id. at 78.
organs and complaints procedures were necessary for all human rights. As

demonstrated below, however, the historic development of the Netherlands
ideas about economic and social rights protection had not kept pace with

those concerning the protection of civil and political rights. In the course of

the 1960s, giving up a certain amount of state control for the benefit of those

values that had been designated as crucial for human dignity came to be

seen as a logical step in regard to civil and political rights. A question that

must be posed, then, is to what extent has the Netherlands been prepared
to accept similar consequences for economic and social rights as well?

III. FUNDAMENTAL AND LESS FUNDAMENTAL RIGHTS

In their article, Whelan and Donnelly maintain that, during the negotiations

on the U.N. Covenants, Western states did not oppose the inclusion of
economic and social rights in international human rights treaties, but rather

struggled only with the question of how these rights could be included.22

For the Netherlands, this was indeed an important question. Initially, how-

ever, there were silent doubts about whether international treaty-making

was needed as urgently in the field of economic and social rights as it

was in the field of civil and political rights. When, in 1950, the General

Assembly discussed the first draft Covenant of the Commission on Human

Rights, several states opined that the Covenant should be supplemented with

provisions on economic and social rights, which at that time had not been

incorporated.23 The Netherlands disagreed. It sanctimoniously declared that

its objections should not be interpreted as an attempt to deny these rights

international recognition or protection, but should rather be seen as a purely

legal, technical matter. The government's further explanations undeniably

reveal, however, that economic and social rights were actually viewed as

less important than civil and political rights.

The main argument the Netherlands utilized to resist the inclusion

of economic and social rights was that positive law should grow and ex-

pand gradually. According to the Netherlands, the time was not yet ripe

for economic and social rights to be adopted in an international treaty,
because these rights did not universally form “part of the legal conscience
even when excepting the primitive peoples.”24 Incorporating these rights

in the covenant would therefore “seriously harm the healthy development


23. Id. at 928.
24. Ministerie van Buitenlandse Zaken [Ministry of Foreign Affairs], Verslag over de Vijfde Algemene
Vergadering van de Verenigde Naties (18 September–15 December 1950) [Report of the 5th Ses-
as well as the recognition and the protection of the human rights."25 What the Netherlands actually said, or at least meant to say, was that the inclusion of economic and social human rights would harm the recognition and protection of civil and political human rights. A review of the Netherlands annual report on that year’s session of the General Assembly supports this interpretation. In this report, the state further explained it had already been very difficult to secure and reach agreement on the most fundamental rights, and considering the enormous differences in the states’ political, economic, social, and financial situation, even greater difficulties were to be expected if a discussion were initiated on economic and social rights. Therefore, the Netherlands government advocated restricting discussion to the rights that were enumerated in the Commission’s original draft. It wanted to make only one exception: it wanted to see the right to own property included in the Covenant. The government asserted that even though this right concededly belonged in the economic and social rights category, it should be seen as a fundamental right, because it was indispensable to the full development of a human being.26

The Netherlands thus distinguished between fundamental rights and other, apparently less fundamental, rights. The government, moreover, wanted to concentrate on reaching international agreement on a set of fundamental rights to which most economic and social rights obviously did not belong. Fearing that discussions on economic and social rights could put such an agreement at risk, the Netherlands preferred not to deal with them at all for the time being. Hence, contrary to Whelan and Donnelly’s contention regarding the singularity of the US position, the Netherlands prioritized civil and political rights over economic and social rights.

It is well-known that the majority of states took a different position than the Netherlands, and voted in favor of the international codification of economic and social rights. It is also general knowledge that, subsequently, a decision was made to split the draft Covenant into two separate treaties.27 The Netherlands belonged to the group of states that favored the latter decision, and subscribed to the view that civil and political rights were of a different nature than economic and social rights.28 The Netherlands believed that creating one treaty with different types of rights could be detrimental to the number of potential ratifications. In the General Assembly’s Third Committee, it declared that if two Covenants would be drafted,

25. *Id.* at 300.
26. *Id.* at 170–71.
all States who deem it possible to accept the obligations of both conventions are free to do so, whereas other States may limit themselves for the time being to sign only one. In this way, real progress would be possible and we may be assured that at least one category of important human rights will find almost universal acceptance, and be legally protected in the far greater part of the world.29

Clearly, the Netherlands thought states would find it easier to ratify the Civil and Political Rights Covenant than to ratify the Economic and Social Rights Covenant because it believed that acceptance of the former was merely a matter of choice, whereas acceptance of the latter also depended upon a state’s level of development and financial circumstances.30 In their reply to Kirkup and Evans, Whelan and Donnelly rightly remark that civil and political rights “do not grow on trees” either, and courts, police, polling places, voting machines, election officials, and even effective protection against torture require “considerable, often expensive, efforts” too.31 The Netherlands, however, obviously perceived these latter costs differently. It considered the protection of civil and political rights such a natural and essential governmental duty that expenses associated with these rights were no longer perceived as spending that could be curtailed if the budget was limited by unfavorable economic circumstances. Evidently, this point of view implies priority for civil and political over economic and social rights, too.

It is unlikely that the Netherlands was the only state that considered civil and political rights the more important category of rights. With the adoption of the International Covenant on Economic, Social and Cultural Rights (ICESCR), however, economic and social rights formally received the status of legally recognized international human rights.32 For states that ratified this treaty, it would be difficult to further question the status of economic and social rights in public. Nonetheless, modes of thought and conceptions of these latter human rights could not be changed with one stroke of the pen.

One may, for instance, doubt whether it was truly no more than an unfortunate coincidence that the UN Committee charged with supervising only the ICCPR was called the Human Rights Committee, as if it were responsible for the supervision of all human rights, as Whelan and Donnelly seem to think.33 In any case, similar “mistakes” were made more often in those days. The name of the European Convention for the Protection of Human Rights

29. Id. at 292.
31. Whelan & Donnelly, Yes, A Myth, supra note 1, at 245.
33. Whelan & Donnelly, The West, supra note 1, at 936.
and Fundamental Freedoms, for instance, does not clearly indicate that it deals (almost) exclusively with civil and political rights either. In fact, for many years, the institutional practice and publications of the Council of Europe were organized so that economic and social rights were dealt with as social affairs, and not as human rights. The Charter’s institutions were located outside the Human Rights Building in Strasbourg, the Secretariat’s services were paid from the social affairs budget, and in Council of Europe publications the Charter was treated as an economic and social affairs subject.\textsuperscript{34} Similarly, in the yearbooks of the Netherlands Ministry of Foreign Affairs, matters concerning the European Social Charter were described under the heading of “social affairs,” while developments with respect to the European Convention on Human Rights were dealt with in a section called “human rights.”\textsuperscript{35} Clearly, despite their formal status, economic and social rights were not yet fully accepted as human rights, at least not in the same way that civil and political rights were. Over the intervening years, however, the gap between the two categories of rights has narrowed. A gradual shift was noticeable not only in the discourse and in the way various governments talked about economic and social rights, but also in the various reforms that altered the supervisory procedures related to these rights in the United Nations and the Council of Europe.

IV. INDEPENDENCE AND ACCESS

In their article, Whelan and Donnelly explain that one reason economic and social rights were formulated as expressive or directive rights, instead of strictly formulated and directly enforceable rights, was that the practical implications of justiciability in this field were unclear. The paucity of jurisprudence for most economic and social rights made it difficult to predict what obligations might follow from these rights, especially in a time of expanding welfare states.\textsuperscript{36} According to Whelan and Donnelly, the choice for non-justiciability was therefore understandable and actually not as relevant as many scholars seem to suggest.\textsuperscript{37}

The two authors recognize that there were important differences between the Covenants’ supervisory procedures. The ICESCR, for instance, lacked an


\textsuperscript{36} Whelan & Donnelly, \textit{The West, supra note 1}, at 934.

\textsuperscript{37} Id.
independent supervisory committee comparable to the Human Rights Committee, which had been created to monitor and assist in the implementation of the ICCPR.\textsuperscript{38} The ICESCR also did not provide for a complaints mechanism for individuals and states to communicate alleged violations even though such a procedure had been created for the ICCPR.\textsuperscript{39} With respect to the latter difference, Whelan and Donnelly confine themselves to the observation that it “flows directly from the differences in the obligations in the two Covenants.”\textsuperscript{40} Yet, remarkably enough, they consider the “initial absence of a Committee on Economic, Social and Cultural Rights, by contrast . . . unjustifiable.”\textsuperscript{41}

This difference in appreciation is not easy to grasp, because both decisions seem to be two sides of the same coin. As Robert Keohane, Andrew Moravcsik, and Anne-Marie Slaughter have argued, independence and access are both important elements in determining the measure of state control over international supervision of treaty implementation. The independence of the procedure defines the extent to which adjudication can be rendered impartially with respect to concrete state interests, while access refers to the ease with which parties other than states can influence agendas in the supervisory process.\textsuperscript{42} Obviously, the ICESCR’s supervision by a governmental Working Group of the United Nations Economic and Social Council (ECOSOC) made its implementation mechanism less structurally independent from state interference than that of the ICCPR, while the absence of a petition procedure also restricted access.

Hence, the negotiating states’ decision to provide only a state-controlled reporting mechanism and no independent or petitions procedures for economic and social rights belied a mindset in which the idea that certain social goods could or should be seen as human rights had only just begun to take root. The same root attitude accounts for the decision to draft economic, social and cultural rights as more loosely formulated rights, or so-called “rights of another category.” States were not yet ready to accept that giving up some state control might be necessary if they truly aimed to protect these rights, as at least some of them had done with respect to civil and political rights.

In light of these findings, there is definitely something artificial about Whelan and Donnelly’s judgment that the absence of a complaints procedure to the ICESCR was justifiable, while the lack of an independent supervisory organ was not. Even so, it must be admitted that states seem to have found

\textsuperscript{38} Id. at 936.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} Id.
it easier to accept measures to increase the independence of economic and social rights supervisory organs than proposals aimed at giving other parties access to the procedures through complaints mechanisms. In any case, reforms intended to improve and strengthen international control mechanisms in the field of economic and social rights usually started with proposals to increase the procedures’ independence from state interference.

V. AN INDEPENDENT COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

In the case of the ICESCR, an independent monitoring body had already been proposed during the initial negotiations. In 1966, the United States and Italy tabled proposals to that end. The US delegation proposed a completely independent committee, comparable to that of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) of 1965. The Italians, on the other hand, advocated the creation of a committee of experts to advise the Economic and Social Council (ECOSOC), which would still have an important role to play. The Netherlands supported the Italian proposal because it believed that consideration by a special committee would guarantee sufficient attention for the state reports, while the involvement of ECOSOC, as the United Nations main body in the field of economic, social and cultural questions, would be needed for recommendations and follow-up. The United States and Italy eventually withdrew their proposals, however, because they lacked support from the majority of states, including the Soviet Union.

Whelan and Donnelly do not pay much attention to this episode in the drafting history of the ICESCR, even though it obviously supports their claim that the idea of Western opposition to economic and social rights is too one-sided a picture of reality because both proposals for a more independent monitoring procedure came from two Western countries. When initiatives to reform the Covenant’s supervisory system were taken in the 1980s, resistance did not then come primarily from Western countries either. On the contrary, it was the Soviet bloc that tried to block proposals to replace the governmental Working Group that ECOSOC had created to carry out its

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43. See Arambulo, supra note 27, at 24–28.
44. Id. at 26–27.
47. Arambulo, supra note 27, at 27.
48. Id. at 30–32.
duties in regard to the ICESCR by an independent Committee on Economic, Social and Cultural Rights (CESCR). 49

Like most Western states, the Netherlands belonged to the proponents of this reform. In the period between 1980 and 1985, it tabled and supported several resolutions that aimed to reconsider the composition and organization of the Covenant’s supervisory organs. 50 Initially, the United States supported these efforts, too. 51 Perhaps it did so mainly to embarrass its main Cold War rival, because the Soviet Union’s reluctance to accept any infringements of its sovereignty, exactly in the field of those rights that it claimed to champion, placed it in a delicate position. The fact that the United States withdrew its support once the Soviet Union gave up its resistance seems to indicate that this might have been the case. 52 Even so, other Western states continued their efforts; hence, the attitude of the United States cannot be considered representative of other Western countries. Its position change, for instance, did not in any way affect the Netherlands point of view. 53 When a decision in favor of the establishment of an independent Committee on Economic, Social and Cultural Rights was finally taken in 1985, its delegation celebrated this as an important diplomatic success for which it had worked hard and of which it was very proud. 54

The creation of an independent Committee gave the ICESCR a great boost. The CESCR subsequently further developed the Covenant’s norms and restructured the reporting system to more forcefully promote enforcement. 55 The question whether it would be beneficial to design a complaints procedure for the ICESCR was also raised. Initially, this discussion was confined to the Committee members. In 1996, however, it was brought to the attention


52. Id. at 1091; Economic and Social Council Action, 1985 U.N.Y.B. 878, 879 (1989) [hereinafter UN Yearbook 1985].


54. MINISTERE VAN Buitenlands Zaken [MINISTRY OF FOREIGN AFFAIRS], ALGEMENE VERGADERING DER VERENIGDE NATIES, VERDERGSTE ZITTING (17 SEPTEMBER–18 DECEMBER 1985) [THE UNITED NATIONS GENERAL ASSEMBLY, 40TH SESSION] 142 (1986).

of the UN member states when the CESCR submitted to the Commission on Human Rights a draft Protocol to the ICESCR proposing a new petition procedure.\textsuperscript{56} For the Council of Europe’s member states, the debate that eventually ensued from this draft was the second in a row. For them, a reform of the European Social Charter, in which the degree of independence and access were also major topics of discussion, preceded the UN debate.

\section*{VI. A More Independent Reporting Procedure for the European Social Charter}

Within the Council of Europe, economic and social rights were protected by the European Social Charter.\textsuperscript{57} The European scheme for protecting these rights bore a strong resemblance to the international scheme: they were protected by a separate treaty and the implementation machinery of the economic and social rights Charter lacked the independence and broad access that characterized its civil and political rights counterpart, the European Convention for the Protection of Human Rights and Fundamental Freedoms. Whereas an independent Court could make legally binding decisions concerning individual complaints regarding violations of the latter rights,\textsuperscript{58} implementation of the rights covered by the European Social Charter was supervised by a reporting procedure only.\textsuperscript{59}

The Charter’s reporting procedure was very complicated and did not work well. Contracting parties submitted reports on national application of the Charter’s provisions once every two years.\textsuperscript{60} The Charter stipulated that these reports would first be “examined” by the Committee of Independent Experts.\textsuperscript{61} The conclusions of this independent supervisory organ were then “submitted for examination,” together with the reports, to the Governmental Committee of the Social Charter.\textsuperscript{62} Both Committees were specifically cre-


\textsuperscript{60}. \textit{Id.} art. 21.

\textsuperscript{61}. \textit{Id.} art. 24. In 1998, this Committee’s name was changed into European Committee of Social Rights. See David Harris & John Darcy, \textit{The European Social Charter} \texttt{293} (2d ed. 2001). Because this name was not yet used during the reform process dealt with here, the Committee’s original name is used in this article.

\textsuperscript{62}. European Social Charter, \textit{supra} note 59, art. 27.
ated to supervise the Charter’s implementation, but whereas the members of the first were independent experts, the latter was composed of government representatives.63 Two of the Council of Europe’s main political institutions also had to fulfill a role in the reporting procedure: the Consultative Assembly had to “communicate its views” on “the conclusions of the Committee of [Independent] Experts,” and the Committee of Ministers had the authority to “make to each Contracting Party any necessary recommendations.”64

This procedure created a significant problem because the Committee of Independent Experts and the Governmental Committee each offered their own interpretation of the Charter’s text, leading to problems concerning the demarcation of competencies. The Committee of Independent Experts determined that its role was to interpret the Charter’s provisions and to determine, in a legal sense, whether the legislation and practices of the contracting states conformed with the provisions. It was of the opinion that it should be the only organ that dealt with the question of whether or not there had been breaches, that the other organs that were involved in the supervisory procedure had different responsibilities, and that they should focus on political aspects of supervision, such as the reasons for non-compliance and steps to be taken in order to rectify the situation.65 The Governmental Committee disagreed with this viewpoint, however, and maintained that it was equally competent to interpret and rule upon the application of the Charter. This was particularly problematic because the different composition of the Governmental Committee often caused it to interpret the Charter differently than the Committee of Independent Experts and to draw different conclusions. Hence, a uniform answer to the question whether a contracting party had acted in violation of the Charter was oftentimes lacking.66

As a result of this problem, voices were raised in favor of reforms very soon after the European Social Charter had entered into force, though reconsideration of the Charter’s reporting procedure did not take place prior to the 1990s.67 When the Amending Protocol was finally adopted in 1991, it further clarified the powers of the Committee of Independent Experts and the Governmental Committee.68 In practice, most of the changes in the Amending Protocol have already been implemented, but it has not formally

63. Id.
64. Id. art. 28–29.
66. Id.
67. See REIDING, supra note 11, at 165–68.
68. The Protocol Amending the European Social Charter also solved some other problems, such as the inability of the Committee of Ministers to make recommendations to contracting parties that were in breach of the obligations under the Charter. For more detailed information on this and other matters that were raised in the negotiations on the Amending Protocol, see id. at 161–97.
entered into force because some of the states that need to ratify it have not yet done so.69 It is probably no coincidence that Germany, Denmark and the United Kingdom are among these states, because together with Austria, Turkey and Iceland, they belonged to a group of states that did not want the negotiations to lead to anything that might diminish state control over the Charter’s supervisory procedure.70

The majority of other states were prepared to consider proposals that would make the Charter’s reporting procedure more independent. This could, for example, be done by abolishing the Governmental Committee or changing it into a tripartite organ in which organizations of management and labor were represented as well. Yet, hardly any states were prepared to seriously discuss these alternatives. Eventually, the debate therefore focused on a third solution, namely to reach agreement on a clear division of duties between the Committee of Independent Experts and the Governmental Committee, and to further ensure that the latter would no longer act as an “appeal body” for decisions and conclusions of the former.71 The Secretariat of the Council of Europe made a proposal to recognize the Committee of Independent Experts as the organ with the exclusive competence to interpret the provisions of the Charter and to adopt conclusions on states’ compliance or non-compliance with the Charter’s provisions. The Governmental Committee would then take on a political rather than legal role, making political observations on the conclusions of the Committee of Independent Experts, finding reasons for non-compliance, and indicating solutions.72

France wholeheartedly supported this idea, but Germany and Austria strongly rejected it.73 Most other states, including the Netherlands, took a middle-position. The Netherlands was positively disposed towards a redefi-

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72. Id. at 2, 22, 24, 27–29.

nition of the competences and duties of the two supervisory committees, but it considered the Secretariat’s proposal to give the Committee of Independent Experts the exclusive competence to make legal interpretations too far-reaching,74 arguing that neither its formal status as a Committee and not a court, nor its reputation, justified such an important role.75

Moreover, the Netherlands agreed with many other states that the Committee of Independent Experts tended to provide overly extensive and detailed interpretations of the Charter. The obligations of the Charter were formulated in qualitative terms, but the Committee translated them into strict and quantitative minimum standards to which many governments had never intended to be bound. The Netherlands agreed that reinterpretation-sessions by the Governmental Committee, which had become common practice, were unfortunate and that such sessions should no longer be permitted as a rule. At the same time, however, the state was of the opinion that the Governmental Committee should retain the authority to reflect on interpretations of the Committee of Independent Experts that were clearly unreasonable. Past experience and adherence to the principle that an appellate mechanism should always be in place when legally binding interpretations are made inspired this position.76

On the initiative of France and Cyprus, the problem that the Netherlands and others had with giving the Committee of Independent Experts the exclusive right to interpret the Charter was solved simply by avoiding the term “interpretations.” The phrase “legal assessment” was easier to accept for most states because it avoided the impression of a quasi-judicial body making legally binding interpretations.77 The text that was finally adopted

The Committee of Independent Experts shall assess from a legal standpoint the compliance of national law and practice with the obligations arising from the Charter for the Contracting Parties concerned.\(^\text{78}\)

The Governmental Committee’s duties were described as follows:

The Governmental Committee shall prepare the decisions of the Committee of Ministers. In particular, in the light of the reports of the Committee of Independent Experts and of the Contracting Parties, it shall select, giving reasons for its choice, on the basis of social, economic and other policy considerations the situations which should, in its view, be the subject of recommendations to each Contracting Party concerned, in accordance with Article 28 of the Charter.\(^\text{79}\)

It took some time and considerable effort to convince all the contracting parties that this was the right solution. The Netherlands and the majority of other states were in favor of the newly formulated division of duties between the two supervisory Committee’s, but before they gave in, Austria, Germany, Denmark, Turkey, the United Kingdom, and Iceland tried to undo the reforms about which a growing consensus began to take shape. These states also proposed amendments that gave the Governmental Committee an explicit competency to make legal assessments.\(^\text{80}\) Although these amendments were not accepted, they complicated the negotiation process and made it clear that, while most states were very careful, some states were quite reluctant to give up even a modest part of state control in the field of economic and social rights.

VII. A COLLECTIVE COMPLAINTS PROTOCOL TO THE EUROPEAN SOCIAL CHARTER

Giving non-state actors access to the supervisory procedure of the European Social Charter through a complaints mechanism appeared to encounter even greater objections than defining the capacities of the committees. The Netherlands, at least, only agreed with it after serious hesitations.

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, adopted in 1995, allows certain carefully described categories of trade unions, employers’ organizations, and

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79. Id. art. 4.3.
NGOs to lodge collective complaints of violations of the Social Charter.\textsuperscript{81} The possibility of an interstate or individual complaints mechanism was not considered, because it was evident that it would not receive sufficient support. The contracting parties regarded the Charter's provisions as duties for governments to provide for social goods rather than rights that could be claimed on an individual basis, and they did not want to deviate from this way of thinking. Apart from that, they wanted a complaints procedure for serious cases only, which was a reason to choose a collective type of mechanism.\textsuperscript{82}

For the Netherlands, it was also very important that the procedure's aim would be to ensure the general conformity of national law and practice with the Charter's provisions, and not to provide remedies for individual victims. Due to a somewhat traumatic experience that the Netherlands government had undergone in the late 1980s—the influence of which could still be felt during the negotiations on the Complaints protocol—it was committed to the understanding that economic and social rights are non-justiciable.

In 1987 the Human Rights Committee (HRC), the supervisory organ of the ICCPR, had determined that the Dutch Unemployment Act was in violation of the Covenant's non-discrimination article, which applied not only to civil and political rights, but also to social and economic rights.\textsuperscript{83} The Act stipulated that married women could receive social security benefits only on the condition that they were the breadwinner in their family, while it did not contain such a precondition for married men, and therefore it was considered discriminatory. The Dutch Constitution states that provisions of international law that are by their nature binding on everyone—such as the ICCPR's non-discrimination article—are directly applicable and can thus be invoked in Dutch courts. As a result, individuals whose rights had, according to the HRC, been infringed could bring their claims in Dutch courts, and so they did.\textsuperscript{84} The courts followed the HRC's judgment and the government was confronted with a major financial problem. Eventually, the government was able to reduce at least some of the costs by lowering the standards for everyone, so that the Act no longer discriminated between men and

\begin{footnotes}
\item[82] Archive MSAE, temporary file 384, supra note 73; Archive MSAE, file: RvE-1.83/07.76, supra note 73.
\item[83] For a more detailed description of these events, see Aalt Willem Heringa, \textit{Article 26 CCPR and Social Security: Recent Dutch Cases Invalidating Discriminatory Social Security Laws}, SLM Newsletter (Studie-en Informatiecentrum Mensenrechten), No. 1, 1988, at 19.
\item[84] \textit{Id.}
\end{footnotes}
women. The course of events was nevertheless an unnerving experience for many government officials; it made them fully aware of the potential risks of anything that even resembled justiciable economic and social rights.85

This circumspect attitude existed in particular at the Ministry of Social Affairs and Employment, which had been directly confronted with the consequences of the non-discrimination verdicts. This same ministry was also responsible in the Netherlands for matters concerning the European Social Charter, and it was therefore officials from this ministry that represented the Netherlands in the negotiations on a Complaints Protocol. In a memorandum drawn up in preparation for consultations with other ministries, the negotiators made it clear that they thought petition procedures were inappropriate in the realm of social and economic rights.86 Representatives from other ministries, however, challenged this view and expressed the opinion that civil and political rights could not be regarded as totally distinct from economic and social rights. They asserted that, depending on their contents economic and social rights might also be legally enforceable. The question, therefore, was not so much whether a complaints procedure was possible, but rather whether it was considered desirable.87

The answer to that question appeared to be negative. When the negotiations started, the Netherlands expressed a general reservation over the introduction of a complaints mechanism. The argument utilized by the government to explain its position was that it preferred to finish the on-going reporting procedure reform negotiations. It was obvious, however, that other considerations actually played a role as well. Internal documents show that there were concerns that decisions on collective complaints could somehow still be used as a starting point for individual claims, and guarantees were sought to make sure that costly retroactive effects could in any case be avoided.88 From the perspective of these fears, rejection of a complaints procedure was the best position to take. On the other hand, there were only three other states that had openly raised objections against such a procedure: Germany, the United Kingdom, and Turkey. The majority of other states had reacted positively to the idea of drafting a collective complaints procedure. As a result, the Netherlands now found itself among those states that were known for their reluctance to contribute and their attempts to

85. Id.; Baehr, The Netherlands supra note 11, at 191–92.
obstruct even the slightest reform of the European Social Charter’s supervisory procedures. From a political point of view, the Netherlands considered this a very unattractive position, and therefore the government did not take long to withdraw its reservations and try to cooperate constructively on the Complaints Protocol.\textsuperscript{89}

When the Netherlands made the decision to engage in drafting the Protocol, it had not yet decided whether it would want to be a party to it. However, in 2006, the Netherlands ratified the Protocol, thus expressing its willingness to give up some state control and to allow non-state parties access to the European Social Charter’s supervisory procedure.\textsuperscript{90} Hence, conclusions drawn by the Netherlands in the 1960s in regard to civil and political rights were hesitantly, though increasingly, accepted in the field of economic and social rights too. Nonetheless, it is striking to note that the reform of the Charter’s supervisory procedures was considered less of a political priority than that of the Council of Europe’s main civil and political rights treaty, the European Convention for Human Rights and Fundamental Freedoms. Both were discussed in the same period, but whereas the latter received attention from high-level officials, politicians, and advisory committees,\textsuperscript{91} lower-ranking officials carried out the negotiations on the Charter’s Protocols in almost complete silence.\textsuperscript{92}

\textbf{VIII. A COMPLAINTS PROCEDURE TO THE ICESCR}

The reforms to the European Social Charter diminished the degree of state control over the procedures, but the collective characteristic of the complaints procedure prevented the reforms from infringing on the principle of non-justiciability. The complaints procedure introduced by the 2008 Optional Protocol to the ICESCR, however, does make economic and social rights

\textsuperscript{89} Annex to a Letter from the Director of the International Affairs Division of the Ministry of Social Affairs and Employment to a List of Persons Involved in the ESC, 15 Apr. 1992, Archive MSAE, temporary file 401. The main topics of discussion in the negotiations were whether the Governmental Committee should or should not have a role in the complaints procedure and the what organizations should be given access to the procedure. For the Netherlands, the question of admissibility criteria was of importance, too. For more detailed information regarding the negotiations, see \textit{Reidinger}, supra note 11, at 197–216.


\textsuperscript{92} \textit{Reidinger}, supra note 11, at 179–80.
justiciable. Apart from an optional inter-state complaints mechanism and an optional inquiry procedure, the Optional Protocol contains another procedure that allows for the submission of communications by or “on behalf of individuals or groups of individuals” claiming to be victims of violations of the Covenant.93

Although the idea that economic and social rights were rights of another category—ones that could not be claimed before any authoritative body—was generally accepted during the first decades of the United Nations existence, it was increasingly challenged at the end of the twentieth century. Human rights organizations, experts, and a growing number of states began to regard the dichotomy as an artificial division that could no longer be justified. For example, in the Working Group that carried out the negotiations on the Optional Protocol, Brazil declared on behalf of the Group of Latin American and Caribbean States that, “the historical imbalance between economic, social and cultural rights and other rights needed to be remedied.”94 Similarly, Spain said it supported the Optional Protocol because “[i]t addressed an historic inequality between artificially created categories of rights.”95

Many states, including many Western States, nonetheless continued to adhere to the conventional view that economic and social rights are non-justiciable and thus unsuitable for adjudication under procedures such as those established by the Optional Protocol.96 Some of the most explicit statements in this respect were made by the United States, the United Kingdom, Denmark, Canada, and Switzerland.97 Yet many other states also found it difficult to dissociate themselves from the conviction that a complaints mechanism was not suitable for economic and social rights and to help draft a text on which agreement could be reached.98 This arguably explains

96. Id. ¶ 26–30.
97. Id.
why no less than twelve years passed between the submission of the draft proposal and its final adoption.  

Drafting the Optional Protocol was also met with mixed feelings in the Netherlands. At the Ministry of Foreign Affairs, some officials had been closely involved with the further development of legal theories on economic and social rights that aimed to facilitate their application as justiciable rights. In 1986 and 1997, for instance, the Ministry of Foreign Affairs had financed and participated in meetings that adopted a set of principles and guidelines to determine whether a violation of the ICESCR had taken place.  

Hence, readiness to think about these matters and to reconsider initial assumptions about the character and protection of economic and social rights existed at this Ministry. Nonetheless, doubts about whether a complaints procedure was desirable, or even possible, in the field of economic and social rights remained, particularly at the ministries that were directly responsible for their implementation. In a speech she delivered on 5 October 2000, the Dutch Ambassador-at-Large for Human Rights explained that the government struggled with questions such as whether it was possible to establish a causal link between an alleged violation and a government’s action or failure to act. Moreover, as she frankly admitted, political considerations also played a role; states simply do not easily take on obligations that may involve considerable financial commitments.

Initially, concerns like these dominated the Netherlands attitude towards the Optional Protocol, which, as a consequence, was far from enthusiastic. In a formal reaction to the draft proposal, the Netherlands communicated to the Secretary-General of the United Nations that it had “not reached any conclusion with regard to the desirability of a complaint mechanism under ICESCR,” but that the government was prepared to discuss it further. The

99. For an account of the Protocol’s drafting history, see id. at 160–77.
Netherlands previous reservations made it clear that this could by no means be interpreted as an inclination to support a complaints procedure. In the negotiations, the Netherlands sided with a group of countries that was very critical towards the draft Protocol and that consisted of the United Kingdom, Denmark, Germany, India, Canada, and Japan, among others. This group did not want to go as far as the United States, Australia, and Poland, all of whom opposed any complaints mechanism. But, unlike Portugal, Austria, Spain, and Finland—and the majority of African and Latin American states—it did not favor the option to draft a comprehensive complaints procedure that would apply to all the Covenant’s articles and that could be invoked by individuals as well as collective entities. The group of states to which the Netherlands belonged was only prepared to discuss alternatives that were less far-reaching, which made it possible to restrict the application of the complaints mechanism to certain of the Covenant’s rights only.

In the course of the negotiations, the Netherlands gradually put aside its reservations. Although the Minister of Foreign Affairs gave lukewarm responses to requests for a more positive attitude from parties on the left of the political spectrum in Parliament in 2006, these were replaced by explicit statements of support in 2008 and 2009. The government’s changing attitude was also visible in the Working Group. While the Netherlands had remained somewhat aloof in the beginning, the state took a more active role in drafting work in 2006. Even so, the Netherlands continued to support the inclusion of an opt-out clause that would have made it possible to exclude certain rights from the complaints procedure. Hence, when the Optional Protocol’s final draft did not include such a clause, but instead took a comprehensive approach, the Netherlands was disappointed. In the

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106. Id.
Working Group, the state declared that because “its overriding interest – the possibility to opt out from the right of complaint with regard to certain provisions – had not been accommodated, it reserved its final position on the draft.” It did not take long, however, before the Netherlands appeared to be prepared to put its objections aside. As an official of the Ministry of Foreign Affairs confirmed to the author of this article, demonstrating the Netherlands goodwill towards the protocol was considered more important than insistence on the ability to opt out. Eventually, the Netherlands was among the first group of states to sign the Optional Protocol.

Apparently, the government also intended to ratify the Protocol soon. It was adopted in 2009 in a list of treaties that the government wanted to submit for parliamentary approval within a year’s time. However, the Netherlands has not yet ratified the Protocol and it remains to be seen whether it will actually do so in the near future. Among insiders it is well-known that other Ministries, which would have to address possible financial consequences, are less eager to ratify than the Ministry of Foreign Affairs. There is a serious chance that the Netherlands’ ratification will be delayed, especially in light of the huge expenditure cuts the Netherlands will undergo in the coming years. Even if the Netherlands does not ratify the Protocol in the short run, its changing attitude shows that the government’s ideas about economic and social rights are not written in stone, and that, at minimum, the state is susceptible to the thought that these rights might be justiciable.

IX. CONCLUSION

This article accepts Whelan and Donnelly’s assertion that the West was never alone in its views concerning economic and social rights. In the period shortly after the Second World War, the idea that economic and social rights were rights of another category that were non-justiciable and that could be supervised by a state-controlled procedure was indeed generally accepted, also among non-Western states.

Whelan and Donnelly’s conclusion that the West considered economic and social rights to be just as important as civil and political rights, however, is incorrect, at least as concerns the Netherlands. In the period when the

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111. Due to the sensitivity of the subject, this official was ready to speak to the author only on an anonymous basis.
112. See de Albuquerque, supra note 98, at 177.
113. Annex to the appendices to the reports of the Second Chamber, 2008–2009, 31 700 V, no. 83 (List 1: Treaties expected to be submitted for parliamentary approval this year), at 6.
United Nations basic human rights treaties were drafted, the Netherlands government made a clear distinction between fundamental and other, apparently less fundamental, rights. Economic and social rights were not generally seen as fundamental rights, and were thus considered less important. The lack of attention paid to the reform of the European Social Charter, as opposed to the reform of the European Convention for Human Rights and Fundamental Freedoms, illustrates that an inclination on the part of European states to prioritize the protection of civil and political rights over economic and social rights has continued to exist.

Contrary to Whelan and Donnelly’s position, the West’s approach to protecting economic and social rights is just as relevant to determining the West’s attitude towards these rights as whether these states were willing to include these rights in a human rights document in the first place. As discussed above, the West’s inclusion of economic and social rights in one of the founding human rights treaties, the ICESCR, does not itself signify full acceptance of these rights. Unlike civil and political rights, economic and social rights were long considered non-justiciable, second class rights. Western states’ relationship to these rights, then, is much more complicated than Whelan and Donnelly’s portrayal.

Using the Netherlands changing attitude towards economic and social rights as a cipher for the West’s attitude towards these rights, this article concludes that the West was wary of the economic consequences for states of protecting economic and social rights, whereas it considered the costs associated with protecting civil and political rights of less consequence. When they drafted the international treaties on economic and social rights, therefore, the negotiating states made sure that they kept full control over the interpretation and supervision of these rights.

When principles concerning independence and access that had become common practice in the field of civil and political rights increasingly permeated the area of economic and social rights, many states, including the Netherlands and a number of other Western states, found this difficult to accept. It would be difficult to generalize and speak of “Western opposition” though, because in each of the negotiation processes, there was divergence of opinion between Western states, and where the United Nations was concerned, opposition came from non-Western as well as Western governments. Insofar as the Netherlands is concerned hesitations and doubts were primarily inspired by financial considerations and fear of losing sovereign control over government expenditure.

Even though these beliefs will probably continue to cause certain ambivalence towards economic and social rights, the Netherlands has gradually readjusted its ideas about these rights. It has shown itself increasingly prepared to adopt the same logic and accept similar legal consequences for this category of rights as it had earlier with respect to civil and political
rights. The fact that this has taken a long period of time demonstrates that it is problematic to speak of strong and consistent Dutch support for economic and social human rights protection, as Whelan and Donnelly do. At the same time, the Netherlands willingness to reconsider its original views and to accept and support reforms that increase the degree of independence and access of international supervisory procedures in the field of economic and social rights make it clear that it is not hostile to these rights either. The simple dichotomy between opposition and support does not leave enough room for the reality of Dutch policies, characterized as they are by a cautiously positive attitude. It is true that the historic development of the Netherlands ideas about the two categories of rights has been asymmetric, but the most recent developments seem to indicate that they might eventually point in the same direction.