THE FACTS

Whereas the facts as presented by the Applicant may be summarised as follows:

The Applicant is an American citizen, born in 1929 and seems to be at present detained in prison in the USA. He is represented before the Commission by Mr. S, a lawyer practising in Amsterdam.

The original Application was lodged on 13th September 1963 and concerned the Applicant's detention in the Netherlands. On 9th March 1964, certain additional complaints were lodged, relating to his deportation from the Netherlands.

The Applicant was first arrested in Amsterdam in ... 1960 on suspicion of illegal possession of narcotics. In ... 1961, the District Court (Arrondissementsrechtbank) in Amsterdam convicted him of this offence and sentenced him to two years' imprisonment.

In ... 1960, the US Bureau of Narcotics informed the Netherlands authorities that the Applicant was under suspicion of similar offenses in the USA and that the American authorities were anxious to see him return to the USA.

By letter of ... 1961, the US Embassy in The Hague informed the Netherlands authorities that the Applicant was charged in the USA with the smuggling of narcotics, other narcotics violations and passport fraud and that the US authorities were anxious to secure his return to the USA following his release from imprisonment in the Netherlands. The US authorities did not intend, however, to demand his extradition since the offenses with which the Applicant was charged in the USA did not fall within the categories of offenses covered by the extradition agreements in force. The Embassy stated that the Applicant's passport had been restricted for return to the USA only and suggested that the Netherlands Government might therefore wish to examine the possibility of deporting the Applicant directly to the USA after his release. It was further stated that the US Government would be pleased if such action were possible and that funds for his passage to the USA would probably be available.

After serving his sentence, the Applicant was detained, as from .. November 1962, by the Dutch Aliens' Police. He states that he was told that he was being detained pending the decision of the authorities whether he should be declared "an undesired alien". He was detained at a Rotterdam police station until ... December 1962 and subsequently in a house of detention (Huis van Bewaring) in Rotterdam.
On .. February 1963 he was declared to be an "undesired alien" and he states that he was then notified that he was being held in detention pending his deportation from the Netherlands.

The Applicant then took two lines of action before the Netherlands courts:

1. He submitted a petition to the District Court (Arrondissementsrechtbank) in Rotterdam, alleging that his detention was illegal and that, under Article 5, paragraph (4), of the Convention, he was entitled to have the lawfulness of his detention decided by a court. He also invoked the Aliens Act of 1918 according to which an "interned" alien was entitled to obtain a court decision as to the lawfulness of the measure by which he was interned; although not being an interned alien within the meaning of that Act, he considered that the provision referred to could be applied to his case by way of analogy.

On .. June, 1963, the District Court dismissed his complaint, stating that neither Article 5, paragraph (4), of the Convention nor any

domestic legal provision gave the Court competence to examine the lawfulness of his detention.

He then lodged an appeal (beroep in cassatie) to the Supreme Court (Hoge Raad) which, on 13th September 1963, declared the appeal inadmissible. In its decision, the Supreme Court stated that the Applicant's appeal had been lodged according to rules laid down in the Code of Criminal Procedure; that, however, the decision appealed against did not concern a criminal matter and that, consequently, an appeal submitted according to these rules could not be admitted; that, moreover, it was not necessary to decide whether an appeal had been possible in the present case since the Applicant had, in any event, not complied with the provisions in the Code of Civil Procedure when lodging his appeal.

2. In regard to his deportation, the Applicant instituted proceedings against the Minister of Justice and the Netherlands State before the District Court (Arrondissementsrechtbank) in The Hague. He applied, in particular, for a court order that he should not be deported from the Netherlands. By decision of .. June, 1963, the District Court declared his claim against the Minister of Justice inadmissible and rejected his claim against the State. He appealed but his appeal was rejected, on .. July, 1963, by the Court of Appeal (Gerechtshof) in The Hague and his further appeal was also rejected on 13th September, 1963 by the Supreme Court.

Immediately after these two negative decisions had been given by the Supreme Court, the Applicant was transported, on 13th September 1963, in an aeroplane to New York where he was immediately arrested by the US authorities.

Concerning the facts relating to the Applicant's transfer to the USA his lawyer has submitted the following detailed information.

A. The Applicant's own experiences

12th September, 1963 - The Applicant wrote a letter to his lawyer and asked for permission to send it as an express letter. The letter was accepted by the authorities and it was promised that it would be sent by express.

13th September, 1963 - At about 10.30 hours the Applicant was told to make himself ready to be transferred to the Main Bureau of the Rotterdam Police.

At the exit from the house of detention he was informed by members of the Aliens' Police of the decision of the Supreme Court given on the same day, and he was also told that he would be taken to the airport of Schiphol and from there be transported to the USA. He then wanted to telephone his lawyer but this was refused.

Soon after 10.30 hrs. the members of the Aliens' Police took the Applicant in a car and drove him slowly to the airport, where they arrived at about 13.00 hrs. The aeroplane bound for New York was to leave about 13.30 hrs.

A short while before his departure, a member of the Aliens' Police told the Applicant that he had received a message from his lawyer - by way of the Ministry of Justice and the airport, authorities - explaining that he was unable to come to the airport since he was engaged in submitting a complaint to the Commission of Human Rights.

The Applicant was forced to board the aeroplane where he had to sit between two members of the Aliens' Police. They told him that the transport was taking place in complete secrecy so that the US police would not meet him and that this was done in order to avoid any appearance of extradition.

Nevertheless, eighteen US officials were at the airport to receive the Applicant. Three of them boarded the aeroplane, asking: "Who is Mr. X?". One of the members of the Dutch Aliens' Police pointed to Mr. X who was apprehended and taken away by the US officials.

B. The Applicant's lawyer's experience

13th September, 1963 - At about 10.15 hrs. the Applicant's lawyer was informed of the decision of the Supreme Court and he immediately went to Rotterdam to see the Applicant and discuss the situation with him. Shortly before 11.00 hrs., he arrived at the house of detention, where he was told that the Applicant was absent, probably at the Main Bureau of the Rotterdam Police. He instructed his office to find out about the Applicant's whereabouts but he sent no message to the Applicant; the message, which the Applicant received at the airport, was consequently not sent by him.

In the course of the day the lawyer's office telephoned repeatedly to the house of detention, the Main Bureau of the Rotterdam Police, the Aliens' Police and the Ministry of Justice but could not receive any information about the Applicant's whereabouts.

In the evening the lawyer managed to obtain from New York the information that the Applicant had arrived there and was under arrest.

14th September, 1963 - In the morning the lawyer received a letter from the Ministry of Justice, informing him that his client had been transported to the USA. He also received the letter, written by the Applicant on 12th September, 1963 (see under A.). The letter was stamped in Rotterdam on 13th September at 18.00 hrs. On the envelope, Wallace had written "Express". This word, however, had been deleted by someone other than the Applicant and a stamp had been put on covering this part of the envelope.

C. The applicant's lawyer conclusions

The lawyer points out the following circumstances concerning the events on 12th and 13th September, 1963:

(1) Everything was performed in complete secrecy. Even the Applicant himself was surprised and did not get time to change his clothes before he was taken to the airport.

(2) Any contact between the Applicant and his lawyer was refused or frustrated.

(3) Shortly before his departure from the airport, the Applicant was given the false information that his lawyer was aware of the situation but could not come to the airport.

The lawyer states that secrecy was observed in order to avoid any appearance of extradition; it would not seem, however, that any serious attempt was made to keep the transport secret from the US authorities. The secrecy was, in fact, only a fiction.

This could also explain, in the lawyer's view, why no contact was allowed between him and his client. The authorities would otherwise have been exposed to the risk that the Applicant's lawyer might request guarantees that the US authorities would not be informed or information given about possible contacts between the Netherlands and the US authorities. It would also have been possible that the Applicant's lawyer might have proposed that the Applicant should be permitted to return by ship to a US port of his own choice or that an Application with the Commission of Human Rights could have been lodged in time.

The false information given to the Applicant at the airport was

apparently meant to prevent him from requesting a conversation with his lawyer or even from making physical resistance when being taken on board the aeroplane.

Among the documents submitted by the Applicant's lawyer, there is an expert report, dated ... 1963, in which Professor A of the University of Leyden gives, for the information of the Minister of Justice, his opinion on the legality of the Applicant's possible transfer to the USA. Professor A considers that such a transfer against the Applicant's will would be legal considering that there would be no other way of sending him out of the country, that he was not entitled to asylum and, further, that he had entered the country illegally. The Government ought, however, according to A, to avoid any measures which would make his transfer to the USA appear as an extradition de facto. Nevertheless, it would seem necessary to inform the US authorities, at least for "technical reasons".

The Applicant's lawyer criticises this last statement and considers apparently that no such contact with the US authorities would have been required.

In his original Application submitted on 13th September 1963, as well as in his additional complaint of 9th March 1964, the Applicant alleged violations of Articles 1, 3, 5, 6, 8, 13, 14, 17 and 18 of the Convention and requested compensation; in the original Application he claimed a global sum of 100,000 guilders and a monthly payment of 10,000 guilders, as from 13th September 1963, whereas in his additional complaint he requested 10,000 guilders a month, as from 13th September, 1963 until he was again at liberty.

The particular allegations made by the Applicant against the Netherlands Government are set out below (Submissions of the Parties, pages 8 - 18).

Proceedings before the Commission

Whereas the proceedings before the Commission to date may be summarised as follows:

On 26th March, 1965, a group of three members of the Commission made a preliminary examination as to the admissibility of the Application, in accordance with Rule 45, paragraph 1, of the Commission's Rules of Procedure and the group reported unanimously that the Application appeared to be admissible. Consequently, the President of the Commission, acting in accordance with Rule 45, paragraph 2, of the Rules of Procedure, gave notice of the Application to the Netherlands Government and invited it to submit to the Commission its observations in writing on the admissibility.

On 4th August, 1965, the Netherlands Permanent Representative at the Council of Europe submitted the Government's observations dated 2nd August, 1965. A copy of these observations was sent to the Applicant's lawyer who was invited to submit his observations in reply.

The Applicant's lawyer submitted his reply in two pleadings dated 25th and 28th October, 1965. Copies of these pleadings have been sent to the Government for information.

Submissions of the Parties

Whereas the submissions of the Parties may be summarised as follows:

I. On procedural questions

(a) "In his letters of 25th and 28th October, 1965, the Applicant's lawyer submitted that the document dated 2nd August, 1965 could not be accepted as being the observations of the Netherlands Government.

This document had only been signed by Mr. B, a barrister at the Supreme Court and deputy State Legal Adviser (plaatsvervangend Landsadvocaat), and it had not been shown that Mr. B was the representative of the Government within the meaning of Rules 36, paragraph 1, and 48, paragraph 1, of the Rules of Procedure. It was not sufficient that the document had been transmitted by the Netherlands Permanent Representative at the Council of Europe, since he had not signed the observations and Rule 48, paragraph 1, requires signature. The Applicant's lawyer therefore requested that the Commission should decide not to take notice of the document concerned.

(b) In his letter of 25th October, 1965, the Applicant's lawyer raised two further formal questions which he referred to the Commission without himself making any specific proposal:

(i) He indicated that the time-limit for the submission of the Government's observations had expired on 1st August, 1965; that, nevertheless, the document signed by Mr. B had been sent to the Netherlands Permanent Representative at the Council of Europe on 2nd August, 1965; and had probably not been submitted to the Commission until 4th August, 1965.

(ii) He further indicated that the document signed by Mr. B was drafted in Dutch although the Government had not obtained permission to use a language other than the official ones; and that a translation into English had not been submitted until much later.

II. On the admissibility

A. Complaints regarding the Applicant's detention in the Netherlands

1. The question whether or not the Applicant's detention was permissible under Article 5, paragraph (1), of the Convention

The Applicant's lawyer stated that, according to information given to the Applicant, he was detained at first, pending the decision to declare him "an undesired alien" and, after such a decision had been given, pending his deportation. The lawyer alleged:

(a) that the Applicant was not being detained "awaiting procedure and decision of a deportation court as there is no deportation court in the Netherlands";

(b) that his detention was not lawful, there being no provision in Dutch law which provides for detention in such a case; in particular, Article 9 of the Aliens Act of 1849 which was invoked by the authorities does not provide for detention. (Article 9 states as follows: "Aliens who have not been admitted and cannot obtain a passport shall, if they are nevertheless found within the country, be taken across its frontiers").

(c) that he was detained with a view to extradition de facto although extradition could not legally be effected (the submissions on this point are set out more fully below).

The Government stated that the Applicant was told immediately after arriving on 12th November, 1962 at the Rotterdam Police Station that he was being held pending his deportation. In regard to the Applicant's allegations it was stated:

(a) that neither the first part of Article 5 ("in accordance with a procedure prescribed by law", "selon les voies légales") nor the wording of Article 5, paragraph (1)(f) ("action ... with a view to deportation or extradition", une procédure d'expulsion ou d'extradition") of the Convention, can be held to require specific court proceedings as a condition of detention; and that, therefore, the fact that there are not, under Dutch law, any specific court

proceedings in deportation cases does not make the Applicant's detention contrary to the Convention;

(b) that the Convention, of which Article 5, paragraph (1)(f) authorises detention with a view to deportation, forms part of Netherlands law;

that deportation is permitted under Article 9 of the Aliens Act; and that deportation of a person against his will implies that the person concerned is deprived of his liberty (detained) since otherwise deportation could not be effected.

that the police is competent to carry out a deportation measure as part of its duty to maintain law and order; and that, therefore, the police is also competent to enforce detention which forms part of the deportation procedure;

that for such detention the police normally uses the detention quarters available at the police stations; that, for particular reasons, the Applicant was detained longer than usual at a police station; that, in regard to his subsequent detention at a house of detention (Huis van Bewaring), it is to be observed that, according to a provision in the Act regarding the principles of the prison system (Beginselenwet gevangeniswezen), these houses are designed to accommodate persons lawfully deprived of their liberty by public order, in so far as no other place of detention is appointed for them;

(c) that the Applicant was detained with a view to deportation and not extradition (the submissions on this point are set out near fully below).

2. The Applicant not being brought before a judge or a court

The Applicant's lawyer alleged that the Applicant, during his detention, was at no time brought before a judge or a court for a decision on the lawfulness of his detention.

The Government stated that the Applicant's detention was not authorised by Article 5, paragraph (1)(c), but by Article 5, paragraph (1)(f), of the Convention which provision does not require that the detainee should be brought before a judge or a court.

3. Interference with the Applicant's private life

The Applicant's lawyer alleged that there had been an interference with the Applicant's private life during his detention and that this interference was not based on any legal provisions; in particular, the Applicant was not allowed to receive visitors which was important for him in view of his attempts to arrange for his departure to a country other than the USA.

The Government submitted that the Applicant's counsel had sufficient opportunity to find a country which would be willing to receive the Applicant; that neither the Applicant nor his counsel asked for any such visits to be permitted; that there would have been good reasons to refuse such visits (if the Applicant had made a request to this effect), there being a risk of his using personal contacts for illegal purposes; that a refusal would have been permissible under Article 8, paragraph (2) of the Convention; that legal provisions relating to this matter are contained in the Internal Rules of the Rotterdam House of Detention (Huishoudelijk Reglement Huis van Bewaring te Rotterdam) and the Prison Regulations Decree (Gevangenismaatregel) whose preamble refers to certain articles of the Penal Code and to the act regarding the principles of the prison system (Beginselenwet gevangeniswezen).

The Applicant's lawyer stated, in reply, that the Internal Rules and the Decree referred to are not to be considered as "law" within

the morning of the Convention (see Article 8, paragraph (2): "in accordance with the law") and that the articles concerned in the Penal Code and the Act regarding the principles of the prison system are only "law" in the formal sense of the word but not within the meaning of the Convention.

4. Interference with the Applicant's correspondence

The Applicant's lawyer alleged that there had been interference with the Applicant's correspondence during his detention. He stated:

(a) generally, that the Applicant's correspondence was controlled (including, during his detention in the police station, his correspondence with his lawyer) and that this interference was not based on any legal provisions;

(b) in particular, that the Applicant wrote a letter to his lawyer on 12th September 1963 and asked for permission to send it as an express letter; that the letter was accepted and it was promised that the letter would be sent by express; that the letter was not received by the lawyer until 14th September 1963, i.e. after the Applicant had been deported to the USA; that the letter was stamped in Rotterdam on 13th September at 18.00 hrs.; that the word "express" written by the Applicant on the envelope had been deleted and a stamp had been put on covering this part of the envelope.

The Government submitted

(a) that there were reasonable grounds for controlling the Applicant's correspondence (the wish to prevent traffic in narcotics and obtain information about possible contacts made by the Applicant for such purpose); that the legal ground for such restrictions in the right to free correspondence is to be found in the Prison Regulations Decree (Gevangenismaatregel), the Internal Rules of the Rotterdam House of Detention (Huishoudelijk Reglement Huis van Bewaring te Rotterdam) and the service Regulation No. 19 of the Rotterdam Municipal Police (Dienstvoorschrift No. 19 van de Gemeentepolitie te Rotterdam); that these restrictions are permissible under Article 8, paragraph (2), of the Convention; and that the Convention did not give any special protection to the Applicant's correspondence with his lawyer, as Article 6, paragraph (3) (c), is applicable only to cases of criminal proceedings and no such proceedings had been instituted against the Applicant.

(b) that the particular letter referred to by the Applicant's lawyer was found in the house of detention on 13th September 1963, after the Applicant's departure; that it was posted on the same day; that it is not known, whether the letter was marked "express" and whether, in such a case, this word was deleted; that, however, if this was done, there were reasonable grounds for doing so.

The Applicant's lawyer stated, in reply, that the provisions referred to by the Government are not to be considered as "law" within the meaning of the Convention (see Article 8, paragraph (2): "in accordance with the law").

5. Presumption of innocence

The Applicant's lawyer stated: "The Dutch Government has always asserted that applicant should have entered Holland by an illegal way. But there has been no trial against applicant because of illegal entry; so the applicant can't be held guilty of such offense".

The Government replied that this allegation apparently related to Article 6, paragraph (2), of the Convention; that, however, this provision only applies to persons charged with a criminal offense; that this was not the case with the Applicant (the Government also

referred to Application No. 858/60, Yearbook IV, page 225).

6. Remedies in Dutch Law

The Parties' submissions as to the remedies in Dutch law are relevant in respect of two different questions under the Convention, namely

(a) whether the Applicant was entitled under Dutch law to take proceedings by which the lawfulness of his detention should be decided by a court and his release ordered where the detention was not lawful, as required by Article 5, paragraph (4), of the Convention; and

(b) whether the Applicant exhausted domestic remedies within the meaning of Article 26 of the Convention.

The Applicant's lawyer submitted

that there are no remedies in Dutch law, by which an alien could obtain a decision either on the lawfulness of his detention except if he is interned under the provisions of the Aliens Act of 1918 which was not the case with the Applicant, or in regard to an interference with his private life and correspondence; that, in particular, there is not, in respect of detention, a remedy which satisfies the requirements of Article 5, paragraph (4); that, although the Convention forms part of Dutch law, Article 5, paragraph (4), and Article 13 are not considered to be "self-executing";

that it is true that an alien can bring a civil action alleging "détournement de pouvoir" by the authorities; that, however, where such an actionis brought, the courts are only competent to proceed to a marginal examination of the issue of detention; that, in fact, they can only consider whether the authorities have acted from wrongful motives but they are not competent to re-examine the administrative decisions as such; and that this limitation of the examination makes an action ineffective, since the motives from which the officials acted can hardly ever be proved.

The Applicant's lawyer also referred, in this regard, to certain passages in the report which Professor A submitted, on ... 1963, to the Minister of Justice (see above). In this report, Professor A also dealt with the possibility of an action in regard to the Applicant's deportation based on alleged détournement de pouvoir and stated inter alia:

"An action based on alleged détournement de pouvoir can only be successful if it is evident that the competence of the authorities concerned has been used for a purpose other than that for which it is given. As you certainly know, Your Excellency, the Supreme Court (Hoge Raad), in such a case, does not look at the factual consequences of the measures taken by the authorities but examines only if the motives which inspired the authorities in taking the measures concerned are acceptable in view of the purpose of the legal provisions on which the competence of the authorities concerned is based (see e.g. Supreme Court 14-1-49, Nederlandse Jurisprudentie 557; 24-6-49, Nederlandse Jurisprudentie 559). What these motives were is deduced from possible statements by these authorities or from other facts.

Difficulties arise when the authorities have been inspired by different motives some of which are in conformity with the law, while other motives are not. It would be possible to deduce from Supreme Court 24-6-49, Nederlandse Jurisprudentie 559 ... that an action based on alleged détournement de pouvoir would also be successful in such cases. It is true that the question of establishing the "motifs déterminants" is also to be considered. According to the interpretation of Hofmann-Drion-Wiersma in Het Ned. Verbintenissenrecht, 1959, page 234, the decision concerned implies that, in the opinion of the Supreme Court, there can only be détournement de pouvoir when it is established

that the measures taken by the authorities are entirely inspired by a purpose which is contrary to the purpose of the law ...".
The Government submitted that the question whether or not the Applicant's detention was lawful could have been examined by a court if he had brought an action based on Article 1401 of the Civil Code (this Article states as follows: "Any wrongful act, as a result of which damage has been inflicted on another person, makes the person by whose fault damage has been caused liable to pay compensation") which provision can also be applied to the conduct of the public authorities; that, when such action is brought, it is regular practice to test the conduct of the authorities in respect not only of possible violations of the system of law and justice, but also of "détournement de pouvoir" or "abus de droit"; that the courts can also investigate the question whether or not deprivation or restriction of liberty has been lawful (rechtmatig); that the Applicant can, in fact, still bring such an action in regard to his detention and other alleged violations of the Convention; and that it would be incorrect to describe this remedy as "inadequate".

B. Complaints relating to the Applicant's deportation

1. Unlawful detention and interference with the Applicant's private life in connection with his transportation to the USA

The Applicant's lawyer alleged that the Applicant, during his flight to the USA was illegally deprived of his liberty and that his private life was interfered with. In this respect, he stated, in particular,

(a) that the extradition treaty between the Netherlands and the USA did not provide for extradition in respect of narcotics offenses or passport frauds which were the offenses for which the Applicant was claimed in the USA, that, despite this, the US authorities requested the assistance of the Netherlands authorities in bringing the Applicant back to the USA (see the letters of ... 1960 and ... 1961 referred to on page 2 ; that the US authorities offered to pay for the Applicant's transport and that they probably did pay for it; that the Netherlands authorities transported the Applicant from Amsterdam to New York where they delivered him to the US authorities; that it is true that the Netherlands Government tried to avoid any appearance of extradition but that, nevertheless, the Applicant was subjected to a de facto extradition contrary to the existing extradition treaty;

that the Netherlands authorities have repeatedly referred to the Applicant's "deportation to the USA"; that, however, it could legally be a question either of his deportation from the Netherlands or of his extradition to the USA; that Article 9 of the Aliens Act only authorises the deportation of an alien across the Dutch frontier; and that, therefore, the transport of the Applicant to the USA could not be justified under the Aliens Act since the Netherlands has no frontier with the USA;

(b) that, on 12th and 13th September, 1963, the Applicant was refused permission to contact his lawyer; that he was not allowed to telephone the lawyer and that the letter he sent was delayed (see pages 4, 6 and 12 ; that he was even given a false message purporting to come from his lawyer;
that, on 13th September, 1963, the lawyer tried repeatedly to obtain information as to what was happening to the Applicant by telephoning to various officials concerned with the case; that all such information was refused;

that, consequently, the Applicant and his lawyer were prevented from discussing whether legal proceedings should be instituted against the KLM, the company which was to transport the Applicant to the USA, or whether other legal action should be taken after the negative decisions of the Supreme Court.

The Government submitted that a measure taken for deportation implies deprivation or restriction of liberty of the person concerned; that such deprivation or restriction of liberty is recognised by Article 5, paragraph (1) (f), of the Convention; that any inherent interference with a person's private life cannot be contrary to Article 8 of the Convention; that there is no evidence to show that the Applicant's liberty, though naturally restricted in view of the means of transport, was actually taken away from him during the flight; that two plain clothes police officers travelled with him in order to avoid disturbances on board the aircraft but did not have to take any action. The Government further stated

(a) that the Applicant was not wanted in the Netherlands, because he had twice violated Netherlands hospitality by entering the country with a false passport and by committing an offence in regard to narcotics; that he was given the possibility of indicating a country willing to receive him but that he was unable to obtain a permit to enter any country other than the USA; that the Netherlands authorities could therefore only deport the Applicant by sending him to the USA; that, as the measure proposed was not extradition, the Netherlands authorities avoided making contact with the US authorities but found it necessary to obtain an entry document before deporting the Applicant to the USA; that the travel tickets were ordered and paid for by the Netherlands Ministry of Justice and that payment from the US authorities has neither been asked for nor received; that the Applicant himself and not the police officers accompanying him revealed his identity to the US police; that, consequently, the Applicant was deported and not extradited to the USA; that, moreover, the question as to whether or not he was extradited is irrelevant under the Convention, since the right not to be extradited is not guaranteed by the Convention;

(b) that it was decided not to give the Applicant and his counsel any opportunity to contact each other during the period between the Supreme Court's final decisions and the Applicant's departure, as such contact would have no useful purpose and could result in action which would delay the procedure, prolong the Applicant's detention and draw the attention of the US authorities to the Applicant's departure; and that it is not true that a false message was passed on to the Applicant; that the lawyer would have been allowed to take leave of his client if he had asked permission but that he did not do so; that the attitude of the authorities constitutes no violation of the Convention, as Article 6, paragraph (3)(c) does not apply in the present case and, if the situation should fall under Article 8, it would be permissible under paragraph (2) of that Article.

The Government also submitted, as subsidiary arguments in regard to the complaints as to the Applicant's deportation, that the question of non-exhaustion of domestic remedies may arise, in so far as such actions or motives are imputed to the State as were not alleged in the court proceedings regarding alleged "wrongful acts"; and that, moreover, if the Applicant alleges that the State's intentions were other than those found by the Courts, the Commission could not accept the Applicant's position without acting as an organ of appeal which would be contrary to its jurisprudence.

2. Inhuman or degrading treatment

The Applicant's lawyer alleged that the transfer of the Applicant constituted an inhuman or degrading treatment and indicated, in particular, that in the USA the Applicant could be sentenced for narcotics offenses to a much heavier sentence than could be imposed for such offenses in Europe.

The Government submitted that deportation could only in very exceptional cases be a violation of Article 3 of the Convention; that

this Article might be involved if an alien was deported to a country where one of his hands might be cut off for an offence which he had committed or if he was deported to a place totally unfit for human habitation, such as the high seas or an uninhabited island; that, however, the expected length of a prison sentence could not involve this Article, particularly in view of the fact that the Convention contains no provision regarding the length of sentences to be imposed.

THE LAW

Whereas the Commission finds it appropriate to deal first with certain procedural questions raised by the Applicant; whereas the Applicant has pointed out that the observations of 2nd August, 1965 have been signed by Mr. B., a barrister at the Supreme Court and Deputy State Legal Adviser; whereas the Applicant has further submitted that it has not been established that Mr. B had been authorised to represent the Netherlands Government in the present proceedings; whereas, therefore, the Applicant has requested that the Commission should not accept the document concerned as being the observations of the Government;

Whereas the Commission takes into account the fact that the observations concerned were submitted to the Commission by the Netherlands Permanent Representative at the Council of Europe and were stated by him to be the observations of the Netherlands Government; whereas the Commission finds it evident that the document concerned constitutes an authentic statement of the views of the respondent Government and, consequently, accepts it as being the observations of that Government;

Whereas the Applicant, without making any specific request, has also stated that the observations of 2nd August, 1965 were submitted after the expiry of the time-limit fixed by the Commission and that they were first submitted only in the Dutch language although the Government had not obtained the Commission's permission to use a language other than one of the official languages; whereas the Commission observes that the points raised by the Applicant relate to matters which fall exclusively within the Commission's discretion; and whereas the Commission finds no reason to disregard, on a formal ground, the Government's observations or to take any other action as a result of the Applicant's submissions in this regard;

Whereas, in regard to the substance of the Applicant's claim, it has been alleged on his behalf that his detention in the Netherlands was not permissible under Article 5, paragraph (1) (Art. 5-1) of the Convention (see page 9 "Submissions of the Parties" II/A/1); whereas, in this regard, the Applicant states, inter alia, that his detention was not lawful under Dutch law;

Whereas, furthermore, the Applicant alleges that there was not at his disposal a remedy satisfying the requirements of Article 5, paragraph (4) (Art. 5-4) of the Convention (see page 14 "Submissions of the Parties" II/A/6);

whereas in regard to these particular allegations, the Commission has had regard to the provisions of Article 5, paragraph (1) (Art. 5-1-f) in particular paragraph (1)(f), and of Article 5, paragraph (4) (Art. 5-4); whereas it finds that an examination of the Parties' submissions and the documents contained in the file does not give it the information required for deciding on the admissibility of these complaints; whereas the Commission has decided to request certain further information from the Parties in regard to the admissibility of this part of the Application, including the question as to whether the domestic remedies have been exhausted within the meaning of Article 26 (Art. 26) of the Convention (see page 14 "Submissions of the Parties" II/A/6);

Whereas, in the meanwhile, the Commission adjourns its examination of this part of the Application;

Whereas the Applicant also alleges that he was extradited de facto to the USA although extradition could not legally take place or that, in any case, his transfer to that country was not a lawful measure of deportation within the meaning of the provisions of the Dutch Aliens Act (see page 16 "Submissions of the Parties" II/B/1/a);

Whereas it is to be observed that the Convention, under the terms of Article 1, (Art. 1) guarantees only the rights and freedoms set forth in Section I of the Convention; and whereas, under Article 25, paragraph (1) (Art. 25-1) only the alleged violations of one of those rights and freedoms by a Contracting Party can be the subject of an application presented by a person, non-governmental organisation or group of individuals;

Whereas otherwise its examination is outside the competence of the Commission ratione materiae; whereas the right not to be extradited or deported is not as such included among the rights and freedoms guaranteed by the Convention; whereas in this respect the Commission refers to its previous decisions Nos. 1465/62, X.v. Federal Republic of Germany; Yearbook V, page 256, and 2143/64, X. v. Austria; Collection of Decisions, Volume 14, page 15; whereas it follows that this part of the Application is incompatible with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas the Applicant also alleges that the authorities subjected him to an inhuman or degrading treatment by taking him against his will to the USA (see page 18 "Submissions of the Parties" II/B/2);

Whereas it is true that the Commission has held in a number of previous cases (see, for instance, Applications Nos. 1465/62, X. v. Federal Republic of Germany, Yearbook V, page 256, and 1802/62, X. v. Federal Republic of Germany, Yearbook VI, page 462) that the deportation or extradition of a foreigner to a particular country might in exceptional circumstances give rise to the question whether there had been inhuman treatment within the meaning of Article 3 (Art. 3) of the Convention;

Whereas,however, the Commission has no hesitation in stating that there are no such exceptional circumstances in the present case;

Whereas it follows that this complaint is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas, in regard to the remaining complaints, an examination of the case as it has been submitted, including an examination made ex officio, does not disclose any appearance of a violation of the rights and freedoms set forth in the Convention; whereas it follows that these complaints are also manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2) of the Convention;

Whereas, however, the Commission finds it appropriate to indicate here below in further detail the grounds on which the Commission considers these complaints to be manifestly ill-founded;

Whereas the Applicant alleges that, during his detention, he was not brought before a judge or a court for a decision on the lawfulness of his detention (see page 11 "Submissions of the Parties" II/A/2); Whereas Article 5, paragraph (3) (Art. 5-3) of the Convention provides that everyone arrested or detained in accordance with the provisions of paragraph (1)(c) of the same Article (Art. 5-1-c) shall be brought promptly before a judge or other officer authorised by law to exercise judicial power;

Whereas the Applicant was not arrested or detained in accordance

with Article 5, paragraph (1)(c) (Art. 5-1-c); whereas, consequently, Article 5, paragraph (3) (Art. 5-3) was not applicable to the Applicant's case;

Whereas there is no other provision in the Convention which could give the Applicant a similar right in the circumstances to be brought before a judge or a court; whereas it is a separate question whether the Applicant himself could institute court proceedings in accordance with Article 5, paragraph (4) (Art. 5-4); whereas this question has already been dealt with above;

Whereas the Commission has considered in relation to Article 8 (Art. 8) the Applicant's allegation of an interference with his right to respect for his private life (see page 11 "Submissions of the Parties" II/A/3); whereas, in particular, he complains that, during his detention, he was not allowed to receive visitors which was important for him in view of his attempts to arrange for his departure to a country other than the USA; whereas, having regard to the Government's submissions on this point, it is not clear whether or to what extent the Applicant was refused permission to receive visitors; whereas, however, in so far as any such restrictions on his right to respect for his private life were imposed, the reason was apparently that, in the opinion of the authorities, there was a risk of the Applicant using personal contacts for illegal purposes; whereas the Applicant has failed to show that this opinion held by the authorities was unfounded or unreasonable; whereas the Commission is also satisfied, on the basis of the Government's submissions, that such restrictions were permissible under Dutch law; whereas it follows that the measures complained of were permissible under Article 8, paragraph (2) (Art. 8-2) of the Convention which permits, inter alia, such interference with the exercise of the right to respect for private life "as is in accordance with the law and is necessary in a democratic society - for the prevention of - crime -";

Whereas the Applicant further complains of interference with his right to respect for his correspondence (see page 12 "Submissions of the Parties" II/A/4); whereas, in particular, he complains that his correspondence was controlled by the authorities during his detention and that for a certain time such control was also exercised in regard to his correspondence with his lawyer; whereas in a number of previous cases the Commission has examined complaints by detained persons regarding measures of control exercised by the authorities over their correspondence;

Whereas in these cases the Commission has generally considered that the practice of permitting prison authorities to examine the correspondence of the detainees falls within the exceptions permitted in Article 8, paragraph (2) (Art. 8-2) of the Convention (see, for instance, Application No. 646/59, X.v.Federal Republic of Germany, Yearbook III, page 272);

Whereas the Commission also notes that, in the present case, the authorities considered it essential to control the Applicant's correspondence in order to prevent the possible committal of narcotics offenses;

Whereas the Commission is satisfied, on the basis of the Government's submissions, that the said control was exercised in accordance with Dutch law; whereas, consequently, the measures complained of were permissible under Article 8, paragraph (2) (Art. 8-2); whereas the Commission adds that, in regard to the particular letter posted on 13th September 1963, it is not satisfied that there has been any undue delay or other interference which could be attributed to the authorities;

Whereas, consequently, in respect of that letter, there is no appearance of any interference within the meaning of Article 8, paragraph (1) (Art. 8-1) of the Convention;

whereas the Applicant also alleges that the Dutch Government has held him guilty of illegal entry into the Netherlands, although he had not been convicted of such offence (see page 13 "Submissions of the Parties" II/A/5);

whereas Article 6, paragraph 2) (Art. 6-2) of the Convention provides that "everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law"; whereas the Applicant was not charged, at the time concerned, with the offence of illegal entry or any other equivalent offence but was detained pending his deportation from the Netherlands; whereas, consequently, Article 6, paragraph (2) (Art. 6-2) was not applicable in the circumstances of his case;

Whereas the Applicant complains that he was detained in the aircraft taking him to the USA and that this constituted during the flight an interference with his private life (see page 16 "Submissions of the Parties" II/B/1); whereas the Commission has stated above that the right not to be extradited or deported is not as such included among the rights and freedoms guaranteed by the Convention; whereas a measure of extradition or deportation generally implies that the liberty of the person to be extradited or deported is restricted during the execution of that measure; and whereas it is also clear that a certain interference with a person's private life may be a consequence of such restriction of liberty; whereas the Commission is satisfied that the restriction of the Applicant's liberty during the flight was a lawful detention within the meaning of Article 5, paragraph (1) (f) (Art. 5-1-f) of the Convention and that, in so far as there was any interference with the Applicant's right to respect for his private life as a result of that flight, such interference was covered by Article 8, paragraph (2) (Art. 8-2) of the Convention;

Whereas the Applicant complains that on 12th and 13th September 1963, he and his lawyer were prevented from contacting one another (see page 16 "Submissions of the Parties" II/B/1 b); whereas the Commission considers that the attitude of the authorities in this regard could not constitute a violation of Article 6 (Art. 6) or any other provision of the Convention.

Now therefore the Commission

1. Rejects the Applicant's formal objection and other comments relating to the submission of the Government's pleading on admissibility;

2. Adjourns the examination of the part of the Application relating to the alleged violations of Article 5, paragraphs (1) and (4) (Art. 5-1, 5-4) of the Convention during the Applicant's detention in the Netherlands;

3. Declares the remainder of the Application to be inadmissible.