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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 2199th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 13 July 2004, at 3 p.m.

Chairperson: Mr. AMOR

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.2199/Add.1.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Fourth periodic report of Belgium (continued) (CCPR/C/BEL/2003/4; CCPR/C/80/L/BEL)

1. At the invitation of the Chairperson, the members of the delegation of Belgium resumed their places at the Committee table.

2. The CHAIRPERSON invited the delegation to respond to the questions raised by Committee members.

3. Mr. DE VULDER (Belgium), referring to question 18 of the list of issues, said it was true that seizure of the complaints commission established in September 2003 did not have suspensive effect. The establishment of the commission had not been intended as a means of introducing another complaints mechanism, given that recourse was already available through the Council of State, the Judges' Council Chamber of the Correctional Court and the civil courts. The commission had been established solely as a mechanism to oversee compliance with the Royal Decree of 2002 laying down regulations concerning living conditions in closed centres. That Decree did not apply to the operation of the INADS centre in the transit zone of Brussels international airport. Specific regulations for the running of the centre were currently at the drafting stages.

4. He pointed out that the circulars of 17 July 2002 and 23 July 2002 on double jeopardy and emergency remedies filed against a deportation order did not modify existing legislation, but served as guidelines to the Aliens Office regarding implementation. A draft royal decree to replace existing legislation would be submitted to Parliament for consideration in autumn 2004. The circular of 17 July 2002 stipulated that aliens who had been born in Belgium or had lived there most of their lives, and had served a prison sentence there, could not be deported. The circular of 23 July 2002 gave suspensive effect to emergency remedies filed against an expulsion order. It applied not only to asylum-seekers, but to all aliens facing refoulement or expulsion.

5. Ms. BERRENDORF (Belgium) said that, while prison overcrowding in her country was endemic, successive Governments had rejected the idea of expanding prison capacity for fear that such action might in turn lead to a further increase in the prison population. Among the more easily identifiable factors contributing to overcrowding was the large number of persons detained on arrest warrants. The high percentage of prisoners in pre-trial detention and the sharp increase in the number of long sentences could also in part be held responsible for the increase in the prison population. The decline in the number of prisoners released on parole, on the other hand, was minimal and could not be considered as contributing to prison overcrowding.

6. Public demand for more effective prosecution of offences, increasing criminalization of deviant behaviour and increased police efficiency had resulted in a greater number of persons being convicted and sentenced. It was important to recognize that a growing number of persons

reacted with delinquent behaviour to the scourge of poverty and social exclusion. The problem of prison overcrowding could therefore not be solved by the Government or the justice system alone, but required an overall response based on preventive measures such as education and integration of marginalized groups.

7. Mr. DEBRULLE (Belgium) said that his delegation would supply a detailed written reply to the question on Belgium's position on State responsibility for violations of principles and provisions set forth in the Covenant. However, Belgium's withdrawal of a warrant for the arrest of former Congolese minister Mr. Yerodia Aboulaye Ndombasi following a relevant decision by the International Court of Justice in The Hague indicated its willingness to assume responsibility when found to be contravening provisions of international agreements to which it was a party.

8. The concept of universal jurisdiction drew legitimacy from an interpretation of the Geneva Conventions, by virtue of which offences recognized by the community of nations as of universal concern, such as war crimes, could be prosecuted by individual States. The above-mentioned proceedings instituted against Mr. Ndombasi, had been declared inadmissible owing to the defendant's immunity and not because of the inapplicability of universal jurisdiction.

9. The Belgian universal jurisdiction law had not been repealed as such. However, in 2003 a series of provisions stipulating the necessity of a link with the prosecuting State had been introduced, which restricted its scope. A question had been raised concerning the legal status of persons whose complaints were no longer admissible under the amended legislation. There had been concern that the new provisions might violate the victim's right to effective recourse.

10. The majority of complaints that had been declared inadmissible on the basis of the new criteria had concerned cases where the accused enjoyed immunity. By rejecting such cases, Belgium was complying with a relevant decision of the International Court of Justice. As to cases that did not fall in that category, he wondered whether the Committee was of the view that a State was guilty of depriving a victim of his right to legal recourse when it amended certain provisions of its domestic criminal legislation.

11. Replying to a question on measures taken to tackle the problem of racist propaganda, he said that considerable efforts had been expended in that area. Measures in the field of legislation were outlined in the country report. Practical measures included an agreement between the Belgian post office and the Centre for Equal Opportunity and Action to Combat Racism to ban the distribution by mail of material that propagated racism. Another agreement concluded with journalists sought to preclude references to the ethnic origin of the presumed perpetrator of an offence. An institute for intercultural dialogue had been established and was composed of, inter alia, representatives of all religions practised in Belgium.

12. It was true that his country's report gave an insufficient account of the effectiveness of measures taken. In order to remedy that shortcoming, his Government envisaged the establishment of a number of follow-up mechanisms. At the international level, accession to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was currently under consideration and would represent a step in the

right direction. At the national level, the Criminal Policy Service, within the Department of Justice, ensured implementation of legal provisions by means of ministerial circulars. It also monitored the de facto implementation and effectiveness of those provisions through the compilation of relevant data.

13. Replying to a question relating to the "recognition" of mosques, he said that negotiations between the federal Government and the Muslim Executive on a relevant proposal had failed to produce positive results owing to disagreements on the criteria for recognition. A new proposal currently before Parliament was expected to be discussed with the new Muslim Executive which would be elected by the constituent assembly in autumn 2004.

14. A guardianship service had been established to oversee specific guardianship arrangements for unaccompanied foreign minors who were applying for refugee status or were in Belgium or on the border without the requisite entry or residence documents. Apart from assessing whether a minor met the legal conditions for being afforded protection, the authorities were also guided by psychosocial considerations.

15. The Government was committed to cooperating with NGOs in the process of drafting country reports and monitoring the implementation of recommendations made by the Committee. A draft of the report submitted in 2003 had been made available to NGOs in October 2002 with a request for their contribution. In response, the NGOs had produced an alternative report. The participation of a large number of civil-society representatives in a round-table discussion on the rights of the child was another example of the Government's willingness to cooperate with NGOs in the process of monitoring compliance with international obligations.

16. In 2003, the Government had declared its intention to establish a national human rights commission. NGOs' extensive experience in the field of human rights placed them in a good position to make a significant contribution to such a body. A national commission constituted an important tool in monitoring the observance of human rights and a forum for dialogue and joint action.

17. Committee members had expressed concern that the right of access to a lawyer or doctor of one's choosing while in pre-trial detention might not always be guaranteed. In that connection, it was important to establish at what point during the period of detention access to legal counsel was to be granted. Possible amendments to existing legislation on the matter would be discussed in Parliament in autumn 2004 and the relevant recommendations by the Committee would be taken into consideration.

18. He agreed that detainees ought to be permitted to notify a third party of their detention. However, caution needed to be exercised because, in the context of the fight against impunity, notifying somebody about an arrest could serve as a signal to an accomplice; the exception should not become the rule, however.

19. Although the possibility of reviewing Belgium's reservations to the Covenant was being discussed, there was at present no formal proposal regarding the introduction of the right of appeal against judgements of the assize court. A proposal was under consideration, however, that would require that court to give reasons for its decisions.

20. The Code of Criminal Procedure, which dated from 1874, was in the process of being revised. Problems with the existing system included the power that it gave to the State prosecution department, through the investigating judge, to undertake certain investigative measures that were not subject to the same safeguards as the main investigation. It would be up to Parliament to decide how to proceed when it debated the matter in the following autumn; possible solutions included adopting an adversarial system or reassigning the roles within the existing system in such a way as to rectify the imbalance of power. The Court of Cassation had handed down a number of rulings regarding the extent to which judgements of the investigating courts must comply with article 14 of the Covenant and article 6 of the European Convention on Human Rights. It was for Parliament to decide whether the jurisprudence of the Court of Cassation warranted more specific legislation in order to stipulate where the line should be drawn between effective investigative measures and the need to ensure a fair trial. Belgium had responded swiftly to two judgements handed down by the European Court of Human Rights, and despite some reluctance on the part of the prosecuting authorities with respect to civil cases, the prosecuting authorities of the Court of Cassation were no longer allowed to be present at that Court's deliberations in either criminal or civil proceedings.

21. With regard to the appointment and promotion of judges, he explained that the Supreme Council of Justice could propose only one candidate for royal assent; the King could then only either accept or reject the candidate. Following a rejection, which must be in the form of a reasoned Royal Decree, the process had to start again; the King could never substitute his own candidate. That system had recently been employed in relation to an appointment to the Liège court of appeal, when the King had been unable to accept the candidate proposed; the Supreme Council of Justice had had some difficulty in agreeing on a single candidate.

22. The training periods of 18 months for a prosecutor or 3 years for a judge were obligatory. The Ministry of Justice was considering introducing a third method of appointment to the bench, which would allow experienced lawyers who had a minimum of 20 years' experience at the bar to obtain a judgeship without undergoing that dual training period.

23. Mr. LALLAH paid tribute to the delegation's willingness to reconsider the question of restrictions on universal jurisdiction in terms of certain articles of the Covenant; it was good that the question remained open, given the Committee's position that States which chose to exercise their discretionary power to extend certain rights, particularly under articles 5 and 26, were then obligated in terms of the various articles of the Covenant. The difficulties that arose with regard to criminal matters in that respect would be addressed in an appropriate forum, after the Committee had completed its deliberations. He complimented the delegation on the quality of its report and replies.

24. The CHAIRPERSON said that the quality of the delegation's replies and its openness to dialogue were commendable; that was no surprise, given that efforts to undertake reform seemed to be under way in Belgium and concentrated on eliminating any discrepancy between the legislative framework and the actual situation. The Committee would not be able to comment in detail on the bills that had been referred to until they had become law, although they had appeared promising. Belgium had learned lessons from the dramatic events in Somalia in legislative terms, but those lessons should perhaps have been reflected more effectively in terms of prosecutions. He took note of Belgium's desire to establish a multicultural dialogue with a view to minimizing conflict, promoting better understanding, and making sure that the

guarantees underlying fundamental rights were effective in Belgium and elsewhere. It was important not to underestimate the importance of that trend. Multicultural dialogue seemed to be based on the declaration of faith, not on day-to-day practice. It was important to consider whether the political will that existed in that regard was making an impact on local authorities.

25. The Committee would have to focus its attention on only a few issues, some of which were more serious than others. One important matter that called for concerted action on the part of the Belgian authorities was the increase in discrimination and extremism, in particular political extremism that incited hatred and sought to exclude those who were different. He expressed the hope that that situation might improve. Although the messages of hatred, intolerance and extremism that were propagated on Internet sites addressing Belgian citizens or based on Belgian soil were worrying, what was of greatest concern was extremism in the form of racist or xenophobic political parties, which gave the country an image that it did not deserve. Political extremism was growing in a number of ways, including at the ballot box. There was reason to fear that movement in that direction would make it difficult to remedy the situation in the future. The public authorities were not powerless: the matter of public funding of political parties that spread racist views must be resolved as a matter of urgency, and private funding of incitement to hatred should also be combated at the national level, as it was in other States and as was sought at the international level. Religious extremism and political extremism were essentially the same. Belgium had laws that must be effectively enforced, and must not just give rise to monetary sanctions. Article 20, paragraph 2, of the Covenant did not allow for flexibility or a laissez-faire approach.

26. A second matter that merited particular attention was the question of universal jurisdiction; in choosing to exercise its optional powers, Belgium had taken its place at the forefront of the fight against impunity, yet in the course of a relatively short period, it had made an about-turn in its policy. Although a State was free to determine its own policy, there were victims who had rights, and who had interests that must be respected, and that must be taken into account in action to combat impunity. However, the most important issue was that when a State opted to use its powers, and then almost immediately made an about-turn, there was a danger of a cause that should be above politics being used for political, and maybe even economic, ends. Thus, the credibility of universal jurisdiction was at stake.

27. He had understood the delegation's explanations concerning repudiation. However, even if repudiation was subject to requirements that were all but impossible to fulfil, the term still retained grave connotations of something that many, if unfortunately not all, Muslim countries had rejected since 1956 as being detrimental to human rights. It was therefore astonishing that the term should have resurfaced in Belgium.

28. Although the information provided by the delegation about overcrowding in prisons was welcome, the important point was that there should be respect for prisoners' rights, compliance with the standard minimum rules and proper segregation of prisoners. Although such problems were not unique to Belgium, he felt sure that it was in a position to remedy the problem. The reasons for the large prison population were many and varied, but education, both in schools and within the family, was paramount. Education was also imperative in preventing extremism and minimizing social tensions.

29. Lastly, although Belgium had done a great deal to promote freedom of religious belief, it could have done more to avert the problems with the recognition of mosques which had stemmed from internal conflicts within Muslim communities. He questioned the Belgian Government's use of the term "sect", which had acquired pejorative connotations and yet was being unjustly applied to legitimate religious communities. However, such remarks could not detract from all the good work being done by Belgium to achieve better protection of human rights.

30. Mr. DEBRULLE (Belgium) said that the reporting process was a challenging one, which required thorough preparation and had prompted Belgium to give careful consideration to its own policies. He thanked the Committee for the opportunity to engage in such constructive dialogue. He had taken note of the concerns already expressed by the Committee and awaited with interest its concluding observations, which would be brought to the attention of the competent authorities.

The public part of the meeting rose at 4.20 p.m.