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HUMAN RIGHTS COMMITTEE

Seventieth session

SUMMARY RECORD OF THE 1884th MEETING

Held at the Palais Wilson, Geneva,
on Thursday 26 October 2000, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.00-45341 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Argentina (continued)

(CCPR/C/ARG/98/3; CCPR/C/70/L/ARG; and HRI/CORE/1/Add.74)

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

2. The CHAIRPERSON invited further comments and questions from Committee members on the Argentine delegation's replies to questions 1-18 of the list of issues.

3. Ms. CHANET commended Argentina for sending such a high-level delegation headed by Mr. Despouy, who was well known to all human rights experts for his services as a Special Rapporteur of the Commission on Human Rights.

4. She wondered why the delegation's reply to question 4 of the list of issues concerning measures to protect minorities had focused on disabled persons, who were certainly a vulnerable category and deserved protection but were not covered by article 27 of the Covenant, which referred to ethnic, religious and linguistic minorities.

5. She associated herself with Ms. Evatt's question about abortion and Ms Gaitan de Pombo's questions about the protection of children's rights during the period covered by the report.

6. Pre-trial detention was dealt with in the report under article 10 of the Covenant although some aspects of such detention were covered by article 9. In its concluding observations on Argentina's second periodic report, the Committee had expressed concern at the fact that the principle of the presumption of innocence had been breached in the Penal Code and the Code of Penal Procedure, since persons could be held in custody for periods exceeding the maximum period authorized by the law. It had criticized, in particular, article 317 of the Code of Penal Procedure. She noted that the Code had been amended in the meantime and now stipulated that release might be granted if the accused had served the maximum penalty established in the Penal Code. The article further stipulated, however, that release might be granted if the accused had served, in pre-trial detention, the penalty requested by the prosecutor and that appeared "at first sight" to be sufficient. She asked the delegation to clarify how such a prima facie finding could be made at that stage of the proceedings.

7. According to article 319 of the Code of Penal Procedure, release could be denied when an "objective temporary assessment" of the features of the offence, the possibility of recidivism, the personal circumstances of the accused or the fact that he had previously been grated releases provided good reason to believe that he would attempt to escape justice or interfere with the investigations. She pointed out that, under the Covenant, pre-trial detention was strictly limited to the need for the person concerned to be brought before a court. It was not related to the

maximum penalty established for the offence and could not depend on a pre-trial assessment, which would be incompatible with the presumption of innocence. The Argentine judicial system did not seem to apply with due rigour the provisions of article 9 requiring the courts to decide without delay on the lawfulness of a person's detention and to order his release if the detention was not lawful. Was there a deadline beyond which a person held in pre-trial detention was automatically released? At what stage of the investigations could an accused person file an appeal? Was detention ordered by a judge or an independent court? What was the procedure for appealing against such decisions? What was the maximum period of police custody? And was a lawyer present during police questioning?

8. With regard to Argentina's reservation to article 15.2 of the Covenant, she noted that the provisions of article 15 were non-derogable pursuant to article 4. Although that did not rule out the possibility of entering a reservation thereto, the Committee stated in its general comment on article 24 that, in the case of peremptory norms of international law, while there was no automatic correlation between reservations to non-derogable provisions and reservations which offended against the object and purpose of the Covenant, the State concerned had a heavy onus to justifiy such a reservation.

9. Mr. KRETZMER expressed satisfaction at the many positive changes that had taken place in Argentina during the period covered by the report.

10. There were allegedly still a number of high-ranking officers in the Argentine armed forces who had been associated with or implicated in human rights violations during the dictatorship. He suggested that their continuation in office was sending an inappropriate message to the public. What was the policy of the Government towards such officers?

11. He associated himself with Ms. Chanet's comments on pre-trial detention. The second sentence of article 9.3 stipulated that it should not be the general rule for persons awaiting trial to be detained in custody. But it seemed from both the report and the delegation's replies that it was the general rule in Argentina, especially in the case of serious crimes. According to paragraph 72 of the report, if an accused person was liable to less than eight years' imprisonment, the judge might exempt him or her from detention. On what criteria did the judge base that decision? He took it that an accused who was liable to more than eight years' imprisonment was automatically detained in custody, a practice that was inconsistent with article 9.3 of the Covenant.

12. He associated himself with Mr. Klein's questions about the delegation's reply to question 15 of the list of issues. Moreover, the delegation had failed to provide detailed information on mechanisms for investigating cases of torture or ill-treatment by law enforcement officials. Was there an independent investigating mechanism to which individuals could address complaints? It had been alleged in a NGO report that 80 people had been killed by the Argentine law enforcement authorities in 1999. He wished to know whether those killings had been investigated and in what manner.

13. Mr. ANDO said that, according to paragraph 41 of the core document (HRI/CORE/1/Add.74), the Supreme Court had concluded that international treaties were equal in rank to national laws. But paragraph 44 stated that a number of international treaties had

constitutional rank and that treaties other than those listed required the vote of two thirds of the members of each chamber of Congress to acquire constitutional rank. He gathered that Argentina differentiated between international treaties ratified by a simple majority and those ratified by a two-thirds majority. What was the exact position of the Covenant in the legal system?

14. According to paragraph 42 of the core document, the provisions of international treaties must be "sufficiently specific" to permit their immediate application. According to paragraph 43, a treaty acquired legal validity by virtue of the law by which it was approved, but that did not mean that it ceased to have the character of an autonomous legal statute, the interpretation of which depended on its own text and nature. According to paragraph 45, moreover, international customary law was self-executing. It was thus unclear to him whether treaties, including the Covenant, were directly applicable or had to be incorporated in domestic legislation.

15. Article 50 stipulated that the provisions of the Covenant should extend to all parts of federal States without any limitations or exceptions. He understood that there was a division of legal competence between the federal and provincial governments in Argentina, that some ILO conventions were not evenly implemented throughout the country and that the mechanisms for the protection of human rights were not evenly distributed. Was there any specific area in which the Federal Government could under domestic law compel provincial governments to comply with international obligations?

16. Mr. DESPOUY (Argentina) said that the third periodic report had been drafted in 1998 and therefore failed to reflect many important developments in the Argentine legal system during the intervening period.

17. In principle, the Constitution stood at the apex of the judicial pyramid; next in rank came international treaties and they were followed by domestic laws. No law could be incompatible with a treaty and no treaty with the Constitution. However, the constitutional reform of 1994 had brought about what could only be described as a legal revolution in Argentina. A number of key human rights treaties, including the Covenant, now formed part of the Constitution. Mr. Klein had asked about the meaning of the term "complementarity" between treaties with constitutional rank. The reform of the Constitution had not affected all its provisions; Congress had decided that some parts should not be amended. As a result, the process of incorporation of the treaties had to be effected by stating that, while they enjoyed constitutional rank, they did not abrogate any article of the first part of the Constitution and must be interpreted as complementary to the rights and guarantees recognized therein.

18. Under the Argentine federal system, treaties were applicable throughout the national territory. No provincial body could act contrary to a treaty. If it did so, there were all kinds of legal procedures for challenging its conduct right up to the Supreme Court.

19. In response to Mr. Scheinin's question about the protection of human rights in crisis situations such as states of emergency declared pursuant to article 23 of the Constitution, he said that a major national tragedy had occurred when that article had been invoked as a pretext for the suspension of all human rights in the country so that the military authorities could act with

impunity. As the Constituent Assembly had not been authorized to amend the entire Constitution, that article had been left untouched. However, the problem had been largely resolved by the conferral of constitutional rank on international treaties. Article 4 of the Covenant now formed part of the Constitution and was therefore applicable in Argentina to all states of emergency. There had to be a real threat to the life of the nation and emergency measures had to be proportionate to the circumstances. The Committee's jurisprudence as reflected in its general comments would also be applied in interpreting which rights were derogable or non-derogable. One state of emergency had been declared since the restoration of democracy and on that occasion a communication had been sent, through the United Nations Secretary-General, to the Committee confirming Argentina's compliance with all its obligations under article 4. The state of emergency had in fact been terminated before the date originally announced.

20. In addition to the punishment of the perpetrators of crimes, some examples of non-pecuniary compensation for human rights violations suffered during the dictatorship were exemption from military service for the sons of disappeared persons and the establishment of a memorial museum and a memorial park. The previous Government had made a special effort to provide financial compensation of roughly US$ 500 million to the victims of arbitrary detention. Each day in detention had been compensated at a rate equivalent to the highest salary payable to a civil servant. Over US$ 300 million had been paid out in moral damages to the family members of victims of forced disappearance. Some relatives who had brought legal proceedings before the law on compensation had come into force had also been awarded substantial damages. Dagmar Hagelin had taken the case of his son's disappearance right up to the later American Court of Human Rights, and the Argentine Government, in an amicable settlement, had paid damages of over US$ 700,000.

21. The case of disappeared children was a very sensitive issue. Thanks to the tireless efforts of human rights bodies, especially the Association of Grandmothers of the Plaza de Mayo, to overcome an array of administrative and legal obstacles, some 70 children had so far been recovered. All the legislation setting limits on criminal prosecution for acts committed under the dictatorship had expressly excluded the crime of kidnapping of children. In some cases even parents had been found guilty of involvement. High-ranking military officers such as Jorge Videla and Emilio Massera, who had been tried and sentenced on other grounds and later pardoned, had recently been arraigned on kidnapping charges, in respect of which no pardon was permissible. The issue had led to considerable progress in Argentine jurisprudence, also in the area of identity rights.

22. In accordance with the Argentine Constitution the Malvinas formed an integral part of Argentine territory. The islands were officially recognized by the United Nations as a disputed territory but, pending the resolution of that dispute, on mainland Argentina the islanders enjoyed all the rights protected by the Covenant, without any restrictions. Some people originally from the islands now held high-ranking positions in Argentine public service. Moreover, the Constitution provided a positive guarantee of due respect for the lifestyle of the islanders, effectively according them special treatment.

23. Article 15 of the Covenant had been the subject of extensive and arduous debate in Congress in the 1980s in connection with proposals for its ratification. Members of Congress had taken the view that article 15.2 provided for the possibility of the retroactivity of criminal law in certain cases, which ran counter to the Argentine Constitution. A solution had eventually been found through the incorporation of an interpretative clause to the effect that article 15.2 should be understood as upholding the principle of due process. If the non-retroactivity of criminal law was considered to be one of the guarantees of due process, then the clause might be considered a reservation. If, on the other hand, it was interpreted differently and the principle of non-retroactivity did not apply to crimes, including war crimes, then the Committee could consider itself competent to examine such matters. In any case, he considered that matters relating to the trials of members of the Argentine armed forces who had been granted amnesty or a stay of proceedings would come under the Committee's scrutiny in the future, probably in connection with the issue of double jeopardy covered in article 14 of the Covenant.

24. Mr. CERDA (Argentina), replying to questions raised in connection with the indigenous population and their rights, said that statistics on the settlement of claims and land distribution prepared by the National Institute for Indigenous Affairs would be made available to the Committee. The basic policy followed by the Institute was to ensure the involvement of indigenous people in the land distribution process, through greater transparency with respect to funding, achievement of targets set, and proper monitoring and follow-up activities. In addition, specific measures had been adopted at provincial level to fund land measurement and delimitation and to provide technical and financial assistance following land allocation. Some of the land successfully allocated under such procedures included 7,182 hectares for 1,856 inhabitants of the Toba, Pilag and Wichi communities in the Province of Formosa and 5,412 hectares for some 900 Mby-Guarani in the Province of Misiones. Other Institute statistics on land expropriated during the year 2000 would also be sent to members for information.

25. For the time being he was unable to provide more information on the specific court case referred to by Mr. Scheinin involving a Guarani community and a logging company in the Province of Misiones, since the court's decision was currently under appeal. However, the case might be eligible for mediation. In such cases the government authorities strove to reconcile the constitutional rights of the indigenous people with the interests of private entities which had submitted land claims, as in the case in question.

26. Ms. NASCIMBENE DE DUMONT (Argentina), responding to questions by Ms. Gaitan de Pombo and Ms. Chanet relating to children, said that although the Government was aware of cases of the sale of and trafficking in children, it was not a widespread problem. Steps were being taken to curb those practices, including strict controls in maternity homes and at airports and frontiers.

27. International adoption was not legally recognized in Argentina since it was considered that, pending the establishment of a reliable system for monitoring the procedure, the concomitant problems could only worsen. Hence Argentina's reservation to article 21 of the Convention on the Rights of the Child. Although child prostitution was a growing trend worldwide, it was not yet a major problem in Argentina. Specific programmes had been set up to protect child victims.

28. Argentina's recent periodic reports had described the efforts being made to achieve legal and effective equality for women. Landmark achievements included the amendment of legislation relating to parental rights and divorce; that progress had been made following the establishment of democracy and with great difficulty, given the numerous cultural, religious and bureaucratic obstacles that had had to be overcome. The Government was aware that there were still some remnants of inequality in the current Civil Code, such as the differentiation between men and women vis-à-vis the minimum age for marriage. The Committee had been informed of proposals before Congress for the amendment or repeal of outdated legislation of that kind. There were growing numbers of women in primary, secondary and tertiary education and many women in positions of authority in the field of education. However, stereotypes and prejudices about women still existed in all sectors and so the new Government still had much work to do. Replying to a query about the Act No. 24,012 establishing quotas for women candidates in elections to public office, she confirmed that it was applicable at both provincial and national levels. When it was not duly complied with, legal remedies could be sought.

29. Mr. DESPOUY, responding to questions about a case brought before the Inter-American Court of Human Rights concerning the Act, said that Ms. Maria Teresa Morini had claimed the Act had not been complied with during elections in Cordoba on the grounds that it was not sufficient for 30 per cent of the candidates to be women, they must also be eligible for election. Having been rejected by the provincial and federal courts, the claim had subsequently been declared admissible by the Inter-American Court, as a result of which there would be an out-of-court settlement.

30. Ms. NASCIMBENE DE DUMONT (Argentina), in response to queries on legislation relating to domestic violence, said that the provinces were bound to comply with federal legislation on domestic violence. To date, 20 of the 24 provinces had brought their provisions into line with federal legislation and joined the nationwide campaign to combat the problem. She would provide the Committee with written information on the situation in each province with regard to specific legislation and measures adopted, which included the provision of facilities in local police stations and hospitals and action to create awareness about domestic violence and to encourage women to file complaints.

31. She could not but agree with Mr. Yalden on the lack of statistics in Argentina in general, and stastistics on maternal mortality in particular. That was certainly one area where improvement was needed. It must be remembered, however, that Argentina was a developing country and that surveys required funds which were not always available. Statistics on the maternal mortality rate had not been included in the report, since the relevant surveys post-dated its submission in 1998. Nevertheless, information on the situation in each province was now ready. Many deaths were the result of illegal abortions but were not recorded as such. Argentina's long-standing opposition to abortion had been confirmed in the constitutional reform of 1999. It was still classified as a criminal offence and the State party wished to protect the right to life from conception. Some exceptions were provided for in the Penal Code and since abortion in those cases was not punishable, there was no need for judicial action. However, frequent applications were made to the courts to authorize terminations not covered by those exceptions.

32. Mr. ZAFFARONI (Argentina) acknowledged that the information contained in the report on pre-trial detention gave rise to confusion. One of the reasons was that in the text of the Penal Code no distinction was drawn between the principal and the accessory. The general rule was to try not to order pre-trial detention for persons charged with offences carrying sentences of less than eight years. Pre-trial detention could not be extended in the following circumstances: when the accused had already served the maximum penalty for the offence with which he was charged; when the penalty requested by the prosecution had been served; when the penalty imposed by a non-enforceable sentence had been served; when the accused had served a period which, had he been convicted, would have allowed for his conditional release, provided that the prison regulations had been observed.

33. In response to Ms. Chanet, he said that the compatibility of the presumption of innocence with pre-trial detention was a worldwide problem which he reckoned would never be resolved. In all legal systems, inevitably and to varying degrees, pre-trial detention became a form of preliminary sentence, unless it was for the purpose of preventing further crimes or the elimination of evidence. He acknowledged that the Argentine Penal Code did undermine the presumption of innocence and that the situation could be improved on. Although the Civil Code, the Penal Code and the Commercial Code were applicable throughout the country, each province had its own code of penal procedure. If necessary, federal legislation could be enforced in order to take coercive and punitive measures against provinces which applied excessively long periods of pre-trial detention. The criterion followed, which was binding on all provinces, was that after two years of detention each extra day served by the detainee counted as two days.

34. In response to comments about the comparative numbers of untried and convicted prisoners, he had replied that figures for Argentina were fairly average by Latin American standards. Of course, he was not proud of the fact and recognized that much needed to be done in order to ameliorate the situation.

35. Ms. LAFERRIERE (Argentina), providing information on prisons, said that the Committee had been furnished with statistics on the numbers of prisoners and corresponding shortage of space in different prisons in Argentina. Overcrowding was a major problem and government policy to tackle it included a new prison building plan, which was already under way. Approximately 11,500 places would be created as a result, including 3,000 for prisoners currently living in overcrowded conditions and 6,000 for those whose present quarters had been deemed highly unsatisfactory or needed major repairs. Two new prisons had already been built in the Buenos Aires area, each with a capacity of 1,800. Advantage had been taken of the closure of older prisons to rehouse prisoners in low, medium and maximum-security facilities and to separate juveniles from adults.

36. In order to create a new prison culture, a standing commission had been set up comprising members of prison authorities and the criminal police department to monitor prison conditions and to deal with complaints from inmates. A system of spot checks had also been organized not only for the above-mentioned purposes but also to supervise staff. As a result of such checks some 300 prison warders had been suspended for a variety of reasons, including allegations of corruption, which were currently under investigation. The success of such efforts varied, since recommendations were not always followed up; nonetheless, with the new system of cross-checks greater transparency and supervision of prison conditions were guaranteed.

37. In response to the questions about the role of the Procurator for Prisons, she said that the office had been established by Executive Decree in 1993 with the aim of appointing an independent body to investigate individual or joint complaints of violations of their human rights by inmates of both federal and provincial prisons. The Procurator's role was purely investigatory and he played no part in actual prison management. His task was to prepare reports and make recommendations for the cessation of the practices complained of. Emphasis was laid on joint activities by all the bodies involved in dealing with convicted and untried prisoners, with a view to ensuring that their rights were protected. Within the Ministry of Justice, a pamphlet was being drafted to ensure that any person entering prison was aware of his rights and obligations and of the procedure for forwarding complaints to the Ministry or the Procurator's Office.

38. Mr. DESPOUY (Argentina), replying to Mr. Yalden's question about the functions of the Ombudsman, said the Ombudsman was an important, independent official appointed by and reporting to Parliament and endowed with certain powers in regard to human rights in general, not only those set forth in the Constitution but also those deriving from all the international instruments to which Argentina was a party. He had the power to carry out investigations and to make recommendations, which were passed on to the competent judicial or administrative authorities. His recommendations had considerable weight and were generally acted on. His mandate covered the whole of the country, although the provinces could also appoint their own ombudsmen. It was difficult to say in what area his actions had been most effective, but detailed information on his activities was available and could be supplied if so desired.

39. Mr. ZAFFARONI (Argentina), replying to questions about torture, acknowledged that paragraph 65 of the report was rather clumsily worded and might give the impression that public officials committing acts of torture were simply abusing their authority. In fact, torture must play no part in the activities of public officials. There was no systematic use of torture in Argentina and the perpetration of such acts did not lie within the powers of the police. Such instances as did occur were usually where a prisoner was being held incommunicado. That could only be done on the basis of a warrant from the court and for a maximum of 48 hours, with the possibility of extension for a further 24 hours on a separate warrant. A prisoner could not be prevented from having contact with a lawyer before making a statement. Refusal to make a statement could not be used against him. Nor could anything a prisoner said to a police officer or administration official without the presence of a lawyer be used in evidence. The investigating magistrate, the public prosecutor and defence counsel acted in concert to ensure that those rules were obeyed.

40. It was significant, from the standpoint of the prevention of torture, that when a prisoner was brought before a court he was no longer in police hands but in those of the prison authorities, who were a quite different body. Much progress had been made in eliminating torture over the past few years. Until recently, the Office of the Federal Public Prosecutor had been under the Ministry of Justice. With the new Constitution of 1994, however, the Office had been placed outside the Executive and enjoyed the same guarantees of independence as the Judiciary. It was headed jointly by the Public Prosecutor and the Ombudsman, with a view to establishing that balance between the opposing parties in a trial which was so important for the safeguarding of human rights. Further preventive measures against torture included special police training in the protection of human rights and the prevention of discrimination.

41. As far as the prohibition and punishment of torture were concerned, the police in Argentina, unlike certain other countries, enjoyed no special protection and were liable to prosecution in the ordinary courts. There were 24 police authorities in the nation as a whole, whose powers varied from province to province. The Government was taking steps to secure uniformity but it was not always successful. Situations could occasionally arise involving serious violations of human rights, in which case action could be taken in the form of "provincial intervention". That was a very serious matter, involving a high cost to the province concerned in terms of self-government. The province of Corrientes was currently the subject of such intervention. He could give the Committee a long list of cases involving police officers accused of torture and human rights violations who were now being tried in that province. The provincial executive, legislature and judiciary had all been taken over so that the Federal Government could ensure the implementation of the Covenant. That was an exceptional measure which could be taken only when warranted by extreme circumstances.

42. The CHAIRPERSON invited the delegation to answer the remaining questions on the list of issues and the additional questions asked by members of the Committee.

43. Ms. LAFERRIERE (Argentina) said that the answer to question 18 was that separate premises had indeed been made available for the detention of young offenders. A table had been provided showing the number of facilities for young adults. She noted that 375 young adults were currently detained in the federal prison system.

44. Mr. ZAFFARONI (Argentina), replying to question 19, said that the rights of aliens were defined in the Constitution and in the provisions of the Immigration Act. The need for a new act had been recognized by the Executive and the relevant congressional committees. Consideration had even been given to the possibility of amnesty for offences, and a congressional committee was currently holding a seminar on that question. As part of the effort to combat discrimination, plans were being made for a free advisory service for aliens. It was hoped that a new act could be adopted in the next few months making immigration procedures simple and accessible, and avoiding the need for amnesty, which would be very costly to administer.

45. In response to question 20 on the independence of the judiciary, he said that improvements had been made since 1994 in the system whereby judges were appointed. They could not be removed from their posts save for misconduct and then only after investigation by the Judicial Council. Since 1994, judges must be appointed from a short list resulting from a competitive examination administered by the Council. Only the judges of the Supreme Court were outside that system and could be removed by Congress. It was expected that, by instituting a system of competitive examination, the standard of the federal judiciary would rise within the next few years. The earlier system, whereby judges were appointed on the proposal of the President with the agreement of the Senate had tended to result in excessively political appointments, the judges proving insufficiently independent. The new system bolstered independence.

46. Mr. DESPOUY (Argentina) said, in reply to question 21, that article 2 of the Constitution, whereby the State maintained a special relationship with the Apostolic Roman Catholic Church, had remained unchanged since 1853. That relationship should be viewed in the context of the fact that the majority of the population were Catholics. However, the

discriminatory clause establishing that the presidency was restricted to Catholics had been removed with the 1994 reform, and currently any Argentine citizen of whatever belief could accede to that office.

47. The right to freedom of worship was generally observed and any complaints in that regard were settled at the local level. For example, in 1996, a Mennonite immigrant community had decided that it wished its children to be educated in the community and therefore had not sent them to the local primary school. The matter had been settled by agreement with the local authorities and a system of home teaching had been authorized. As stated in the report, the system of paid religious holidays had been extended to cover the Jewish and Muslim communities. Under the special regulations governing relationship with the Catholic faith, members of the Catholic clergy could not stand for election. Clerics of other faiths could do so, however. In the budget for 2000, US$ 9,780,000 had been allocated to the Catholic Church. A joint committee consisting of representatives of the various religious communities had been organized within the Ministry for Foreign Affairs and Worship to advise on matters affecting them.

48. Mr. ZAFFARONI (Argentina) said, in response to question 22 and the questions put by Ms. Chanet regarding the principle of equality before the law, that the principle and its implementation were matters of constant concern to the Government. At the previous meeting he had dwelt at length on the action taken in respect of the minorities referred to in the Covenant and other vulnerable groups, and had described the various national institutions established to combat intolerance. Constant contact was maintained with the various foreign communities in the country, and with immigrant groups, disabled persons, indigenous persons, the elderly and so on. The documentation provided gave a detailed picture of the work that was being done and how complaints of discrimination were being dealt with.

49. Mr. DESPOUY (Argentina) said that question 23 related to the follow-up to the Committee's recommendations in regard to individual complaints received under the Optional Protocol. There had been no complaints from Argentina for a great many years, which made it difficult to describe arrangements for follow-up. In the context of the inter-American system of human rights protection, however, it could be said that there was no clear legislation to regulate action in response to the Inter-American Commission on Human Rights. It was planned to organize a seminar on how to deal with follow-up in general and the Committee's participation could be very useful. For example, there was no legislation specifying what would need to be done in the case of a breach of the Covenant with regard to conditions of detention or lack of due process. Under a presidential initiative, a bill was being discussed whereby, if any international body found that not all the guarantees of article 10 of the Covenant had been observed, domestic legislation would be revised to incorporate the provisions of the Covenant automatically.

50. As far as the dissemination of information about the Covenant was concerned, a document had been provided listing all the means of dissemination and describing the education and training provided for public officials, in particular those engaged in law enforcement. The terms of the Covenant were widely disseminated, notably on the occasion of the incorporation of international instruments in the Constitution. Since 1994, copies of all such international instruments were annexed whenever the Constitution was published.

51. The CHAIRPERSON thanked the members of the delegation for their informative, though necessarily brief, replies.

52. Ms. CHANET welcomed the acknowledgement by the delegation in response to her questions about the guarantees referred to in article 9.3, that serious difficulties remained in that regard. As Special Rapporteur on follow-up to the Optional Protocol, she had been interested to hear what was being done to introduce legislation to that end. There were some difficulties that should be avoided and they would need to be discussed in any gathering organized to set up a new system. It was particularly important not to introduce new levels of complexity that would discourage complaints. Regarding the situation of judges, she found the new system to be a sign of progress. It was strange, however, in terms of respect for the independence of judges, that the arrangement under the Judicial Council did not apply to the appointment of judges of the Supreme Court. In her view, the higher the rank of the judge, the greater the need for a divorce from politics. According to the disciplinary measures described, the Council could set up a jury of impeachment. She would be particularly interested to learn what faults had been committed by the three judges who had been removed from their posts in 1998 and 1999 for reasons said to be connected with the exercise of their duties.

53. Mr. WIERUSZEWSKI said he understood that Argentina was in the process of adopting a new adversarial system of criminal procedure. He would be glad of some information as to how the new system was functioning, and in particular how the rights of defence counsel were ensured and equality of arms preserved. He was not fully satisfied with the answers given to question 19. According to paragraph 131 of the report, the Ministry of the Interior had very wide powers regarding the expulsion of foreigners, which in effect amounted to administrative discretion. He would like to know whether there was any effective judicial control, and whether there were any judicial procedures which could suspend an expulsion order. To what extent were aliens who had been granted refugee status guaranteed rights to education and health? The Committee had heard reports of the expression of strongly xenophobic sentiments, in which certain government officials had been involved. What was being done to change that situation and to ensure that the rights of foreigners were respected?

54. There had reportedly been a great deal of intimidation of journalists in recent years, and in 1998 a series of Supreme Court decisions had imposed sanctions on various media organs. Was the Government considering introducing a law covering habeas data? It had been reported that a number of peaceful demonstrations had been broken up by the police and more than 2,000 demonstrators prosecuted. What steps were being taken to guarantee the right of peaceful assembly? Despite those concerns, he believed that Argentina was well on the way to improving its human rights situation, and he wished it all success.

55. Mr. HENKIN commended the delegation for its frank replies and welcomed the progress achieved under the new regime. On the important issue of abortion, which he understood was illegal in Argentina, he would like clarification as to whether exceptions were made in all cases of rape or only in cases of rape of a mentally handicapped person. The delegation had emphasized that the report had been prepared under the previous Government. Did that imply that the new Government would have prepared a different report?

56. A state of "constitutionalism" such as that now said to exist in Argentina normally implied civilian control of the military. Was complete separation of the military from civilian life now implemented as a matter of law, and were civilians no longer tried in military courts? What was the situation with regard to the immunity granted to the military for past offences?

57. Lastly, he recalled a recent instance in which a Spanish judge had applied to have certain Argentine citizens brought to trial in Spain for human rights violations against Spanish nationals in Argentina. What was the attitude of the Government to cooperation in foreign adjudication of human rights violations in Argentina?

58. Ms. GAITAN DE POMBO, referring to the situation of prisoners who had been tried and sentenced under the old regime and had been in prison for many years, asked whether the Government considered that such persons had had access to due process and had a fair trial.

59. Mr. YALDEN associated himself with the question raised by Mr. Wieruszewski concerning expulsion of aliens. Concerning question 21, the Committee had not really received an answer to its question whether discriminatory financing was in violation of article 26. The Committee also needed detailed information on what types of discrimination were or were not permitted, for instance on grounds of age, disability or sexual orientation. While he understood that conducting statistical surveys was expensive, other data were readily available, for example in the annual report to the Ombudsman and in the annual report of the Procurator for Prisons. He would hope to see such data included in future reports.

60. Mr. ANDO said that in its previous concluding observations the Committee had raised questions concerning freedom of expression and association which had not been answered, although the report gave details of relevant legal provisions. Had any cases of intimidation of journalists or trade unionists arisen recently? Secondly, how was the statement in paragraph 157 of the report, that any act exceeding the limits imposed by good faith, morality and decency was deemed abusive, to be reconciled with article 19.3 of the Covenant?

61. Mr. DESPOUY (Argentina) said he fully agreed with the suggestions made concerning the follow-up to the Committee's recommendations. It had been asked whether there were any internal mechanisms to give effect to a ruling by an international jurisdiction that the State had not observed due process. He recalled a famous case involving an attempted takeover of an army garrison which had resulted in a number of deaths on both sides. The case had first been tried in Argentina and then referred to the Inter-American Commission on Human Rights, which had determined that the provisions of article 8 of the Inter-American Convention on Human Rights had not been observed. After three years, it had been recommended that the persons convicted be pardoned, but that recommendation had not been complied with. The new Government had made efforts to find a solution, and had proposed that amendments be made to the law in order to comply with the Commission's decision, but Congress had refused. Notwithstanding, the Government, with the support of the President, had introduced a bill providing expressly for dual instance. Under that bill, all cases in which there had been flaws in due process at one instance would be subject to review by a higher instance. In addition, the bill required that national legislation should be in compliance with all treaties to which Argentina was a party.

62. In reply to the question concerning the jurisdiction of foreign courts over Argentinian nationals, he said that the previous Administration had refused all requests for cooperation in that respect. However, the new Government was considering the possibility of such cooperation, although its extent had not yet been decided. In cases of Argentinian citizens tried abroad, the Government had said it would not challenge the competence of foreign courts and would limit itself to providing consular assistance. It was hoped that clear guidelines regarding cooperation would soon be developed.

63. In reply to questions concerning the military, he pointed out that the report covered the situation before 1998; there had been many important developments since. In particular, much progress had been achieved in providing compensation to victims, and high-ranking military figures had apologized for the illegal repression carried out by the armed forces under the previous regime. Though much remained to be done, the presence of the military in civilian life was much less marked than in the past.

64. Mr. ZAFFARONI (Argentina), replying to a question from Ms. Chanet concerning the appointment and removal of judges of the Supreme Court, said it was true that even greater guarantees of political independence were needed for judges of higher instances. However, it was invariably the practice in countries with a constitutional court that appointments to the supreme court did not come within the competence of the judicial council. That practice prevailed in a number of European countries and in the United States. In 1994, an amendment had been made to the law whereby supreme court appointments had to be approved by a two-thirds majority of the Senate. In order to impeach a supreme court judge, a complaint had to be lodged with the Senate by the Chamber of Deputies.

65. Concerning the situation of aliens, he pointed out that the administrative procedures enshrined in the Aliens Act, like all other administrative procedures, were subject to review and amparo. Aliens were guaranteed access to the courts to defend their rights. There were no restrictions on health provision for aliens, and very few complaints in that respect had been received. Education in Argentina was free and, in Buenos Aires at least, was provided even for the children of illegal immigrants up to the age of 18.

66. Regarding expressions of xenophobia, it was true that under the previous Administration certain government officials had tried to blame immigrants from neighbouring countries for law and order problems. That situation was being exploited by certain radio stations and newspapers in Buenos Aires owned by a supporter of the previous Government. Although the situation raised serious problems regarding freedom of expression, the necessary legal measures were being taken to deal with it. One important advance had been made in the area of freedom of expression in that criticism of public officials for the way they carried out their duties no longer constituted the offence of defamation.

67. Under existing law, military courts were not entitled to try civilians for non-military offences. Concerning abortion, his own interpretation of the Penal Code was that abortion for any pregnancy resulting from rape was permissible. However, the courts unfortunately interpreted the Code as covering only cases of pregnancies resulting from the rape of mentally handicapped women.

68. The CHAIRPERSON thanked the delegation for its frankness in responding to questions, and for its acknowledgement that many problems remained to be solved. The Committee welcomed the many advances made in the human rights field and was glad to learn that the grave violations committed under the dictatorship were now being remedied. Argentina set an example to the rest of the continent where interpretation of international treaties was concerned.

69. The delegation had stated that the provisions of the Covenant applied throughout the country, but she had been concerned to hear that the mechanism for enforcement was different in the provinces from that in Buenos Aires. The practice was that the central authorities merely invited or encouraged provincial authorities to meet their human rights commitments, whereas they should have powers to intervene and to enforce implementation of the Covenant's provisions.

70. As she saw it, it was not right that pre-trial detention should as a matter of principle be obligatory for certain offences. Regarding the role of the military, questions raised by members of the Committee concerning certain members of the armed forces who were still in active service and had even been promoted had not been answered: in view of their past record, it was surely not desirable that such persons should still occupy positions of authority. Similarly, the situation regarding victims of torture had not been fully clarified. The Committee needed to know what procedures were in place for such victims to apply for compensation.

71. Abortion was a serious problem in Argentina. It had been reported that very large numbers of illegal abortions were performed every year, and that 40 per cent of cases of maternal mortality resulting from such operations involved adolescents, some as young as 9. The fact that the health or life of the mother was endangered had to be established by court intervention, which meant that doctors were afraid to perform abortions without the authorization of a judge. She understood that pressure was being exerted by the Catholic Church to counter efforts to change that situation. There was also the problem of doctors who violated patient/doctor confidentiality and denounced women who requested abortions, and also the problem of sterilization, which was officially not permitted but nevertheless took place. In that field, Argentina still had a long way to go, not only in terms of legislation but also in terms of changing public attitudes.

72. She again congratulated Argentina on all the progress it had made. Where one country of the continent took the lead in implementing human rights, others would follow.

73. Mr. DESPOUY (Argentina) thanked the Committee for having highlighted areas where efforts needed to be concentrated. Argentina had changed and matured in recent years, and it was a sign of its increased openness that its internal problems could be brought before international bodies such as the Committee for discussion. His Government had the will to maintain and consolidate what had already been achieved and to address new challenges. It looked forward to receiving the Committee's concluding observations and would not fail to act on them.

The meeting rose at 1.15 p.m.