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HUMAN RIGHTS COMMITTEE

Eighty-first session

SUMMARY RECORD OF THE 2197th MEETING

Held at the Palais Wilson, Geneva,  
on Monday, 12 July 2004, at 3 p.m.

Chairperson: Mr. AMOR

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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)

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

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

2. Mr. DEBRULLE (Belgium), introducing Belgium's fourth periodic report (CCPR/C/BEL/2003/4), said that the report was based largely on the Committee's concluding observations on the third periodic report (CCPR/C/79/Add.93) and set forth the administrative, legislative and other action taken to give effect to the Committee's concerns, recommendations and requests. All bodies at the federal and Community level responsible for ensuring respect for the rights set forth in the Covenant had been consulted and closely involved in the preparation of the report. The federal authorities were responsible for questions of criminal, civil and administrative law and national defence; the Communities had exclusive responsibility for, inter alia, cultural affairs, education, the use of languages, and health and welfare policy. The draft report had also been submitted for comment to a number of the country's law faculties and to non-governmental organizations (NGOs) such as Amnesty International and the International Federation for Human Rights. The report had then been published on the web site of the Ministry of Justice (Federal Public Service - Justice).

3. Belgium had ratified Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances on 23 June 2003 and the Federal Parliament had incorporated that principle in Title II of the Constitution on 25 March 2004. When Parliament was reconvened after the summer recess, it would have before it a bill on international mutual legal assistance in criminal matters, one clause of which would allow the Executive to decline a request for assistance from a third State if it failed to secure reliable guarantees that the death penalty would not be imposed.

4. The Council of Ministers was about to adopt a bill on accession to Protocol No. 7 of the European Convention, which added five new rights to those in respect of which Belgium could be called upon to answer to the European Court of Human Rights. They included the principle of ne bis in idem, which was given absolute status in the Protocol.

5. His Government was also contemplating ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Belgium had ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 17 June 2004.

7. The Anti-Discrimination Act of 25 February 2003 partially incorporated European Union Directive 2002/72/EC on equal treatment for men and women in Belgian law and extended its scope to include a ban on direct or indirect gender discrimination in all economic, social, cultural and political activities open to the public. The Institute for the Equality of Men and Women, established by the Act of 16 December 2002, had begun work in February 2004. On 1 July 2004

the Federal Parliament had adopted legislation on the Code of Private International Law, which would enter into force on 1 October 2004. The recent reforms were designed to clarify and standardize the existing regime pertaining, *inter alia*, to marriage. For instance, the dissolution of marriage by repudiation would not be recognized unless certain restrictive conditions, including the wife's consent, were fulfilled. Certain partnerships registered abroad could be assimilated to marriage subject to certain legal conditions, and marriage between persons of the same sex would be authorized in Belgium between foreigners or between Belgians and foreigners, regardless of their nationality, provided that one of the spouses was resident in Belgium.

8. A Department for the Care of Unaccompanied Minors had been established within the Federal Ministry of Justice on 1 May 2004. It would supervise the care of unaccompanied foreign minors who had applied for refugee status in Belgium or had arrived illegally in the country. An international adoption service would shortly be established and the responsibility of the Department of International Mutual Legal Assistance in Civil Matters had been extended, *inter alia*, to deal with parental abduction. A National Commission for Children's Rights would shortly be set up to coordinate the activities of various public and civil-society bodies operating for the protection of children at the federal and Community levels.

9. A department dealing with alimony within the Ministry of Finance would be responsible under certain circumstances for paying advances on alimony and securing the payment of arrears in alimony. An "Estates-General" meeting on the family bringing together all actors dealing with family issues had been held in late 2003 and early 2004. One of the working groups, on families and civil and procedural law, had discussed the feasibility of creating a family division of first-instance courts to deal with all family-law matters, which were currently dispersed among a variety of judicial bodies. A formal proposal to that effect would be introduced by the end of 2004. A broad consensus had been reached in the same working group on the enactment of legislation on alternate custody of children where parents failed to agree on custody, provided that the interests of the child were best served by such a decision.

10. The Act of 19 March 2004 granted the right to vote in local elections to foreigners from non-European Union (EU) countries resident in Belgium, a right enjoyed by EU nationals since 1999. They would not, however, be allowed to stand for election. The Act would be applied for the first time in the local elections to be held in 2006.

11. Protocols had been concluded with certain judicial authorities to address the existing backlog of cases. They provided for increases in judicial personnel, including judges, and the appointment of magistrates to coordinate hearings and prevent cases of hearings being cancelled because one of the parties failed to attend. A database covering the entire legal system to be launched within the coming months would facilitate management of the different stages of legal proceedings.

12. An Act on the European arrest warrant, which replaced extradition between EU member States, had entered into force on 1 January 2004. The arrest warrant would speed up the transfer of wanted persons while safeguarding their due process rights.

13. The Act concerning terrorist offences of 19 December 2003, which had come into force on 1 January 2004, incorporated the EU framework decision of 13 June 2003 in the Belgian Criminal Code under the new title “Terrorist offences”. Such offences were defined as “intentional acts ... which, given their nature or context, may seriously damage a country or an international organization where committed with the aim of: seriously intimidating a population, or unduly compelling a Government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization”. The notion of “terrorist group” was also defined and there was a specific clause dealing with the financing of such groups.

14. An Act concerning cooperation with the International Criminal Court and the ad hoc international criminal tribunals had entered into force on 1 April 2004. Belgium had furthermore acceded to the Council of Europe Convention on Cybercrime and to the Additional Protocol thereto concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

15. Lastly, the Brussels Criminal Court had found four police officers guilty of manslaughter in the Sémira Adamu case. Disciplinary proceedings were under way.

16. The CHAIRPERSON invited the delegation to respond to the Committee’s list of issues (CCPR/C/80/L/BEL).

17. Mr. DEBRULLE (Belgium), replying to question 1 on the right of persons illegally in Belgium to an effective remedy without fear of expulsion, said that where such persons were victims of human trafficking for sexual or commercial exploitation, they could agree to participate in legal proceedings with a view to dismantling the trafficking network and could then be issued with a residence permit. Victims of acts of violence could receive emergency assistance. Where the offence was not related to trafficking, the complainant could invoke his or her claim for damages in respect of the offence in any legal proceedings that might lead to expulsion. A delay could then be granted to enable the person concerned to obtain an effective remedy. Moreover, under article 39 of the new draft Code of Criminal Procedure a complainant could sue for damages in criminal proceedings by registered letter without appearing before an officer of the law. Of course, in all but the first case mentioned, that of victims of trafficking, the complainant could not claim immunity for his or her illegal entry into Belgium.

18. Responding to question 2 on reforms in Belgium designed to punish racist offences, and in particular to impose financial penalties on openly racist or xenophobic political parties, he said that implementing legislation in the form of a Royal Decree was needed to implement article 15 ter of the Act of 4 July 1989 on the limitation and supervision of electoral spending. In its opinion on the draft Royal Decree of 18 April 2002, however, the Council of State had found the wording of article 15 ter to be unduly succinct. A bill designed to remedy that shortcoming had been adopted by Parliament on 12 February 2004. Under the bill, at least one third of the members of the commission responsible for controlling the funding of political parties could file a complaint with the Council of State where it considered that a political grouping was not respecting human rights or was guilty of racist conduct. The Council of State would decide whether the complaint was well-founded. Once the bill was approved by the Senate, a Royal Decree would be adopted with a view to its implementation.

19. With regard to press offences of a racist nature, after two lower-court judgements to the effect that offences committed by three non-profit associations which had financed the Vlaams Blok party could not be considered as falling within the scope of the criminal legislation concerning racist offences, the Court of Cassation, on 18 November 2003, had recalled its settled jurisprudence that it was free to interpret the scope of a political offence narrowly and had therefore concluded that a political party as such was not a political institution. Hence the action of the non-profit associations in question could be characterized as a criminal offence. The Court of Cassation had referred the case back to the Ghent Court of Appeal, which in April 2004 had fined the three associations for breaching the Act of 30 July 1981 concerning acts motivated by racism and xenophobia and for belonging to a group that incited racial discrimination. The Centre for Equal Opportunity and Action to Combat Racism, the anti-racist institution that had sued the three associations, regularly made use of its right to take legal action in cases involving racist offences of all kinds.

20. Turning to question 3 of the list of issues, he said that increasingly effective monitoring mechanisms enabled the State party to gain a greater insight into the nature and extent of domestic and intrafamily violence. A victim survey carried out in 1998 had shown an increase in acts of physical and sexual violence against women of 20 and 38 per cent respectively compared with 1988. The increase could be attributed in part to a series of measures, such as awareness-raising campaigns, taken to encourage victims to report such acts.

21. Efforts were being made to further increase the availability of data on reported cases and convictions. Greater cooperation between the police and health workers, together with specially created reporting procedures, were expected to produce more accurate statistics. Particular emphasis was placed on the relation between the number of cases of domestic violence filed with the courts and actual convictions. According to currently available statistics, the number of complaints resulting in convictions had increased from zero in 1997 to over 500 in 2002.

22. As to the improved protection of victims of domestic violence, recent legislation provided for the removal of the perpetrator from the family home. In May 2004, the Council of Ministers had approved the national action plan 2004-2007 on domestic violence, whose main objectives were outlined in the written replies. The Belgian Equality Institute was entrusted with establishing an interdepartmental working group to coordinate and monitor the action plan. Training would be given to public prosecutors and examining judges on intrafamily violence and the place of the victim in the justice system.

23. Mr. PIJL (Belgium), replying to question 4, said the Standing Committee on the Supervision of Police Services (Standing Committee P) investigated all allegations of acts of violence perpetrated by law enforcement officials while on duty. The Committee not only investigated individual cases, but also monitored the general conduct of police officers in relation to the indictment, interrogation and detention of suspects. So-called "proactive" inquiries included surprise visits to police stations to ensure that the treatment of suspects in police custody was in accordance with the law.

24. Standing Committee P used witnesses, the confrontation of victims and alleged perpetrators, medical records and other evidence to gather detailed information on a case and clarify inconsistencies between accounts given by complainants and law enforcement officers. If the courts found that excessive force had been used by law enforcement personnel, punitive action was taken.

25. In reply to the second part of question 4 on the discrepancy between complaints lodged and actual convictions, he said that half of the complaints lodged against police officers turned out to be unfounded. Judicial proceedings were instituted in the remaining cases, and in 2003 some 12 per cent of all complaints against police officers had resulted in imprisonment or other sanctions. That figure represented a significant increase compared with earlier years.

26. Turning to question 5, he said that the efficiency of internal and external oversight procedures with respect to the police needed to be seen in the context of the ongoing police reform. A new, integrated police force was being established at both the federal and local levels. External monitoring of the police forces was the responsibility of Standing Committee P, while internal supervision at the federal level came under the general inspectorate of the federal and local police. The effectiveness of oversight procedures at the local level could not yet be assessed, since the establishment of local police units was still under way. The independence and effectiveness of Standing Committee P were undisputed. While it was true that the Committee's investigation unit was composed of former law enforcement officials, they enjoyed a special status that guaranteed their independence from the police.

27. Standing Committee P worked in collaboration and shared information with the general inspectorate, whose main role was to oversee the work of the police and ensure its efficiency. The Committee was also in a position to investigate any complaints lodged against the general inspectorate, which served as an additional safeguard against misconduct.

28. The CHAIRPERSON observed that consideration of question 6 and the first part of question 7 would be deferred.

29. Mr. PIJL (Belgium), replying to the second part of question 7, said that Standing Committee P had processed six complaints of excessive use of force by law enforcement officials during the transfer, expulsion or repatriation of foreigners. On the basis of 53 scheduled flights and 13 escorted flights monitored in 2003, the general inspectorate had concluded that procedures were in compliance with the relevant norms. The recommendations made by the European Committee for the Prevention of Torture in relation to the excessive use of force had also been complied with.

30. All procedures relating to forced repatriation of foreign nationals were currently under review by the Vermeersch Commission, which had submitted its first report. The work of the Commission was, inter alia, based on recommendations made by the Council of Europe's High Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders. The Vermeersch Commission had issued a series of recommendations, including the need to improve collaboration between the

concerned parties. Preventive measures in countries of origin, problems relating to particularly vulnerable groups such as families, unaccompanied minors and pregnant women, and better monitoring of the relevant bodies were among issues to be discussed in the Commission's final report due in September 2004.

31. Mr. DEBRULLE (Belgium) added that the Vermeersch Commission comprised experts from various backgrounds. Its reports were vetted by NGOs, which was a clear indication of his Government's commitment to an active dialogue with civil society on the matter.

32. Mr. PIJL (Belgium), addressing the third part of question 7, said that the ministerial decision of 11 April 2000 referred to in the periodic report was currently under review by the Vermeersch Commission and was likely to be replaced by a Royal Decree. It was therefore unnecessary to dwell on its content.

33. Moving on to question 8, he said that 84 border controllers and escorts were currently responsible for accompanying aliens in the process that led to their expulsion and repatriation. The officers were monitored regularly by the general inspectorate, which had concluded in 2003 that there were no reasonable grounds for claiming that misconduct had occurred.

34. Mr. DEBRULLE (Belgium), answering the first part of question 9, said that his Government considered the eradication of slavery and forced labour a priority. Measures had been taken to improve the protection of victims and to evaluate the nature and extent of those phenomena. Legislation was currently being reviewed with the aim of guaranteeing the protection of all persons from sexual and economic exploitation. Belgium was committed to honouring its international obligations in that regard and had contributed significantly to the Council of Europe's work on formulating a convention on transnational organized crime.

35. Other measures to combat the exploitation of persons included improving legal protection for minors, increasing penalties for the exploitation of minors, and criminalizing the encouragement of minors to engage in begging. Relevant provisions had been incorporated in a bill that had been passed by the Council of Ministers at its second reading.

36. Mr. PIJL (Belgium), in reply to the second part of question 9, pointed out that the report of Standing Committee P mentioned in paragraph 1.5 in the section on article 8 of the periodic report was concerned with trafficking in persons, and in particular with organized illegal immigration, and not with the issue of exploitation.

37. While Belgium was a natural transit country for illegal migration to the United Kingdom, trafficking in persons was an international phenomenon involving the country of origin, the transit countries and the country of destination. Combating the problem therefore exceeded a single country's means and international collaboration was called for. His Government closely cooperated with the United Kingdom in the matter and the presence of British police and liaison officers on Belgian territory constituted part of an effort to identify the problem and stem illegal migration. Efforts were also made to ensure cooperation between federal and local police units within Belgium. Information sharing, research into risk analysis and studies on appropriate future measures were crucial.

38. Mr. DE VULDER (Belgium), addressing question 10 of the list of issues, said that the Federal Agency for the Reception of Asylum-Seekers, in cooperation with local communities, had made special arrangements for the reception of unaccompanied minors. An agreement with the Communities on the reception of asylum-seekers was to be concluded in the near future.

39. The CHAIRPERSON said he took it that the delegation wished to discuss the issue of guardianship of unaccompanied minors when addressing question 23.

40. Mr. DEBRULLE (Belgium), turning to question 11, said that pre-trial detention in his country did not exceed 24 hours. Owing to such time constraints, a balance must be struck between the right of the detainee to the services of a lawyer and the need to interrogate the suspect with a view to obtaining information on the alleged offence. Access to a doctor was granted if necessary, although the suspect's right to choose a doctor was not always guaranteed. The possibility of enshrining that right in legislation would be discussed in Parliament in the context of the reform of the Code of Criminal Procedure.

41. Mr. DE VULDER (Belgium) emphasized that people who were detained in transit zones were usually not asylum-seekers, but people who could not be allowed to enter the country pursuant to the Schengen agreement. Such persons had been informed of the refoulement decision and been detained because of the risk that they would abscond. Appeals against the decision to deprive such a person of his or her liberty were not taken by the same body as appeals against the decision on refoulement; therefore, even if the decision to deprive a person of his or her liberty was overruled, that person would still not have the right of access to Belgian territory or to the Schengen area. All persons held in transit zones could leave at any time by returning to their own country or to a third country; the cost of their return was charged to the airline, not to the person themselves. Persons detained in transit zones were not left without assistance, but received regular visits from the social service department of the federal police. The Centre for Equal Opportunity and Action to Combat Racism also had access to transit zones, as did church personnel; persons held there were provided with three meals a day.

42. The CHAIRPERSON said that he had been surprised to hear the delegation refer to "repudiation", which was a word that had several connotations. Given that the delegation has said that repudiation would be valid only if certain requirements, including the consent of the persons in question, were fulfilled, he wondered whether it was indeed Islamic repudiation that was meant, or simply divorce by mutual consent. He was particularly concerned because there was Belgian jurisprudence to the effect that recourse to certain foreign laws or practices was not considered to be a violation of Belgian public order.

43. Ms. CHANET commended the delegation for its report and written replies; she noted that some of the concerns that the Committee had expressed six years previously when it had considered Belgium's third periodic report had still not been resolved, although there had been some improvement. She welcomed the various bills that had been referred to, but noted that bills were liable to be amended. She requested further details about the degree to which the proposed amendments to the Code of Criminal Procedure with regard to custodial detention were in line with the Covenant. She also questioned the severe restriction on the hours when detainees were permitted access to a lawyer, which seemed to be for the convenience of the authorities, not for the protection of detainees. With regard to the right of detainees to see a doctor, she explained that the real issue was not whether detainees were allowed to see the doctor of their choosing,



but that such access should be systematic, in order that it might act as a safeguard against ill-treatment. Despite the risk that a suspect might use a telephone call to convey a coded message, she felt that detainees should be allowed to make such calls in person. She hoped that the proposed amendments to the Code of Criminal Procedure would take those issues into account.

44. With regard to the Terrorism Act of 19 December 2003, she wished to know how terrorism was defined under Belgian law, and whether the implementation of article 15 of the Covenant in its entirety was provided for. She was not satisfied that the composition of Standing Committee P could ensure its independence, and requested more information regarding its independence and on how its powers might be expanded.

45. Although it was generally accepted that Belgian legislation had in the past gone too far in the direction of universal competence, she hoped that the new act that would put an end to that situation would not go too far in the other direction; she would appreciate an explanation of how the Government had arrived at that point. She would also appreciate information regarding the outcome of a number of complaints in which victims had been granted a remedy through the Belgian courts, since such remedy, once offered, must be effective.

46. Mr. KHALIL asked whether immigrants whose situation was illegal and who sought a remedy for a violation continued to be at risk of detention. He wished to know whether the three hypothetical cases described by the delegation corresponded to legal categories, or whether the decision to proceed with deportation came down to the exercise of discretionary powers; in the third case, it appeared that the complainant might easily be deported and be expected to be able to obtain justice by correspondence, which he did not think sufficient. He asked whether it was still possible for illegal immigrants to have their situation regularized under the Act of 18 December 1980, if there were acceptable reasons for not following the appropriate procedure; and whether Belgium might reconsider its approach to illegal immigrants.

47. He noted with satisfaction the ratification of a number of international instruments, the existence of a specific training programme for judges on action to combat racism and xenophobia, and the adoption of a new Act on computer crime, which might also be applicable to racist offences. He understood that Internet service providers could now be held responsible for any racist content located on their servers. However, he hoped that immigrants were no longer blamed in the media for high unemployment or crime rates. The right of non-European residents to participate in communal elections was a welcome development; he wondered whether they also had the right to participate in local elections.

48. The report referred to a bill to amend the Act of 15 February 1993 setting up the Centre for Equal Opportunity and Action to Combat Racism; the key features of that bill were the inclusion of a definition of discrimination, the prohibition of direct and indirect discrimination, and a provision under civil law allowing victims to bring swift civil proceedings. With regard to the burden of proof in such proceedings, he asked the delegation to explain what the "situation test" comprised, and wished to know whether the Royal Decree that defined the procedures for execution of that test had been adopted. He hoped that the jurisprudential case detailed by the delegation and others like it would eventually prove an effective deterrent in combating racism and xenophobia.

49. He requested clarification of the situation of the Act of 12 February 1999 regarding the financing of political parties that openly advocated racist views and asked whether there was any prospect of it being implemented in the near future.

50. Mr. YALDEN said it was his impression that many cases of violence against women either went unreported or did not result in a criminal conviction; he asked the delegation to comment and to indicate what plans, if any, the Belgian authorities had to remedy that situation. Submissions by NGOs indicated that police violence was perhaps the most serious problem: the relevant supervisory bodies were either not independent or were unwilling to recognize an element of racist behaviour by the police. There were worrying reports about the use of excessive force in the context of deportations. Although he appreciated that some such complaints would necessarily be unfounded, he detected a degree of nervousness on the part of the Belgian authorities with regard to police behaviour, which was perhaps an indication that they were aware of a problem. It was important not only that there was independence, but that there was the appearance of independence. He did not see how Standing Committee P could be genuinely independent if more than half of its members came from the police force and would subsequently resume their police careers. Greater efforts must be made to avert the use of excessive force during deportation. The treatment of a person who was going to be deported against his will was very difficult, and he suggested that emphasis be placed on the training of those involved.

51. He asked for clarification of the role of the Belgian ombudsman, who was not mentioned in the report, with regard to the monitoring and implementation of human rights legislation and regulations. He noted that the Committee on Economic, Social and Cultural Rights had expressed concern about the absence of a national human rights commission: if the Belgian Government believed that the functions of the ombudsman were already fulfilled by the Centre for Equal Opportunity and Action to Combat Racism, he would like to know more about the work of that Centre; if that was not the case, he wished to know whether the Government had any plans to establish a national human rights commission in the future.

52. Ms. WEDGWOOD, referring to trafficking in persons, asked whether the Government had considered implementing an active witness protection programme, since many witnesses required new identities and a sustained income, as well as residence permits. She wondered whether consideration had been given to the use of proactive methods of investigation, such as undercover operations including posing as traffickers in persons, since victims often took a long time to lodge complaints, if they did so at all.

53. The existence of a national human rights commission would mean that Belgium had a national constituency for acting upon the recommendations of such bodies as the Franchimont Commission. She was surprised that that Commission had recommended such limited hours for the availability of legal assistance to detainees; measures should be taken to extend that period. She wished to know whether, in ordinary criminal cases, police questioning would be suspended within the first 12 to 24 hours if the accused requested a consultation with a lawyer. Clarification was required concerning the treatment of people held in transit zones, since information received from NGOs contradicted that received from the State party. If the conditions were indeed as poor as reported by NGOs, improvements should be made.

54. As to the courts martial for troops involved in the United Nations operation in Somalia, she had been astonished to hear that military personnel who had committed atrocities against children had received light sentences or, in some cases, been acquitted. She urged the Government to pursue the remaining cases with vigour. Although Belgium's law on universal jurisdiction had been unique, the results of the inquiries carried out should be made widely available to other countries for purposes of continuity.

55. Mr. LALLAH wished to know whether the European arrest warrant would bypass any of the guarantees provided by the Covenant and, if so, which ones. Universal jurisdiction should not be restricted to Belgian nationals and long-term foreign residents since that would render several principles of the Covenant inaccessible to others, such as refugees. He asked to what extent refugees were discriminated against in that regard, and what had become of victims, such as those from Burma, who had been unable to seek redress anywhere other than in Belgium.

56. Urgent legislative and executive measures were required to prevent the subsidizing of xenophobic political parties at elections, a practice which constituted a violation of article 20, paragraph 2, of the Covenant. Regarding detention in transit zones, the Committee had received information that it was not only people attempting to enter the country without visas who were held in such zones, but also those who had in fact been granted freedom to stay in the country by the Council Chamber, as had been the case with one Guinean national who had been locked in a transit lounge by the Aliens Office and released only after considerable pressure from external sources. He asked whether persons held in transit zones had access to legal assistance at their request, financial support and the possibility of receiving visits.

57. Mr. KÄLIN, referring to the allegations of ill-treatment of Somalis by Belgian military personnel, asked whether Belgium recognized its duty to apply the principles of the Covenant when abroad, for example when participating in United Nations or NATO missions.

58. Sir Nigel RODLEY said that Belgium should be commended for having ratified the second Optional Protocol to the Covenant. Measures should be taken to ensure that seeking satisfactory assurances when sending persons to a country where they could face the death penalty was obligatory, rather than simply optional.

59. Ms. BERRENDORF (Belgium), responding to question 13 of the list of issues, said that Belgium had been facing the problem of overcrowded prisons for several years. Her Government was aware that many issues relating to the penal system needed to be dealt with in order to end overcrowding without resorting to building more prisons: a balance needed to be struck between responding to the expectations of the public concerning security, and using different types of punishment in order to reserve deprivation of liberty for the most serious offences. Efforts must be made to ensure that sentences handed down by judges were enforced, since in the past there had been cases where it had not been possible to execute sentences, a fact which discredited the working of the criminal justice system. In the context of overcrowding, it was also important to consider how to execute sentences in a humane and effective manner.

60. Regarding the increase in pre-trial detention, draft laws currently in the early stages of parliamentary discussion would, inter alia, increase the authority granted to investigating judges, reduce the procedural requirements surrounding pre-trial detention, and expand controls over long-term criminal investigations. There could be several reasons for the rise in the number of

long prison sentences: increased severity on the part of judges, an increase in the seriousness and number of offences or insufficient preventive measures. The Government was aware that the increase in the length of prison sentences was having a negative effect on the problem of prison overcrowding. It was not common practice to grant parole in Belgium, but an increasing number of remand prisoners were being granted conditional release. The Holsters Commission had recommended the establishment of a court for the enforcement of sentences to deal with the release of prisoners. That would be a positive step, but measures must be taken to ensure that the increased procedural requirements did not lead to a longer period of detention.

61. Regarding alternative forms of punishment, the use of electronic tagging was currently limited due to the nature of sentences. However, a bill was being discussed which would aim to develop the use of tagging as an independent form of punishment for offences that currently carried a sentence of less than three years' deprivation of liberty. Preliminary discussions had also recently begun concerning the payment of fines and imprisonment in default.

62. Turning to question 14, she said that considerable progress had been made regarding the legal status of detainees. Discussions in Parliament regarding the bill prepared by the Dupont Commission were at an advanced stage, and the Government hoped to have passed the law by the end of the year, thus providing a precise and constructive legal framework within which prison service personnel could work.

63. Concerning question 15, she said there were three categories of detainees to be considered: first, those who were mentally unstable and not in control of their behaviour (such offenders were interned, rather than sentenced); secondly, detainees manifesting psychiatric problems while in detention, whose numbers had increased significantly over recent years; and thirdly, those who, although mentally unstable, were judged to be in control of their behaviour and were thus imprisoned rather than interned. Unfortunately there were insufficient places in the two social protection institutions in French-speaking Belgium, and there was a shortage of psychiatric staff. There was also a lack of social protection institutions in Flemish-speaking Belgium, and a project was currently under way to build a new institution for 400 people. In Flanders, internees not placed in private institutions were accommodated in psychiatric wings in prisons where conditions were poor and health-care facilities were deficient. There were even cases of internees being detained with other prisoners due to the lack of psychiatric care facilities. The Government was aware that measures must be taken and emphasis must be placed on the care aspect of the problem, rather than on security. Further information relating to questions 13, 14 and 15 could be found in the written replies that her delegation had submitted to the Committee.

64. Mr. LEMMENS (Belgium), replying to question 16, said that the Individual Complaints Board had become operational in October 2003 and investigated complaints lodged by aliens concerning detention conditions in centres run by the Aliens Office. Such complaints must be lodged within a period of five days for the Board to be able to collect the maximum amount of evidence for the investigation as quickly as possible. It was not the aim of his Government to create a recourse against the rulings of the Council Chamber, Justice Committee and the Council of State.

65. Regarding question 17, he pointed out that the regulations imposed by the Aliens Office did not apply to the INAD centre since the centre was located in a transit zone. However, the internal regulations of the INAD centre did not differ greatly from those of other centres for the detention of aliens, since they were based on the same Royal Decree. All aliens held in the INAD centre received written notification of the reasons for their detention. They were granted the opportunity to telephone a lawyer and their consulate or embassy free of charge. Under the airport's internal regulations, meetings with lawyers must be held in the airport police facilities, and not within the INAD centre itself. The centre did not have its own medical service, but health care for detainees was guaranteed by the airport medical services. In accordance with transit zone regulations, detainees were not permitted visits by family members or friends. For legal reasons the Individual Complaints Board could not receive complaints from detainees held in the INAD centre, which was different from other Aliens Office centres in that it was intended to accommodate persons denied access to the Schengen area. Further information on questions 16 and 17 could be found in the written replies that had been submitted to the Committee.

The meeting rose at 6 p.m.