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Sixtieth session

SUMMARY RECORD OF THE 1597th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 July 1997, at 10 a.m.

Chairman: Mr. BHAGWATI

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GE.97-17454 (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 France (CCPR/C/76/Add.7)

1. At the invitation of the Chairman, Mr. Perrin de Brichambaut, Mr. Bernard, Mr. Faugère, Mr. Avel, Mr. Charpentier, Mrs. Giudicelli, Mrs. Doublet, Mrs. de Calan, Mr. Lefeuvre, Mr. Sévère-Jolivet, Mr. Lagèze, Mr. de Belay, Mr. Morize-Rabaux, Mr. Nedelec and Mrs. Paradas-Bouveau (France) took places at the Committee table.

2. The CHAIRMAN said that the Committee was particularly pleased to welcome representatives of the State party which had appointed as one of its members such a distinguished judge, jurist and scholar in human rights law as Mrs. Christine Chanet, its current Chairman and the first woman to preside over its affairs. He recapitulated the procedure followed in considering reports submitted by States parties under article 40 of the Covenant and invited the head of the French delegation to make an introductory statement.

3. Mr. PERRIN de BRICHAMBAUT (France), underlining the importance that France attached to the present exercise, said that the third periodic report before the Committee (CCPR/C/76/Add.7) outlined the major changes which had occurred since the submission of the second report in French law and its application as they affected the protection of the rights set out in the Covenant. In his introduction, he would address three basic themes: de jure and de facto recognition of the equal dignity of individuals in law and in practice; the status of aliens choosing to reside in France; and improvements in the legal and prison systems.

4. Constantly striving to improve the implementation of its three founding principles of liberty, equality and fraternity, and to extend to everyone the protection of the law, the French Republic was keenly conscious of the impact of the latest developments in science and technology on human beings at every stage of their existence, from the cradle to the grave. Indeed, the right to life had never before been the subject of such attention and concern. The National Advisory Committee on Biomedical Ethics, an independent body set up in 1983, was studying a great number of related issues, with a mandate to set its findings and recommendations before the authorities.

5. In 1994 three laws fundamental to the protection of human rights in the biomedical domain had been enacted: one concerning the processing of personal data for the purpose of health research, which had supplemented the earlier Act of 1978 on electronic data processing, data files and freedoms; the second relating to respect for the human body; and the third regulating the donation and utilization of human substances and organs, medical assistance, procreation-related issues, antenatal diagnoses and genetic manipulation.

6. France had contributed the experience gained during the drafting of that legislation to the deliberations of the Council of Europe on the landmark Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Bio-medicine, adopted in

November 1996. More recently, at the request of the President of the Republic, the National Committee on Ethics had given its views on the subject of human reproductive cloning, and France was active in the European forums that were discussing that vital matter.

7. Turning to the broader issue of the rights of the individual, he recalled the guarantees set forth in article 1 of the French Constitution, which were backed by article 8 of the Civil Code. Complete equality between men and women had been a long-standing objective, but since the early 1980s, a great deal of progress had been made, and he listed some of the successes achieved in both the private and public domains through new legislation. Action had also been taken to eliminate residual discrimination against women, to eradicate conjugal violence and to criminalize sexual harassment, including in the workplace. Since October 1995, a watchdog body had been monitoring parity between men and women, both in France and abroad, carrying out public information activities and advising the authorities on related issues.

8. More generally, the prohibition of all behaviour that ran counter to the established principle of equality before the law or violated individual dignity was not just a matter for the lawmaker. It was incumbent on all citizens to respect the right to be different, and a number of laws to help them do so had been enacted, notably as a means of combating all forms of racism and discrimination on any other grounds. The revised Penal Code of 1994 had extended the scope of protection against discrimination since penalties could now be imposed for discrimination against not only individuals but also legal entities, and discrimination on grounds of political opinion or trade union membership. That demonstrated France's commitment to the denunciation and repression of all ideologies which offended human dignity or denied the equal value of each individual. Only the preservation of individual dignity without distinction of origin or status could guarantee harmonious coexistence between the various communities and promote the integration of foreigners.

9. As to the status of aliens in France, the basic considerations which determined national policy in that regard were: the need to control immigration, which formed part of the country's history and contributed to its wealth and influence but could not be allowed to continue unchecked; and the need to respect fundamental human rights. He reviewed the most recent legislation and jurisprudence relating to immigration, designed to be as protective of the fundamental rights and freedoms of aliens on French soil and their families as they were repressive of clandestine or fraudulent entry into the country. The Government which had come to power after the elections of June 1997 was committed to building on the progress of the past decade, and more especially to resolving various problems that had arisen in connection with the application of the new laws; its intention was to be firm and at the same time generous, realistic and respectful of the nation's values. Its immigration policy would be based on the twin principles of “republican integration” and joint development with the immigrants' countries of origin. A bill would be submitted to Parliament in the autumn of the current year, and the whole body of legislation relating to nationality would be reviewed. In the meantime, procedures had been set in motion to regularize the situation of certain categories of aliens illegally present in France.

10. Concerning recent improvements in the judicial and prison systems, he noted with satisfaction that French courts were referring increasingly to the Covenant and to the standards which it embodied. Since the submission of the second periodic report, a great deal of legal reform had been undertaken, both in the domain of administrative law and in the fields covered by the Penal Code, whose overall philosophy, dating back to the early nineteenth century, had been thoroughly overhauled between 1992 and 1994. The revised Code, which established some important new concepts, including those of the criminal responsibility of legal persons and deliberately endangering others, had secured virtually unanimous approval in Parliament as a unique and clear instrument expressing the values and responding to the requirements of modern times.

11. The Code of Criminal Procedure had also been reformed, with the same goals of improved administration of criminal justice and the strengthening of guarantees for suspected persons and claimants for criminal indemnification. He described new limitations on pre-trial detention, notably of minors, and measures designed to expedite appeal procedures, to further consolidate the principle of the presumption of innocence, to establish greater equality between the prosecution and the defence at the pre-trial stage, and - in general - to protect the rights of suspects and accused persons and to help injured parties to obtain justice. He further mentioned numerous recent innovations relating to the imposition, substitution and serving of sentences.

12. Since 1995, steps had been taken to make increased public funds available for improving conditions of detention and to reduce overcrowding in prisons. As at 1 January 1997, the total prison population, housed in 187 establishments, had been just over 54,000 of whom 22,600 had been awaiting trial. The rate of occupancy - 109 per cent - marked a notable decrease in comparison with earlier years. Legislation had been enacted in 1994 to integrate the prison population and their dependants into the general system of public health care. In 1996, steps had been taken to harmonize disciplinary procedures within the prison system, in accordance with the jurisprudence of the European Court of Human Rights and the Council of Europe recommendation on prison regulations. The basic aim was to protect the rights of prisoners, notably by establishing a scale of penalties for various categories of offence and by making provision for appeal against such punishment.

13. Time constraints had prevented him from giving more than a rapid overview of reforms already completed or under way in areas covered by the Covenant. Other measures had been set in motion or announced by the Prime Minister in his general policy statement of 19 June 1997. They related, inter alia, to the modification of the organizational structure of the judiciary, the reinstatement of the ius soli as a criterion for obtaining nationality, the launching of a major plan to combat violence in schools and disadvantaged areas, the establishment of an independent body to monitor police ethics, the creation of a health protection agency, and lastly, the automatic entry of each citizen on the electoral roll upon attaining his or her majority.

14. His delegation would not presume to claim that France was irreproachable or exemplary. It had merely endeavoured to review some of the things done in the past few years to confirm the existence of civil and political rights and to facilitate their enjoyment, both in the spirit of the Covenant and in the tradition of the French Republic. In his policy statement, the Prime Minister had undertaken to review attentively all the international human rights instruments to which France was not yet a party, with a view to accession. That was a measure of the commitment to human rights which his delegation would attempt to demonstrate further in its replies to the Committee's questions.

15. The CHAIRMAN invited the delegation of France to answer the questions contained in part I of the list of issues (M/CCPR/C/60/Q/FRA/2).

16. Mr. CHARPENTIER (France), replying to question 1, said that French law on asylum was based on the preamble to the Constitution of 1958, the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees. The Act of 22 July 1952 entrusted the Office for the Protection of Refugees and Stateless Persons (OFPRA) and the Refugee Assistance Commission with responsibility for examining applications for refugee status. OFPRA was a public independent body under the Ministry of Foreign Affairs which was competent to grant refugee status, following individual examination, to persons meeting the definition contained in article 1 of the Convention relating to the Status of Refugees.

17. The procedure required asylum-seekers to deposit their requests with prefectures, which could deny them having access to OFPRA only if competence in fact lay with one of France's European partners under the Schengen Agreement or the Dublin Convention. Investigation of requests was undertaken by OFPRA either in the simplest cases from the files or after interviewing the asylum-seeker. In 1996, some 45 per cent of requests for asylum had been heard orally at OFPRA. It was considered preferable to reserve interviews for persons of particularly sensitive nationalities, also whenever a file revealed an area of uncertainty an interview was obligatory. OFPRA frequently checked with French consulates abroad in order to verify the authenticity of either facts or documents.

18. In the case of refusal, an asylum-seeker had the right to appeal within one month to the Refugee Assistance Commission, which was an administrative body composed of three members, namely, a chairman of State counsellor rank, an assessor who was a member of the governing board of OFPRA and an assessor who was a representative of the Office of the United Nations High Commissioner for Refugees (UNHCR). The composition of the Commission guaranteed its competence and independence, and it was the only example within French jurisdiction of a body on which the representative of an international organization sat with deliberative power. Appeals to the Commission were free of charge and the procedure was adversarial. The services of a counsel and an interpreter were available to asylum-seekers.

19. The maximum time for reaching a decision regarding refugee status varied according to the complexity of the case, but in 90 per cent of cases the examination was completed in less than three months. In more complicated cases, especially those requiring verification with consulates, the period was

longer. The asylum-seeker had the right to stay in France for the entire period required for his case to be considered: he was issued with a residence permit by the prefecture, and in exchange for his request for asylum he was given a receipt valid for three months and renewable.

20. The right to stay in France also meant that he could be housed collectively in a reception centre or, if he chose an individual solution, he was eligible for financial assistance. In the latter case, from the moment he deposited his request with OFPRA, the asylum-seeker received an allowance of about FF 2,000 per month, with an extra sum for dependent children, an integration allowance and social security cover. If he opted for collective housing he did not receive any financial assistance, but was taken care of by France Terre d'Asile, which had a management contract with the State and covered all daily expenses of the asylum-seeker and his family. The reduction of the maximum time for reaching decisions and the fact that in many cases asylum-seekers were trying to live in France for purely economic reasons had led, since 1991, to withdrawal of their right to work in France.

21. Mr. FAUGÈRE (France) described the procedure, governed by an Act of 6 July 1992, for enabling asylum-seekers at the frontier to enter French territory. Competence in that matter was exercised by the Ministry of the Interior. A person seeking admittance to France as an asylum-seeker was kept in a waiting zone during the time needed for his request to be considered. Requests were considered individually and a decision to refuse entry could be taken only if the request was manifestly unfounded. The asylum-seeker was heard by an expert from OFPRA, who gave his opinion on behalf of the Ministry of Foreign Affairs; that opinion was transmitted to the Ministry of the Interior, where the decision was taken. A request was refused, as manifestly unfounded, on only two conditions: if it was outside the scope of the Convention relating to the Status of Refugees in that the person concerned did not invoke fear but rather personal considerations, such as seeking employment or better living conditions; or if it had no credible justification, being lacking in substance and containing insurmountable improbabilities or contradictions. When a request was not judged to be manifestly unfounded, the asylum-seeker was admitted to France and given a safe conduct enabling him to contact a prefecture and embark upon the procedures described by the previous speaker. If the request was judged manifestly unfounded, he was informed of the refusal of entry and could be expelled.

22. During the entire period he was kept in the waiting zone in the international area of the port or airport. The Act of 6 July 1992 had been supplemented by an Act of 27 December 1994, which broadened its scope to cover railway stations handling international traffic. The opening of the Channel tunnel had been an important factor in that law's adoption. The time-limit for keeping an asylum-seeker in the waiting zone when his request for entry had been refused was fixed by law at four days for an administrative decision; that period could be extended by eight days and exceptionally by a further eight days by a judge. From the moment he entered the waiting zone, the asylum-seeker was informed of his rights, if necessary through an interpreter, and when a judge took a decision to extend the time-limit he interviewed the asylum-seeker, if necessary in the presence of a counsel. Foreigners held in waiting zones had right of access to an interpreter, a lawyer and a doctor, and the right to communicate with anyone else of their choice.

Representatives of UNHCR had access to the waiting zone and could have confidential talks with persons held there, who could also be seen by five humanitarian associations accredited under a decree of 1995. In 1996, UNHCR representatives had made 22 visits to waiting zones, and the humanitarian associations had made 31. Annual meetings were now held with representatives of UNHCR and the accredited humanitarian associations. Accommodation conditions in waiting zones were in general deemed to be satisfactory, but a problem had arisen in one of them, namely, the Ibis hotel at Paris-Charles de Gaulle airport, and in full agreement with the humanitarian association involved, the hotel was being completely refurbished.

23. In 1996, 5,646 persons had been placed in waiting zones, and of that figure only 526 had been asylum-seekers. More than half of the asylum-seekers had been admitted to the French territory because their requests had not been manifestly unfounded. The average stay in the waiting zone was two days for asylum-seekers and 30 hours for persons who were not asylum-seekers and were simply not admitted.

24. Turning to question 2 on the list of issues, he said that at first sight no direct impact by the Schengen Agreement could be deduced as far as implementation of articles 12 and 13 of the Covenant was concerned. There had also been no real changes regarding the expulsion of foreigners illegally present in France. Any expulsion undertaken by a State party to the Schengen Agreement could be applied by any other State party. The intention was to prevent multiple requests for asylum being lodged in several States parties, to put a stop to prolonged stays in the Schengen area that were not genuinely backed by asylum requests, and to avoid the phenomenon of asylum-seekers “in orbit”, where States parties might be tempted to send them on from one country to another without taking responsibility for considering their asylum requests. Both the Schengen Agreement and the Dublin Convention placed that responsibility on a single State. The problem did not arise often, but France had asked its partners to take back some 1,000 asylum-seekers. The Schengen Agreement and the Dublin Convention had not resulted in any substantive changes regarding consideration of requests for refugee status.

25. As to the impact of the adoption of recent laws to counter illegal immigration, the laws concerned were dated 24 August and 30 December 1993 and 24 April 1997. They established the requirement to provide a reason for a decision to refuse entry and created the possibility of obtaining a 10-year residence permit almost automatically after three years' legal residence, which gave a person the right to exercise the profession of his choice. French law was favourable to the social integration of foreigners legally present in France; that was demonstrated by the fact that approximately 90,000 such people acquired French nationality every year. The law also maintained the right of appeal to a judge to secure a stay of expulsion.

26. There was very strict monitoring to ensure that due consideration was given to a person's personal and family life, and a government circular of 9 April 1996 contained an instruction to ensure that individual decisions took due account of France's international commitments. There was also monitoring by a judge of the conditions of administrative detention in which

foreigners were held pending expulsion; there was a limit of seven days on detention by judicial decision, and exceptionally a further three days by a second such decision.

27. The laws of 1993 and 1997 were based on the need to ensure that public order had been respected before a residence permit was issued and on a desire to combat fraud, which had led to imposition of the condition that a foreigner must have been married to a French national for at least one year in order to acquire a residence permit by that method. Another new requirement had been that full access to a 10-year residence permit was subject to the continuous residence of the person making the request. A new element in the 1997 law had been that fingerprinting was permitted when a foreigner was found to be present illegally and his papers were withheld. That law had also changed the legal regime for administrative detention by increasing the period in which a judge must take a decision regarding its extension from 24 to 48 hours. That aspect of the law, which was designed to curb illegal immigration more effectively, was offset by a codification of the rules on family ties. There had also been codification of the rules under which illegal foreigners could be repatriated: they could not be sent back to a country where they faced danger. The 1997 law had also prohibited sending sick people back to countries where they could not receive appropriate treatment.

28. The Act of 24 August 1993 had revealed difficulties experienced by certain categories of foreigners in obtaining residence permits, while legally speaking they could not be removed from French territory. They were not fully entitled to a residence permit but at the same time they could not be the subject of an expulsion order. The Act of 24 April 1997 made it possible for them to obtain a one-year residence permit; those chiefly concerned were spouses of French nationals, parents of French children and foreigners who had been living in France, even illegally, for more than 15 years.

29. Of themselves, the recent laws had not had any impact on legal immigrants because they fully respected the fundamental rights provided under the Covenant and the French Constitution. However, some difficulties had arisen. For certain foreigners who had had the right of entry to French territory that right had been curtailed. The numbers of those involved under family reunification had fallen from 33,000 in 1992-1993 to fewer than 14,000 in 1995-1996. There had also been legal conflicts which the law of 24 April 1997 had tried to resolve, but new legislation took some time to enter into practice, notably regarding dealing with foreigners in prefectures, time limits and the fact that foreigners' rights in France had become too complex and difficult to understand. There was an obligation to make them clearer.

30. Measures to expel foreigners illegally present in France had been taken in a relatively small proportion - 30 per cent - of cases, and quite a number of people were continuing to live in France despite the irregularity of their residence status. If that situation continued, other measures would have to be taken. In 1991, the Government had decided to regularize the situation of asylum-seekers, and a similar measure had been taken through a circular of 24 June 1997 by which, following various expressions of support for undocumented foreigners, the Government decided to regularize certain situations it judged to be untenable. One particularly controversial policy

of the previous Government had been that of group expulsions, which had created difficult relations with the countries of emigration. An important role in the immigration debate generally had been played by the National Consultative Commission on Human Rights, which in its opinion of 12 September 1996 on the situation of undocumented foreigners had been of crucial significance in the drafting of the circular of 24 June 1997 regularizing certain situations.

31. The Government's objective was to combine firmness with generosity, keeping a necessary balance, and avoiding excessive severity and the unrealistic opening of borders. It did not accept the principle of “papers for all” but wished to ensure the integration of foreigners, with the provision of a quality public service and a law in harmony with the desire to ensure respect for family life, for differences and for a general openness towards foreigners, especially those wishing to pursue their studies in France. Immigration policy had a police function but also had a social policy dimension and aspects of a joint development policy. There was to be a new law on nationality, and legislation on foreigners' rights in France would be made simpler, clearer and more balanced.

32. Providing information on the extent of racist, xenophobic and anti-Semitic trends and activities, as requested in question 3 of the list of issues, he said that recent statistics showed that the Government's policies were achieving results. While he did not underestimate the difficulties involved in compiling such statistics, it did appear that there had been a decline in acts of racist violence over the past few years: thus, 52 had been recorded in 1991, 35 in 1994, 19 in 1995 and only 9 in 1996. The incidents also seemed to be becoming less serious: although 4 persons had been wounded in 1996 in racist attacks, no deaths had occurred, and the number of incidents involving threats, insults and intimidation had declined from 480 in 1995 to 195 in 1996. The proportion of racist attacks against the North African community in France was likewise declining, although it accounted for the highest proportion (77 per cent) of the total, and was largely concentrated in Paris, Provence and the Côte d'Azur.

33. The same was true for anti-Semitic violence, which seemed to have become a marginal phenomenon. In 1996 only 1 anti-Semitic attack had been recorded, as against 24 in 1991 and 11 in 1994, and cases involving anti-Semitic insults had fallen from 120 in 1994 to 89 in 1996. The policy of actively promoting integration by targeting particular problem neighbourhoods was proving effective.

34. The law provided a very wide range of penalties for racist offences. Thus, the Press Act of 29 July 1990, one of the most important weapons in the struggle against racism, prohibited public incitement to discrimination or racial hatred, to defamation, or to crimes against humanity. The Ministry of the Interior monitored all publications and reported any infringements of that Act. In 1996, seven infringements had been reported, two of which had resulted in prosecution. Under the Act of 10 January 1936, associations or groups having the purpose of inciting hatred or violence on grounds of racial or ethnic origin could be disbanded: the Fédération d'Action Nationale Européenne (FANE) had been dissolved three times under that Act between 1980 and 1987. The Ministry of the Interior also had powers to act under the Act

of 16 July 1989 to ban any publications for young people which had racist aims. In 1996, 30 foreign-language publications containing racist material had been prevented from entering France under a law dating from 1881.

35. The departmental cells for combating racism, xenophobia and anti-Semitism played an important role in prevention. They were composed of government officials, members of the judiciary and representatives of local authorities and voluntary associations, and their task was to record racist phenomena, encourage the amicable settlement of disputes, and initiate educational programmes. In schools, for example, they had organized film shows about racism and cultural activities under the theme of tolerance.

36. The Fund for Social Action for the benefit of Immigrant Workers played a similar role: it had organized a "Week against Racism" in 1995 in more than 1,000 schools. The Fund also promoted initiatives in the field of vocational training, such as the sponsorship scheme launched in 1995 which had assisted 1,000 young people from abroad. Associations working to promote better understanding of the richness of the contribution made by foreigners to French culture were awarded government grants. A large-scale programme for the integration of foreigners into French life had been launched in March 1997, and was to be further developed in the coming months.

37. Further examples of moves against racism were the repeal of the provision whereby only persons with one parent of French nationality were entitled to a grant for the birth of a third child, and a decision by the authorities in Bordeaux that it was illegal to refuse a child of foreign nationality the right to register in school on the grounds that its parents were illegally present in France. Of particular importance was the decision of 13 August 1993 banning any form of classification of persons on the basis of ethnic origin.

38. Mr. AVEL (France), replying to question 4 concerning offences committed by public officials during the period under review, said that in France respect for human rights, as defined in the Declaration of 1789 and confirmed by the Constitution of 1946, was binding on everyone, and more particularly on officials responsible for maintaining public order and upholding the law, who were expected to be above reproach. Such offences had been made subject to more severe penalties under the new Penal Code: thus, acts of violence resulting in the victim being unable to work for more than a week, normally punishable by three years' imprisonment or a fine of 300,000 francs, were now punishable by five years' imprisonment or a fine of 500,000 francs when committed by public officials in the course of their duties.

39. Three years earlier, a new unit had been set up within the Ministry of Justice to formulate general guidelines on the role of the judiciary vis-à-vis the Judicial Police and to coordinate the activities of the latter with those of the prosecution service. The Public Prosecutor's Office was well aware of the seriousness of such offences by public officials, and if they were proven, the perpetrators would be prosecuted and severe penalties called for. Besides penal sanctions, the Code of Criminal Procedure also provided for measures such as withdrawal of entitlements and functions from officers who had failed to meet the professional and moral standards required of the Judicial Police.

40. Providing figures for the period under review, he said that there had been 44 disciplinary punishments, including 3 dismissals, between 1988 and 1997 for violence committed by prison staff against detainees. There had also been two cases of dismissal for sexual relations with detainees. However, most offences were those of striking and wounding: there had been six cases in 1989, two in 1991, eight in 1993 and seven in 1995, all resulting in fines or imprisonment.

41. The procedures for investigating such cases were of two kinds: first, an administrative investigation, followed by disciplinary action if the offence was proved, and secondly, referral of the case to the prosecution service, which would then decide whether or not to initiate criminal proceedings. In 1995, there had been 289 cases concerning 611 law enforcement officials. Of those, 232 had ended in dismissal of proceedings, 21 had led to convictions, and in 43 cases the officials concerned had received criminal convictions as well as administrative penalties. The sentences handed down had ranged from fines to imprisonment. In 1994, a court had given an official one year's suspended sentence for striking and wounding which had led to the death of the person concerned. In 1996, an assize court in Paris had tried an inspector of police for assaulting a detainee who had later died as a result of his injuries. He had been convicted of intentional violence and sentenced to eight years' imprisonment. In Lille, a police officer had been sentenced to 24 months' imprisonment for fatally injuring a person during an arrest, and in Nice in 1995 two police officers had been convicted for indecent assault and abuse of authority and sentenced to two years' imprisonment.

42. Mr. FAUGERE (France), responding to the question on use of weapons by the police (question 5 on the list of issues), pointed out that the use of weapons by police officers was permitted only in self-defence. By a note of 3 July 1995, which was still in force, the Director of the National Police Forces had reminded police officers that self-defence could only be invoked in response to a positive act of aggression or to an urgent need to defend themselves or others, and only if the defence was proportionate to the attack. The note stated that the use of weapons was not called for in situations such as, for example, stopping and questioning persons at roadblocks, when other methods must be used.

43. However, weapons were used in exceptional circumstances. In 1995 they had been used in 367 cases, leading to 30 cases of injury and 8 deaths; in 1996 in 295 cases, causing 7 injuries and 2 deaths. Though it was difficult to draw conclusions over such a short period, it could be said that the use of a weapon by the police was a marginal phenomenon, involving only 1 out of every 130 police officers, and that it resulted in very few cases of injury and even fewer deaths. Between 1990 and 1995, only 29 police officers had been brought before a disciplinary board for unauthorized use of weapons.

44. Mr. de BELAY (France) said that the use of weapons by members of the gendarmerie was regulated by articles 122.4 and 122.5 of the Penal Code. By law, police officers were only entitled to use weapons when subjected to violence, when threatened by armed individuals, when unable to defend their

posts or persons entrusted to their care by any other means, or when resistance was such that it could not be overcome except by force of arms. At all levels of training, emphasis was placed on restraint in the use of force, and particularly on restraint in the use of weapons. Officers were trained to act in strict compliance with the law and to show respect for the human person in the widest possible range of circumstances. They were made aware of their duties and responsibilities as members of a public service, and the training they were given was designed to ensure respect for both individual and public freedoms.

45. The use of firearms by the police and gendarmerie was subject to rulings by the judiciary in all cases of complaint. The Court of Cassation had ruled, on 16 January 1996, that the use of weapons pursuant to the Penal Code was restricted to officers in uniform. In addition to any court proceedings arising from inquiries into complaints, the gendarmerie itself could institute disciplinary proceedings. Other measures, such as circulars issued to army personnel, stressed the need for the greatest care at all times in the use of weapons. For those reasons, it had not been deemed necessary to repeal the Decree of 1943.

46. Mr. LAGEZE (France), referring to question 6 on the list of issues, said that French legislation to deal with acts of terrorism was contained essentially in the new Penal Code of 21 March 1994, whose provisions had largely replaced those of the Code of 9 September 1986. The basic aim was to strike a balance between a requisite degree of deterrence and respect for individual freedoms. Two categories of terrorist act were recognized, covered by articles 421.1 and 421.2 of the Code. The former recognized as terrorism a range of acts such as threats to life, kidnapping, hijacking, the use of explosives, and individual or collective acts aimed at undermining public order and safety. The latter recognized punishable acts of ecological terrorism such as deliberate contamination of land, water and the air on French national territory, including waters under its maritime jurisdiction, with the aim of endangering public health or the environment or paralysing economic activity. Offences deemed to have been acts of terrorism carried more severe penalties than those applicable for similar acts not deemed terrorism; for example, a 30-year sentence for a murder conviction could become a life sentence if a charge of terrorism was involved.

47. Proceedings in cases of alleged terrorism were subject to a special regime which, inter alia, provided that a suspect could be detained without access to a lawyer for 72 hours instead of 24. And hearings took place not in the ordinary courts but before specialist judges. With regard to police powers, further legislation had been adopted since the submission of France's previous periodic report to provide, inter alia, for heavier penalties than those set forth under the Code of 9 September 1986. In addition, as a result of the numerous terrorist acts perpetrated during the summer of 1995, a law enacted on 22 July 1996 had expanded the definition of terrorist acts, which now included the offence of complicity. The provisions of the Code of 9 September 1986 survived only in part, since it had been superseded by the Code of 1994. Police powers in regard to anti-terrorist action differed from

their powers in other respects only in that a person could be detained in custody for four days instead of two, subject to authorization by a magistrate or the president of the court concerned. The person detained must first of all be brought before the authorities and undergo a compulsory medical examination.

48. Under the special regime, premises could in certain cases be searched without the occupier's consent, but only on the express decision of a court or prosecutor. Likewise, search and seizure of papers, for example, could take place between 6 p.m. and 6 a.m., with a judge's special authorization, in cases of serious crimes where there was an immediate risk that evidence could be lost or where further offences could be expected. Such night searches were subject to prior justification and a judge's warrant. It was felt that those provisions implied no derogation from articles 9 and 14 of the Covenant.

49. Mrs. GIUDICELLI (France), referring to question 7, said that during 1996 the prison inspectorate had carried out 101 visits, either for routine inspections or to investigate particular incidents. In addition, there were frequent inspections of health conditions, which could also be carried out at the request of individual detainees; complaints in that regard had risen in 1996 by 11.4 per cent over 1995. The Code of Criminal Procedure also provided for a supervisory committee, chaired by the prefect and composed of local legal and administrative authorities, which met at least once a year, heard detainees' complaints and reported to the Minister of Justice. In addition, visiting magistrates had powers to inspect prisons and give advice. And a progressive policy had been followed, for over 20 years, of integrating prisons more closely within society and allowing outside agencies to play a part in the supervision of prisons.

50. Pursuant to the Code of Criminal Procedure, any detainee could request a confidential hearing before judges and prison inspectors, without the presence of any member of the prison personnel, and was entitled to send sealed mail at all times - a right which was carefully monitored. In 1996, the central administration had received over 5,000 requests from detainees in that way. Detainees also had the right of recourse under ordinary law, before independent administrative authorities, the European Court, the European Commission of Human Rights or, in particular, the ordinary French courts. An increasing number of complaints in that regard had been brought, particularly in disciplinary matters, since the Council of State had accepted the admissibility of recourse in disciplinary cases. Prison personnel were also given training and instruction in prisoners' rights, including a handbook for the use of supervisory staff.

51. Reference to the third periodic report (CCPR/C/76/Add.7) would show the progress made in prison regulations and conditions of detention over the past 20 years. Improvements included the right to personal clothing, access to television and telephone, and preparation for the return to society on release. Detention conditions for minors had also improved.

52. Overcrowding of prisons, although currently 109 per cent as against 150 per cent in 1988, remained a problem. The growth in the number of prisoners, from 31,655 in January 1977 to 54,496 in January 1997, was due not

to the number of prison sentences, which had been stable at around 84,000 since the 1980s, or to pre-trial detention, which had been stable since 1985, but to an increase in the average length of sentences, from 4.3 months in 1975 to 7.8 months in 1997. One measure being taken to relieve the problem was a five-year budget allocation, authorized by the Act of 6 January 1995, of 3 billion francs, for recruiting some 4,000 prison personnel and instituting a programme to create 3,870 new prison places. Since 1991, measures for amnesty and pardon had been increasingly used in order to alleviate the problem. The Ministry of Justice was placing its greatest reliance, however, on the development of alternative measures to imprisonment, such as community service, which had been increasingly used since 1990. One measure, in that regard, was the system of temporary release, or probation, a review of which had been initiated by the new Minister of Justice. In general, the current emphasis was on measures to reduce the periods of actual imprisonment, and to make conditions more progressive and open.

53. Mr. LAGEZE (France), referring to question 8, said that under French law the subject of pre-trial detention was broadly defined as covering the entire proceedings from the beginning of inquiries to final judgement and, if applicable, appeal hearings. It could be difficult, of course, to make international comparisons because of differences in procedures. Periods varied according to the nature of the offences in question, but recent legislative efforts had been aimed at reversing an earlier tendency for periods of detention to increase. For example, figures available for 1995 relating to criminal cases showed an average of 21 months - a slight improvement on the figure of 22.7 months for 1988. It should be borne in mind, however, that the number of persons held in pre-trial detention was less than half the total number of persons under investigation; the proportion had fallen from 44 per cent in 1985 to 34 per cent in 1994. The situation was also influenced by the increasing length of time taken by proceedings and the growing complexity of cases, inter alia because of requirements to comply with international instruments. A new law, which had entered into force on 31 March 1997, was aimed at reducing the length of pre-trial detention, but it was too early to measure its impact. That law, of course, was not the first effort made to reduce the period of pre-trial detention, the Act of 6 August 1995 having already imposed a limit, but it reflected the constant concern to reduce that period.

54. The new provisions also addressed the notion of reasonable delay, and stipulated that an examining magistrate must end pre-trial detention once it had reached a certain limit. That approach conformed to article 5 of the European Convention on Human Rights. The new law provided that extensions must be reviewed every six months, not annually. It also set time limits more favourable to the detainee - for example 1 year, instead of 2 years under previous legislation, in connection with charges for offences carrying a sentence of less than 5 years, and a maximum of 2 years in the case of those carrying a sentence of between 5 and 10 years - a category formerly subject to no time limit.

55. The CHAIRMAN thanked the delegation of France for the replies relating to part I of the list of issues, and invited the members of the Committee to ask any further questions they might have.

56. Lord COLVILLE thanked the French delegation for the detailed replies given. Referring to question 6 on the list of issues, he noted that nothing had been said about article 450 of the Penal Code relating to criminal conspiracy. Since cases dealt with under that article, as well as those covered by article 421 already mentioned, were dealt with by special courts, he would like to have information about the system of appeal - an important issue in cases tried in the absence of a jury. He would also welcome information on supervision in relation to the longer-than-normal periods of detention permitted under the anti-terrorism provisions. In the United Kingdom, for example, supervision was carried out by an independent inspector who had access to the detainees and to all relevant documentation, and reported annually to Parliament, which also reviewed its anti-terrorism legislation every five years. If no such system existed, one should be introduced.

The meeting rose at 1.05 p.m.