INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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Tenth session

SUMMARY RECORD OF THE 221ST MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 15 July 1980, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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The meeting was called to order at 10.40 a.m.

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

Colombia (CCPR/C/1/Add.50)

1. At the invitation of the Chairman, Mr. Charry-Samper (Colombia) took a place at the Committee table.

2. Mr. CHARRY-SAMPER (Colombia), introducing his country's initial report (CCPR/C/1/Add.50), said that political and civil rights as well as economic, social and cultural rights were guaranteed by the Constitution, codes and laws of Colombia, which was doing its utmost to implement those rights despite the difficulties posed by its status as a developing country. The report should be considered in its political context and on the basis of the criteria of universality and mutual understanding.

3. His country was proud of a legal tradition founded on some 170 years of independent existence. During that period it had developed institutions based originally on Anglo-American or French models but gradually adapted to circumstances within the country itself. Those institutions had been maintained at a time when democracy had been encountering serious difficulties on a world-wide scale and Colombia itself had been undergoing a crisis of economic development. It was necessary to take an over-all view of events in Latin America, the developing nations and the world in general, and there must be no adoption of double standards in assessing the implementation of human rights in different countries.

4. Colombia's report showed that its Constitution and legal system were fully compatible with the International Covenants on Human Rights and that in its international relations Colombia had always abided by those Covenants and by the Charter of the United Nations. Colombia recognized the right of peoples to self-determination and equal rights for men and women in that country were guaranteed both under the Constitution and under civil law.

5. There was no denying that Colombia had experienced difficulties in the application of the Covenants in recent years, standing as it had as an island in a troubled sea of violence and conflict. However, it was devoted to democracy and to the rule of law and it had managed to maintain that devotion in the face of all difficulties. His country did not attempt to import or export institutions or ideologies but had developed its own institutions since attaining its independence. As a country which was maintaining its basic democratic and legal institutions, it could not be judged in the same way as States in which the rule of law had been eliminated or had never existed.

6. The régime in Colombia was as legitimate and democratic as that in any country in the world: elections were completely free, spokesmen of all parties were heard in Congress, and there was a free university, free trade unions and a free press.

7. It had been suggested by some that his Government had recently enacted Draconian measures of repression, but a comparison with the legislation of other countries revealed how very far from Draconian they were. His Government had been obliged to repress acts of violence and terrorism in order to enforce public order, the maintenance of which was the first duty of the State and was essential to the success of attempts to achieve a greater measure of economic and social justice. The recent dramatic happenings in Bogota, where some 20 ambassadors had been held prisoner by a guerrilla group in the Embassy of the Dominican Republic, in flagrant violation of international diplomatic law, had necessitated the enactment of a Security Statute. However, it was important to note that his Government had nevertheless continued to safeguard all rights provided for under the Covenants on a basis of strict legality and to maintain complete freedom to denounce any abuse. There was an independent system of justice in Colombia and the guarantees embodied in the Constitution formed a more complete set of safeguards than existed even in such a country as the United States of America. The Colombian Supreme Court of Justice was completely independent of the Executive, which, contrary to the practice observed in many civilized Western countries, played no part in the selection of judges.

8. There was not a single legitimate Government in the world which was in a position to say that no violations of law occurred within its territory. However, it should be emphasized that Colombia had a legal system which was immune from political interference and which could guarantee and restore the rights of those who suffered injury. There were, moreover, penalities applicable to those committing unlawful acts and they would continue to be applied in Colombia. The State had miraculously been able to resist the serious attacks made on the legal system in Colombia in recent years without destroying that system itself. Colombia had not had recourse to the Roman method of appointing a Caesar. Instead, it had instituted the state of siege. That institution, of Franco-Roman origin, had been introduced to maintain legality even during foreign wars or internal disturbances, and it had been refined in the course of time. In his youth, there had been abuses of the system of the state of siege, but when he and his contemporaries had come to power they had done their utmost to make the necessary reforms. It had been decreed that the declaration of a state of siege was not incompatible with the functioning of Congress and indeed that Congress must meet while a state of siege was in force. Moreover, decrees enacted during the state of siege were subject to automatic review by independent courts. In addition, a new legal concept, the state of emergency, had been introduced in order to distinguish between natural and economic disasters on the one hand and political upheavals on the other. There was no preventive state of siege in Colombia as in some other highly civilized countries. It should also be pointed out that the state of siege as practised in Colombia differed from the Anglo-American system under which martial law might be introduced in place of common law in cases of emergency. The state of siege in Colombia was fully regulated by law and governed by the Constitution, which was one of the oldest in Latin America and had been reformed and improved in 1910, 1936, 1945 and 1958. Thus, although the state of siege had been in force in Colombia for many years, the institution had been refined to a point where assaults on public order could be countered in a way compatible with the rule of law. In any event, the President of the Republic had announced that the state of siege would be lifted shortly, once various necessary reforms had been carried out.

9. The Colombian Constitution provided for three kinds of laws: there were laws which were always in force, such as those prohibiting the death penalty and banning the confiscation of property; there were laws which were operative only in peacetime, such as those guaranteeing the freedom of the press; and there were laws which came into force only in a state of siege.

10. The state of siege in Colombia was directed only against those who wanted to destroy democracy by terrorism and was not incompatible with the country's status as a State subject to the rule of law. It was accompanied by many guarantees and was applied under strict controls. Absolutely free elections, whose validity had been challenged by nobody, had recently been held under it, and democratic institutions had not been disturbed. Moreover, the state of siege was only temporary.

11. In accordance with a pattern which frequently occurred when a democracy sought to defend itself, an orchestrated campaign had been launched against Colombia's Security Statute, which was so called because it was designed to stop murders, kidnappings, blackmail, extortion, thefts of arms, drug trafficking and other forms of delinquency which could hardly be defended by jurists. Under that Statute the armed forces assumed certain functions on a temporary basis but within constitutional limits; the press remained free, democratic institutions continued to function, and everybody was guaranteed a fair trial and freedom from torture and arbitrary arrest. Under the Security Statute the penalties for some offences had been increased, but the resulting legal situation compared favourably with that found in other civilized countries. The claim that the Statute had been used to cancel out democratic rights was therefore quite unfounded; strikes were permitted except when they were subversive, and there was no censorship except in cases of irresponsibility.

12. In ILO, cases involving the alleged infringement of workers' rights had been mentioned, but subsequent investigations had shown that the situation was usually satisfactory. The basic rights of workers were guaranteed. It was true that workers had been murdered, but by subversive elements and not by the Government. Isolated instances of torture had occurred, as in the case of Adolfo León Pomo, but those responsible had been severely punished. The major trade union federations had stated that they were unaware of trade union leaders in Colombia being arrested for their trade union activities. A number of union leaders had been arrested, but for reasons unconnected with trade union affairs. Other union leaders had been murdered, but responsibility for their murders had been proudly claimed by subversive elements. All that was made abundantly clear in a document jointly signed by the Unión de Trabajadores de Colombia and the Confederación de Trabajadores de Colombia. Furthermore, 400 peasants had been murdered by subversive elements for refusing to co-operate with them.

13. Colombia was proud of its judicial system. Abuses had occurred, but they were being rectified. For example, there had been some justified complaints regarding delays in judicial proceedings, and every effort was being made to speed up the administration of justice. As a voluntary gesture to international opinion, Colombia would invite OAS observers to attend certain trials.

14. Latin America was passing through a period of great turmoil. In Colombia, however, the possibility of changing social and economic structures by democratic methods definitely existed. Colombia had its own model of society, which it did not insist on exporting abroad. There was, to be sure, injustice, but that was so

everywhere. The problems which the country was experiencing in its efforts to maintain its institutions might not have been understood in all quarters. The state of siege would be lifted soon, a bill introducing an amnesty would be presented to Congress in the next few days, and the judicial system would be reformed. In short, Colombia was able to comply with its obligations under the Covenant.

15. Mr. Charry-Samper (Colombia) withdrew.

16. Mr. PRADO VALLEJO said that the representative of Colombia had made a commendably clear presentation of the situation in that country. Colombia had long been a model of democracy in Latin America; at one time it had been one of only three democracies in the region, the others being Venezuela and Costa Rica, and its democratic tradition and the fact that it had always kept its doors open to fighters for democracy had done much to help other countries, particularly the Andean countries, to put an end to dictatorships.

17. The situation in Colombia was characterized by two basic facts - violence and the state of siege required to fight it. It was obvious that all Governments had to defend themselves from subversion and violence; the Colombian Government had understandably imposed a state of siege, but had not used it as a weapon with which to destroy the opposition, as happened in other countries. His only regret was that Colombia had not submitted the notification required under article 4 of the Covenant. He was, however, pleased to note that the state of siege would be lifted and an amnesty proclaimed in the near future.

18. At times Ecuador also suffered from violence caused by social problems. Militarism exploited those problems in order to maintain itself in power. Peru and Bolivia experienced similar difficulties. Nevertheless, Latin American democracy was defending itself. In Colombia free elections had been held and both parties had had to face the problems generated by violence.

19. Many of his doubts about the state of siege in Colombia had been dispelled by the Colombian representative, whose admission that there had been violations of human rights and that it was necessary to compensate the victims of such violations testified to Colombia's sincerity: that was a much more open statement than most Government representatives made.

20. Turning to detailed consideration of the report, he welcomed the statement in section I, paragraph 3 that the Covenant, together with several other international instruments, formed part of Colombian internal legislation and that its provisions could be invoked by a citizen who considered his rights to have been violated. However, he wondered whether there was any administrative authority which could act in accordance with the Covenant even if its provisions were in conflict with those of internal law - in other words, how effective the Covenant was in Colombia in filling any gaps in domestic legislation.

21. He had been pleased to read in connexion with the declaration of a state of siege that only certain constitutional rights and guarantees could be suspended and that decrees issued in connexion with the state of siege must be signed not only by the President but by all ministers, who were held to be answerable. He would like information, however, on how that responsibility of ministers was exercised in practice.

22. He also welcomed the statement in section I, paragraph 6, that all the authorities were responsible for protecting human rights under the Constitution. However, he would like to know what remedies were available to a citizen in respect of abuses committed by the authorities.

23. Referring to section II of the report, which dealt with implementation of the various articles of the Covenant, he said he was pleased to note that, in its international relations, Colombia had always recognized the right of all peoples to self-determination. With reference to article 5 of the Covenant, he inquired whether the statement that there had been no administrative rulings or legal provisions which derogated from or restricted fundamental human rights already recognized was still applicable in view of the continuing state of siege. In connexion with article 6 of the Covenant, he expressed satisfaction that, under the National Constitution of Colombia, "The lawmaker may in no case prescribe the death penalty". Concerning article 9, he wondered whether the right of habeas corpus still existed during the state of siege. With regard to article 14 of the Covenant, he inquired whether the law on criminal procedure continued to afford the minimum guarantees referred to even during the state of siege. With reference to article 20 of the Covenant, he pointed out that Colombia was the only country in Latin America which imposed sanctions on anyone engaging in propaganda against peace.

24. Noting that one of the reasons for violence was the existence of serious social problems, many of which were inherited from the colonial period when human rights had existed only for a minority, he inquired what the Colombian Government was doing to tackle such problems and, in particular, what action it was taking in the fields of education, health and social welfare.

25. In conclusion, he said the report showed that Colombia was setting an example in the effort to maintain human rights and the rule of law in Latin America.

26. Sir Vincent EVANS said that the statement by the representative of Colombia had added to his understanding of the situation in that country and had gone some way towards answering many of the questions he had intended to ask.

27. Colombia had a long democratic tradition and had been one of the first countries to ratify the Covenant. All were aware, however, of the problems which it experienced due to violent activities, as illustrated by the recent occupation of the Dominican Embassy in Bogotá by a guerrilla group. The Government and President of Colombia deserved credit for the way in which they had handled that incident and had secured the release of the hostages unharmed. In considering the report of Colombia, therefore, its difficulties must be taken into account. It had, however, come as a shock to him to discover that a state of siege had existed in the country virtually throughout the last 30 years. Such a situation raised a number of serious questions relevant to implementation of the Covenant.

28. Noting that the Covenant had been made part of the internal law of Colombia, he inquired whether, in practice, provisions of the Covenant were ever invoked before the courts and, if so, with what results.

29. Article 4 of the Covenant permitted a State party to derogate from its obligations under certain circumstances, but there were conditions it had to fulfil in order to do so. In particular, any State party availing itself of the right of derogation was, under article 4 (3), required to inform the other States parties immediately of the provisions from which it had derogated and of the reasons for such derogation. Moreover, a state of siege was not necessarily synonymous with a "public emergency which threatened the life of the nation". It was not clear to him whether Colombia was in fact claiming the right to derogate from its obligations under the Covenant and, if so, whether it was using that right to justify measures taken under the state of siege. As far as he was aware, no information had been provided in accordance with article 4 (3).

30. One of the measures taken pursuant to the state of siege was the extension of military criminal jurisdiction. Usually one of the features of that kind of jurisdiction was the meting out of summary justice which did not accord the normal guarantees of due process of law to the individual. He would like to know why Colombia considered that the ordinary criminal courts were not capable of dealing satisfactorily with those cases which had been removed to the jurisdiction of the military courts and what were the special features of the procedures of the military courts and how they were justified under the Covenant. In particular, did they comply with the requirements of articles 9 and 14 of the Covenant? How many people had been brought to trial before the military courts and for what offences?

31. In connexion with the right to life provided for under article 6 of the Covenant, he noted with satisfaction that Colombia had no death penalty. However, it appeared that legislation had been passed giving the security services immunity from trial in respect of deaths arising from operations to suppress certain crimes. Such legislation appeared to remove the guarantee that a person should not be arbitrarily deprived of his life and seemed difficult to reconcile with article 6 of the Covenant and the respect for life shown by the abolition of the death penalty. He had been happy to learn that allegations of torture and ill-treatment made against the security forces had been investigated and that action had been taken against those responsible.

32. He inquired to what extent the provisions implementing article 9 of the Covenant were still in force under the state of siege. The broad powers of arrest and detention accorded to the security services would seem to be open to serious abuse and he would therefore like to know how widely they were used and how many persons had been detained under them and on the basis of what justification. Further, was there any judicial control over the exercise of those powers?

33. In connexion with the implementation of article 14, the report stated that judgements were public except in criminal cases coming before the juvenile courts. Article 14, however, also required that hearings should be public too. He would like the Colombian representative to confirm that that requirement was complied with and, further, to inform the Committee to what extent the guarantees set out on pages 22 to 33 of the report had been suspended due to the state of siege.

34. Colombia had the reputation of being a country where freedom of expression, including the expression of political opinion, was enjoyed. It was reassuring to learn that there was no censorship of the press, but he felt that article 42 of the National Constitution, which stated that the press incurred liability for attacks against personal honour, the social order or the public peace, might be used to restrict public discussion of social and political issues. He would like to know how the reference to attacks against the social order was interpreted and applied in practice.

OTHER MATTERS

35. The CHAIRMAN informed the Committee that he had received a note verbale from the Syrian Arab Republic informing him that Mr. Kolani was unable to participate in the Committee's current session.

The meeting rose at 1 p.m.