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Tenth session

SUMMARY RECORD OF THE 226TH MEETING

held at the Palais des Nations, Geneva,
on Thursday, 17 July 1980, at 3 p.m.

Chairman: Mr. PRADO VALLEJO

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The meeting was called to order at 3.25 p.m.

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

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

1. The CHAIRMAN invited Mr. Charry-Samper to reply to the questions asked by members of the Committee on the report submitted by his country.

2. Mr. CHARRY-SAMPER (Colombia) said that he was convinced of the importance of the Committee's work and of the seriousness of the obligations assumed by States parties to the Covenant and, far from seeing it as a purely rhetorical exercise, he considered that the dialogue which the submission of reports allowed to be initiated between States parties and the Committee served a very useful purpose. That dialogue was most valuable in that it enabled States parties to benefit from the learning and the observations of a body of eminent jurists who were diligent in examining the texts of reports submitted to them from both a factual and a legislative point of view. The dialogue was all the more fruitful in that it provided an insight into the points of view of jurists from the most diverse schools of thought and economic and social systems. It was thus possible, pursuant to the wish expressed by the States Members of the United Nations, to consider, in the light of different economic and social systems, the universal norms with which States had undertaken to comply. As Mr. Movchan had rightly pointed out, the Committee's main task was not to penalize, but to help States fulfil the obligations they had undertaken in becoming parties to the Covenant.

3. Referring to article 1 of the International Covenant on Economic, Social and Cultural Rights, he said that it was his country's policy to seek to ensure respect for the principle of self-determination both within its borders and in other countries and to support developing countries and peoples in their struggle against colonial domination.

4. With reference to article 2, in reply to a question regarding the attitude of the Colombian Government towards social problems, he said that Colombia lived under a mixed economy system in which the State intervened to an increasing extent in order to remedy long-standing injustices, using the peaceful and legal means at its disposal. The country's economic and social policy was directed increasingly towards the solution of the nation's economic and social problems, particularly as regards the poorest classes and the most underprivileged sectors. That policy was reflected in the structure of the national budget, the largest item in which was devoted to social expenditures with a view to solving employment, housing and social security problems. Although, as a developing country, Colombia had not yet attained the desired levels of social security and justice, the major goals had been established, and the country had resolutely embarked on the road towards their achievement.

5. As part of that policy, substantial allocations had been made to the institution concerned with family welfare and to a number of other social institutions which intended to provide assistance to abandoned children in Bogota, whose situation was causing the Government serious concern. That problem, a result of the break-up of families and urban poverty, could be solved only by a policy for the protection of the family.

6. Turning to article 3, he said that equality between men and women could not be decreed but must be developed in practical terms. Progress had been made in that respect. Inequalities doubtless remained, but was that not also the case in many other countries?

7. With regard to the right to abortion, he said that abortion was punishable under article 343 of the Penal Code, and that the bill tabled in that connexion by women members of Parliament the year before had not met with success. That was an issue on which public opinion in Colombia was rather sensitive. Further, while no measures existed for the provision of assistance to the wives and children of prisoners with a view to ensuring the stability of the family, efforts were being made in that direction within the general framework of family assistance.

8. Turning to article 7, concerning the right to work, he recalled that, under the Constitution of 1886, labour was considered a commodity, but a reform of 1936, inspired by socialist principles, made work a social obligation, the corollary of which was the obligation to create employment, an obligation the fulfilment of which currently seemed to be presenting difficulties not limited to the developing countries alone.

9. The right to work represented one of the major social achievements of the past 25 years. The Colombian Government subscribed fully to the principle of "equal pay for equal work", without any distinction.

10. The right to form trade unions and to strike was fully recognized in Colombia, where there was a very strong trade union organization consisting of four entirely independent groups of trade unions, two of which accounted for more than 92 per cent of trade union members, while the two others, one of which was of Marxist and the other of Christian democrat persuasion, shared the remaining 8 per cent. Trade union pluralism was thus a reality in Colombia. The right to strike was recognized under the Constitution and, indeed, was frequently exercized. Strikes which were not authorized were those designed to further subversive ends. With regard to the prohibition on the establishment of more than one trade union at the level of enterprises, as was provided in Colombian legislation, he explained that that choice was dictated by the desire not to divide workers, and represented the wishes of the workers themselves. The requirement of a minimum number of members for the setting up of a trade union group was intended to prevent the proliferation of very small trade union groupings which would be largely ineffectual. It had, in fact, been the trade unions themselves that had asked for such a requirement. The reason why strikes were prohibited, both in the essential services and in the public services, was that the right to strike, although recognized in the Constitution, was not an unlimited right. The State was obliged, in that matter, to make a choice between the rights of the community and those of a fraction of that community. In the case of transport, the choice was between the rights of passengers and those of transporters. The legislator had felt that first consideration should be given to the interests of the majority. The trade unions were prohibited from engaging in political activities in order to permit them to act with complete freedom from interference by the political parties.

11. Trade union pluralism did indeed exist in Colombia, as the ILO could testify. Moreover, under the state of siege, no restrictive measure had been taken which limited the rights of workers. A worker engaging in subversive activities was judged as an agent of subversion, and not as a worker.

12. Individuals belonging to leftist parties could become members of trade unions, and they did so very extensively. Trade unions could improve the economic conditions of workers through collective bargaining, for the right to collective bargaining existed in Colombia. Lastly, trade unions could avail themselves of legal assistance before labour tribunals.

13. Referring to article 4 of the International Covenant on Civil and Political Rights, he recalled that a question had been raised concerning the responsibility of the President and ministers in connexion with the declaration of the state of siege. Article 121 of the Colombian Constitution provided that, for a state of emergency to be declared, a situation must exist which could objectively be regarded as a state of war or of serious internal unrest; it also required consultation of the Council of State, a body which was completely independent of the executive; also required were the signatures of the President and all ministers, who thereby engaged their responsibility, not only in respect of the declaration of the state of siege itself, but also in respect of all decrees that might be issued during the state of siege.

14. Respect for the rights and freedoms of the citizen was assured by a number of authorities. There was the Supreme Court of Justice and the Council of State, and also an Attorney General who was responsible for supervising and sanctioning all civil service officials. Furthermore, the decision had been taken to establish a sort of ombudsman to be specifically responsible for dealing with cases of violations of human rights.

15. Some surprise had been expressed concerning the lengthy duration of the state of siege. In that connexion, he said that the state of siege had actually been in effect for 30, or even 32 years, but had been modified on two occasions. The state of siege, which was an exceptional, but legal, regime, had been systematically distorted by the dictatorial regime which the Colombian people had overthrown in 1956 by peaceful means. The first measure taken by the new regime had been to reform the state of siege, the present state of siege having nothing in common with the previous one, which had been the result of a laxist conception that had completely distorted the face of the Colombian State.

16. Whereas formerly the President could appoint the judges of the Court, the latter were now appointed by co-optation; they were not removable, and they had a precise mandate. A new institution known as the agency for economic emergency, had been set up to intervene at times of grave crisis or natural disaster. The Supreme Court had been prompted to pronounce on a number of aspects of the Statute of Security, declaring them to be unconstitutional, and the Government had simply annulled them. The state of siege was perhaps the price Colombia had had to pay to avoid being obliged to follow the example of a number of Latin American dictatorships.

17. With respect to the right to life, which was the subject of article 6, he said, in reply to a question concerning political assassinations, that article 324 of the Colombian Penal Code referred only to homicide. Political assassinations were therefore dealt with in the same way as others.

18. With regard to the protection of the environment, he said that, while no ecological party existed in Colombia, there were laws designed to protect the environment, including the marine environment.

19. Referring to article 7, he said that no case of assassination or murder fell outside the competence of the judiciary and that, by contrast with a number of other countries, the phenomenon of disappearances was unknown in Colombia. In addition, the judiciary enjoyed complete independence from the executive and legislative powers.

20. Furthermore, in response to the expression of a general desire to eliminate impunity, which was the worst form of injustice, Colombia had established a system of military criminal justice, which was a permanent rather than a temporary institution. The members of military criminal courts were competent jurists who, although they wore a uniform, were nonetheless Colombian citizens and professional judges. All the rights of the defence were fully guaranteed before those courts in the same way as before the ordinary courts. That system had actually been set up because of the slowness of the traditional system of justice which, reflecting the country's Spanish heritage, lacked the flexibility of Anglo-Saxon law and was ill-suited to the needs of modern life. The judicial function had thus in part been delegated to those courts, which exercised impartial justice in certain specific cases and for particular offences, with a view to ensuring the equality of all before the courts by eliminating the excessively long delays inherent in the traditional system. Furthermore, all decisions rendered by military criminal courts were open to appeal before the Supreme Court of Justice, which afforded a major guarantee to those brought before them. Similarly, investigation procedures existed to deal with any cases of torture or cruel, inhuman or degrading treatment, and the culprits were promptly punished.

21. In accordance with article 9 of the Covenant, the Constitution provided remedies for any individual whose right to liberty and security of person had been infringed. Arbitrary arrest or detention were rendered impossible by a series of measures designed to eliminate such abnormal situations and to punish those guilty of violations of the law. He pointed out that, unlike other countries, Colombia was not living under a regime of a preventive state of siege. Naturally, there were various provisions ensuring the maintenance of public order, which was one of the duties of the State. For example, if there were serious reasons for fearing that public order might be disturbed, it was possible to detain those suspected, on the order of the Government, without any action on the part of a judge. That provision had in fact been applied on a number of occasions. Nevertheless, the Government's decision could be taken only after consultation with the Council of State. Moreover, the relevant provisions could not be applied on grounds of suspicion alone; it was necessary to establish the existence of serious grounds supporting the suspicions with respect to the persons concerned. Such persons could be held incommunicado for a period of 10 days if the maintenance of public order so required.

22. Preventive detention could last up to 120 days and was strictly regulated by a number of conditions established by law. The State thus ensured the protection of human rights through precise and rigorous procedures and it imposed penalties on any official guilty of arbitrary arrest or detention. The relevant provisions were applied as often as was necessary.

23. Similarly, the rights of the defence were protected by the legal instruments in force, including the Penal Code and the Code of Military Criminal Justice. The state of siege did not affect their observance and appeals could be made in the normal way up to the highest level, that of the Supreme Court of Justice. The independence of the administrative courts also guaranteed redress to all citizens who had suffered an administrative wrong. In criminal cases, the possibility of provisional release on bail was clearly in the interests of the accused, particularly as the amount of bail was always set at a very low figure - something like 10 dollars or 11 roubles - in order to take into consideration the financial situation of persons concerned.

24. In reply to questions regarding the situation of persons placed in psychiatric clinics, he said that he was unaware of any abuse of those institutions, contrary to what could be observed in other countries.

25. With regard to juveniles involved in criminal proceedings, he said that the provision whereby the juvenile did not attend the hearing at which his fate was decided was warranted by the legal incapacity of the juvenile, who could act only through his representative, and the latter was present at the hearing. Another reason for that measure was to protect juveniles against any harmful publicity regarding their case.

26. In connexion with article 12, he stated that there was no armed movement in Colombia and no restriction was placed on movement within the country, which was not the case for all other States parties. Nevertheless, a system of safe conduct existed in certain areas in order to ensure the protection of peasants who were sometimes exposed to reprisals from certain groups.

27. In connexion with article 14, he said that there was provision for the compensation of persons who had been the victims of arbitrary imprisonment.

28. With respect to article 17, he said that article 23 of the Constitution guaranteed the protection of privacy and that that principle was universally respected in Colombia. Thus, the interception of correspondence was strictly limited to instances in which it served to obtain legal evidence. Wire-tapping, on the other hand, was completely prohibited. There was no press censorship, in spite of the state of siege. Exceptionally, however, during the occupation of a foreign embassy in Colombia, the Government had imposed certain restrictions on the information media in order to limit the exploitation of the sensational aspects of the incident and to protect the lives of the diplomats being held hostage.

29. With regard to article 18, he stated that the Constitution guaranteed freedom of conscience to everyone. Colombia was a Catholic country and the State was naturally guided by Christian principles, but it respected the right to atheism and no one was harassed because of his religious convictions. In reply to the question asked concerning "acts contrary to Christian morality", he said that he knew of no case of a charge of the violation of Christian morality during the last 30 or 40 years. As to the status of priests, who were prohibited under an article of the Constitution from engaging in any political activity, he said that such provisions seemed very sound in a country in which Church and State were separate, and he pointed out that such measures were applied in other States in a comparable situation. Two exceptions to that principle were, however, allowed: they concerned the spheres of education and charitable work, for it was considered normal that religious personnel should participate in such activities.

30. With respect to article 19 and a question concerning a possible censorship of the press and of political parties, he recalled that the latest elections had taken place in a normal fashion without any censorship whatever. However, it had been said that a law enacted on that occasion to control demonstrations violated the Constitution. In fact the demonstrations preceding the elections had in some cases degenerated into acts of collective violence and the Government had discharged its responsibilities by limiting the right to demonstrate; it had, in fact, guaranteed the peaceful exercise of that right, in so far as the relevant provisions required the organizers to obtain prior authorization from local authorities. That was, thus, simply a measure dictated by caution and a sense of responsibility.

31. With respect to article 20, he recalled that he had already indicated how much his country appreciated the guidance which could be given by eminent jurists de lege feranda. As was stated in the report (p.44): "Propaganda for war and advocacy of national, racial or religious hatred ... are not known to occur in Colombia". Indeed, the country had never known a state of war and war was not among its national concerns. Of course, no effort must be neglected on behalf of peace and the authorities would take care to fulfil their obligations under the Covenant in that respect. Similarly, the country had no race problems because its population was essentially one of mixed race.

32. Turning to article 21, he stated that the legislation in force naturally permitted the prohibition of violent assemblies so that public order could be maintained. He emphasized that the authorities had no intention of permitting the holding of meetings which would not be peaceful.

33. With regard to article 23, he explained that the main purpose of the reform of the Civil Code which had taken place in 1974 had been to eliminate the supremacy of the man in family life, to institute equality between the spouses and to establish a legal system for the shared ownership of property by the spouses. As to the status of natural children, efforts had been made to bring it closer to that of legitimate children by gradually removing the anachronistic provisions inherited from the past. Majority for purposes of criminal law was reached at the age of 16, for marriage at the age of 18 and for the exercise of political rights at the age of 21. That variation appeared justified in particular by a concern to protect the adopted child from the influence of the guardian. Lastly, since 1967 it had been possible for an unmarried woman to give her name to her child.

34. With respect to article 25, some members had seemed to doubt whether the articles of the Constitution establishing the conditions for the holding of certain public offices met the requirements of the Covenant. In fact, equality before the law did not mean that everyone had the right to aspire to any office without any conditions; it meant that the law should be applied in the same manner with respect to everyone, and without any restrictions based, for example, on race, sex or religion. It seemed rather wise to require Colombian nationality by birth of candidates for the office of President of the Republic or for that of a judge. He pointed out that representatives could be Colombian by naturalization, and recalled that Colombia was a relatively closed country without large waves of immigration; hence those provisions did not have very wide application.

35. Referring to article 27 of the Covenant, which dealt with the rights of minorities, he said that the question was a particularly complicated one, resulting from historical and sociological influences dating back to the conquest of America, and its characteristics were not the same in Anglo-Saxon America and Latin America. On the whole, Spanish colonization had been more humane, and there had been no systematic extermination of the indigenous population as there had been in North America. On the contrary, there had nearly always been a great deal of racial mixing. Certain countries, such as Ecuador, Mexico and Peru, had an essentially indigenous population, but elsewhere the situation was different. Colombia, for example, had a far smaller Indian population. In 1821, when the country had become independent, part of the Indian population had even supported the King of Spain, who had defended them against the feudal lords of the Colony. The Republic, in its desire for freedom, had proclaimed equality, but of course that was not enough. It had to be admitted in that connexion that a good many of the Spanish institutions had been better and had offered the indigenous population better protection than did the independent Republican institutions. Proof of that was the fact that 160 years after independence Colombia was returning to some of the

institutions established by the Spanish crown for the protection of the Indians, and efforts were being made to integrate them into national life, to give them land, to guarantee respect for their individuality, all of which were extremely difficult tasks. There were some 200,000 to 300,000 indigenous inhabitants in Colombia out of a population of 25 million - a very small percentage. There was also a large population of mixed race, but that was well integrated into Colombian society. In Colombia, the indigenous population was not regarded as a minority, but it would no doubt be better if it were, in a world which finally recognized the right to be different. There was a legal statute relating to the Indians which he would attach to his Government's report. His Government was currently making every effort to establish institutions which would preserve the cultural integrity of the indigenous population while encouraging their integration.

36. Reference had been made to the existence of a committee in the southern part of the country. The facts were that there had been an indigenous movement, which had unfortunately after a time been infiltrated by subversive elements; a small number of indigenous inhabitants had taken part in subversive acts, for which they had been arrested.

37. In the Colombian Government's reply to Amnesty International, which he would also attach to the report, there was a special chapter on the treatment of the indigenous population (p. 51 of the Spanish text). A desire to right the past wrongs of which the Indians had been victims undoubtedly existed in Latin America, and in Colombia at least the Government was using every means at its disposal for that purpose, in order to ensure them full enjoyment of their rights. It had to be admitted, however, that no complete and final solution to the basic problem had yet been found, even in countries with a predominantly indigenous population.

38. The Colombian Government had been asked what it understood by subversion. Subversion as such was not defined in Colombian legislation. In the chapter on threats to State security, the Penal Code defined and prescribed penalties for four types of offence: rebellion, sedition, riots and conspiracy. The penalties provided for those offences were not harsh in comparison with those imposed for the same offences in other countries, including countries considered to be model democracies.

39. The Colombian Government granted political asylum to foreigners who had had to flee their countries, as it had always done if they claimed that they were being persecuted for political reasons. They were, of course, subject to the same rules as Colombians. Moreover, asylum was a relatively strict institution, which prohibited any political activity in the country of asylum.

40. As far as sedition was concerned, a person was declared guilty of that offence, not if he criticized the Government but if he took up arms against it. The offence was not a matter of holding certain opinions but of perpetrating certain acts directed against the authorities who were legally exercising power. In Colombia, there was no such thing as a political offence or an offence on grounds of opinion. No one could be prosecuted on account of his ideas, his beliefs or his opposition to the régime.

41. It had been asked what measures had been taken to give the Covenant the requisite publicity. The measures taken were all those that were available to a democratic régime. In addition, seminars on human rights had also been organized in Colombia. With regard to the criticisms voiced by Amnesty International, his Government had replied to that organization's report and its reply would be attached to his Government's report to the Committee on Human Rights. Out of respect for

Amnesty International he would refrain from criticizing it, although in fact it had been the subject of quite a large number of criticisms on the part of various countries and organizations. Amnesty International had gone to Colombia at the request of the President of the Republic, and both it and the OAS Inter-American Commission on Human Rights had been provided there with all necessary facilities for studying the situation. His Government did not agree with the conclusions reached in Amnesty's report and therefore hoped that the Committee would hear its point of view also.

42. Questions had been asked concerning the position of the Covenant in relation to the Constitution. In Colombia, the Covenants had been incorporated into national legislation through an act approved and ratified by the Government. Colombian internal legislation might be described as a pyramid, in that all its provisions could be traced upward to the Constitution, which was at the summit. All the rights, guarantees and obligations contained in the Covenants were to be found in the Colombian Constitution. There might be some differences of terminology and other minor differences, but the essentials were there. There existed in Colombia a system for the protection of the Constitution, of which Colombians were proud for they considered it superior to any others in the world, including those of France and the United States, inasmuch as it covered matters which were not covered by the systems of those two countries. The system functioned in the following way: two bodies were responsible for ensuring respect for the Constitution, namely, the Supreme Court of Justice and the Council of State. The latter was concerned with administrative aspects and the Court with all others. They were required to make sure that every decree or law was in conformity with the Constitution. The Supreme Court of Justice exercised its function of protecting the Constitution in various ways. Every decree, for example, a decree proclaiming a state of siege, was sent directly to the Court, which could declare it unconstitutional. It had, for instance, declared unconstitutional certain articles of the Security Statute now in force, but had accepted the general framework of the Statute and had finally approved it, except for the articles in question, a fact which gave the Statute complete legal validity. The Court could also intervene at the request of interested parties or even simply at the request of a private individual, for every citizen could appeal to the Supreme Court against any law or decree whatsoever. The effects of the Court's ruling in such a case were not inter partes but erga omnes. It thus had very broad powers, to such an extent that some persons had said that to repeal a law was to make a law and had talked about a "government by judges", since the latter's power to interpret the Constitution was even greater in Colombia than it was in the United States. So far, the Court had not handed down any decisions respecting violations of the Covenants, but the rights embodied in the Covenants were guaranteed by the very fact that, being incorporated into internal law, they were a part of the Constitution. By way of illustration, he would annex to his Government's report the texts of two rulings issued by the Supreme Court, which would give the Committee a better idea of the independence of that Court and its work. As the rulings showed, the decrees in question (the one proclaiming the state of siege and the other relating to the Security Statute), had been sent to the Court automatically for review as soon as they had been issued. It so happened that the Court had declared those decrees constitutional; had it ruled to the contrary, the Government would have accepted its decision and the decrees in question would not have entered into force. There had subsequently been a second and more rigorous review, for in the case of the Security Statute certain persons, especially lawyers exercising their profession, had considered the automatic review inadequate and had lodged an appeal to the Court; the latter had ruled that certain articles of the Statute were unconstitutional, and they would therefore not be applied.

43. Lastly, referring to the military criminal courts, he acknowledged that in principle justice should be administered by civilian judges, except, however, in exceptional circumstances such as those of the present state of siege. He emphasized that the present state of siege was very different from the one which had existed thirty years earlier, the latter having been nothing but an expedient used by a dictatorship to cloak a de facto situation. The state of siege existing at the present time was of a temporary nature and its constitutionality had been confirmed by the Supreme Court. Notwithstanding the state of siege, the Congress functioned normally in Colombia, the existence of all political parties was authorized there, trade unions were active and international organizations were invited to collaborate with the Government. The intervention of the military courts was justified in exceptional circumstances; however, the military criminal courts existing in Colombia did not constitute a special judicial system but a jurisdiction established on a permanent basis by the Constitution. Recourse was had to it in order to prevent certain crimes from going unpunished, to cope with a wave of insecurity, to accelerate judicial procedures, and because in a period of crisis it was perfectly natural for a Government to seek the assistance of the armed forces, although the latter were nevertheless required to comply with the law, as was the case in Colombia. Whatever the circumstances might be, the decisions of the military criminal courts could be revieved by the Supreme Court of Justice, and that provided the best possible guarantee.

44. Colombia was endeavouring to adapt its legislation to realities, which was not an easy thing to do in a continent where, ever since the conquest, there had been, doubtless for historical reasons, an opposition between realities and the law. He wished to assure the Committee that, in spite of the state of siege, a State like Colombia did not act in a manner contrary to the International Covenants. Colombia was not content to be merely the heir to a legal tradition; it was endeavouring to use the instruments of law to do away with the injustices which still remained, and to perfect its legal institutions.

45. Sir Vincent EVANS said that he had listened with the greatest care to Mr. Charry-Samper's replies, and he thanked him for making available to the Committee his Government's reply to Amnesty International's report, as well as the two rulings of the Supreme Court of Justice. He asked that Mr. Charry-Samper's replies should be reflected as completely as possible in the summary record of the meeting and that the three texts in question should be translated into the Committee's working languages.

46. He would like to revert to article 4 of the International Covenant on Civil and Political Rights, to which Mr. Charry-Samper had not referred in his remarks. He would like to know whether Colombia had invoked article 4, which authorized a State, in certain circumstances, to take measures in derogation of the provisions of the Covenant. According to what the representative of Colombia had stated, none of the measures taken under the state of siege derogated from the provisions of articles 6 or 14 or any other articles of the Covenant. It was very important for the Committee to know exactly whether that was really the case. Colombia had acceded to the Optional Protocol and the Committee had received communications under that Protocol which were being considered and which cast some doubt on Colombia's attitude in that respect.

47. The CHAIRMAN said that he would ask the Secretariat to make sure that the summary record reflected the Colombian representative's statement as faithfully as possible and that the documents he had made available were translated into the Committee's working languages.

48. Mr. CHARRY-SAMPER, replying to Sir Vincent Evans, said that his Government had not violated any article of the Covenant; that was why Colombia was confident in appearing before the Committee, whose authority it recognized. In Colombia, as in the United Kingdom and other countries where there was a democratic rotation of governments, one Prime Minister's position might be different from that of the Prime Minister he had succeeded, and each government was responsible for itself and not for its predecessors.

The meeting rose at 5.40 p.m.