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on Tuesday, 6 April 1982, at 3 p.m.

Chairman: Mr. TOMUSCHAT

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The meeting was called to order at 3.15 p.m.

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

1. Mr. DIEYE said that the report of Uruguay was in general well balanced and well presented. The Committee's objective in considering such reports was not to condemn or isolate one country or the other, but to seek the co-operation of the State party in restoring any human rights which might have been violated. It was not true that particular regions were especially guilty of human rights violations or that economic or social development had an impact on the human rights situation in a given country. It was for that reason that there must be balanced criteria applying to the evaluation of the human rights situation in any country of the world. The Committee recognized that internal machinery for protecting human rights varied from country to country and sought to take that into account in fulfilling its mandate.
2. Uruguay, an under-developed, third-world country, had an exemplary democratic tradition of respect for human rights. The Committee had, however, to draw attention to the fact that there were some problems connected with the human rights situation there. The central problem was the exceptional measures mentioned in the report. The Government of Uruguay had invoked article 4 of the Covenant in order to suspend some rights in response to the serious crisis it believed the country had been undergoing. The letter and spirit of article 4 provided, however, that when a country took measures to suspend human rights, those measures must be temporary; they could not be institutionalized. A State had a sovereign right to determine whether a situation warranted the suspension of certain rights, but the international community and its designated organs, such as the Human Rights Committee, were responsible for monitoring whether article 4 was being complied with. In the light of the current discussion, the Government of Uruguay should ask itself whether it had lost sight of the spirit of article 4 and, having maintained its exceptional measures, for so long, was violating human rights.
3. Turning to questions of legal procedure, he said that many individuals had complained about Uruguayan procedures which did not uphold the human rights and dignity provided for in the Covenant. What was the difference, for example, between ordinary and extraordinary remedies? Could the extraordinary remedies available in Uruguay be considered exceptional remedies?
4. * He asked whether conditional release was only an administrative measure or based on a judicial decision taken by a court which had special jurisdiction in such matters. He also requested a definition of "appeal for review", which was described somewhat inadequately in the report.
5. The military courts in Uruguay clearly took precedence over the judicial courts and he wondered why that was the case. It was well known that military courts were concerned less with providing minimum guarantees than with speed and exceptional jurisdiction and their approach was not always conducive to upholding

(Mr. Dieye)

human rights. He also wondered about the definition of "subversion", which was not very clear in the report. A distinction should be drawn between armed subversion and intellectual subversion. If attempts were made to destabilize a régime by force of arms, a Government was justified in taking action, but if the subversion was mainly through the dissemination of ideas, a Government was not entitled to suspend human rights. Some of the action taken in connexion with the Tupamaros movement was especially repressive and seemed out of proportion to the threat. Imprisonment and deprivation of human rights for 15 years was hardly consonant with minimum respect for fundamental rights and freedoms. He therefore requested further clarification as to the rationale behind the Government's actions against what it termed "subversion".

6. In a State where judges were appointed by the Government and military courts prevailed over civil courts, wherein lay the independence and freedom of the judiciary?

7. Given the current institutions and exceptional measures, he had doubts concerning the Government's denial that it had violated rights which could not be derogated from, especially those mentioned in articles 7 and 15. The claim that an international campaign was being waged against Uruguay was a sweeping and unsatisfactory response. He would appreciate an explanation of why so many people had complained of human rights violations under articles 7 and 15 of the Covenant.

8. He urged the Uruguayan Government to continue its co-operation with the Committee in the interest of safeguarding human rights and fundamental freedoms.

9. Mr. TARNOPOLSKY said that the Committee had considered the situation in Uruguay previously in connexion with communications under the Optional Protocol. Despite the Committee's findings of violations of some human rights, the Government of Uruguay had continued and expanded its co-operation with the Committee, which was a very encouraging sign.

10. The report posed particular problems for the Committee. Although the Uruguayan Constitution had long been recognized as a progressive document, the evidence before the Committee indicated that it was not always implemented in the promotion of human rights. For example, articles 31 and 168 (17) of the Constitution governed the declaration of a state of emergency, but many of the requirements set out in those articles had not been complied with. Article 168 (17) provided for prompt security measures under the ultimate supervision of the General Assembly, but was not being implemented.

11. The 1967 Constitution had been considered exemplary, and the attempt in 1980 by the military Government to introduce a new Constitution containing provisions designed to institutionalize a military dictatorship had been rejected by the overwhelming majority of the population. The desire of the population to restore civilian government under the 1967 Constitution did not, however, appear to have been fulfilled.

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(Mr. Tarnopolsky)

12. State Security Act No. 14,068 of 10 July 1972, the Penal Code and the Military Penal Code contained provisions governing the abuse of authority. He requested information on cases in which investigation of such abuses had been completed, individuals compensated and officials rebuked. In particular, he would welcome information on any investigations, prosecutions or actions taken in respect of the heavier penalties provided for under State Security Act No. 14,068.

13. With regard to exceptional remedies of appeal, he requested information on the composition of the Supreme Court of Justice when it considered such remedies. The report mentioned that two military officers would serve on the Supreme Court of Justice in such cases, and he asked whether they were required to have legal training or experience.

14. The report provided little information on which articles were being derogated from and to what extent as a result of the prompt security measures which had recently been instituted, and he requested that that information be supplemented. Furthermore, in dealing with some communications under the Optional Protocol, the Committee had found violations of the rights mentioned in articles 7 and 15 of the Covenant and which could not be derogated from. In the light of those findings, he requested information as to whether the provisions in Uruguayan law for remedies of such human rights abuses had been applied and remedies granted.

15. The right to life, provided for in article 6 of the Covenant, also could not be derogated from, but a 1978 report of the Inter-American Commission on Human Rights had listed 25 violations and a 1980 report of the same body had indicated that there was no evidence of investigation of those abuses. Under article 6 (1), if a person died in prison, the Government had the obligation to investigate the matter thoroughly. What investigations had been carried out in the cases of individuals who had died in prison in Uruguay?

16. The Committee had found violations of article 9 in a number of cases, the most disturbing of which were abductions of individuals into Uruguayan territory by government authorities. What evidence had there been that any of the abducted individuals constituted a threat to anyone in Uruguay. If, as the Government claimed, the Tupamaros movement had been destroyed in the mid-1970s, what further need was there for Constitutional Act No. 5, article 3?

17. Although article 10 did not cover rights which could not be derogated from, the Committee had found many violations of it and should be given an explanation. The Committee had also found violations of article 14 (1-3). Even under prompt security measures, certain minimum rights must be protected and could not be derogated from, and he invited comments on that matter.

18. There had also been violations under articles 18, 19, 21 and 22 of the Covenant. The constitution of every State recognized that everyone had the right to certain freedoms but that did not mean that they existed in practice. The question arose as to which laws guaranteed the various freedoms, the degree to which they were upheld in the courts and the extent to which individuals made use

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(Mr. Tarnopolsky)

of them. It was true that article 4 of the Covenant did not prohibit derogations from articles 19 and 21 but it would nevertheless be of interest to the Committee to learn the circumstances in which derogations from those articles had been made in Uruguay, both in normal circumstances and currently. As regards remedies available to victims of violations of those articles of the Covenant which were not subject to derogation, he would be interested to learn of cases in which officials had been disciplined or victims compensated. He would also like to see Uruguay return as soon as possible to the Constitution of 1967.

19. Mr. BOUZIRI said that it had been quite clear from the statement made by the representative of Uruguay in introducing the report that the Government of Uruguay was anxious to establish a co-operative relationship with the Committee. As a result of that statement, the Committee had a better picture of Uruguayan realities than had been available from the report. It had become clear that responsible world public opinion had concluded that a serious problem existed in Uruguay. The question therefore arose as to the extent of the troubles which were afflicting the country. As a measure of such difficulties, it would be of interest to the Committee to learn what the per capita income of Uruguay had been in the early 1960s and what it was currently.

20. Every State had the right to deal effectively with internal subversion but he welcomed the reference made by the representative of Uruguay to prospects for a return to peace. He would welcome Uruguay's return to the path of democracy. The number of Tupumaros had dropped substantially since the early 1960s. As that threat had diminished, it would seem reasonable to expect that Uruguay could return to democracy very quickly and that there was no need to maintain the state of emergency. It was therefore difficult to see how Uruguay could justify continuing the derogations from its obligations under the Covenant permitted by article 4.

21. Uruguay was one of the older democracies and it had always adhered to a policy of anti-colonialism. It had given its strong support to the provision of article 1 (3) of the Covenant regarding promotion of the right to self-determination. He had therefore been surprised when Uruguay had established its diplomatic mission in Jerusalem, contrary to recommendations of the General Assembly, although that mission had subsequently been withdrawn. He would appreciate, for the record, a clear statement from the Government of Uruguay regarding its position on the question of the rights to which the Palestinian people were clearly entitled under article 1 (3) of the Covenant.

22. The Constitution and laws of Uruguay clearly stipulated the equality of men and women. He would appreciate learning what the actual situation was in that respect and the extent to which such laws applied in terms of everyday life, in such matters as salaries, education, divorce and whether it was the husband or the wife who was head of the family or whether that responsibility was shared. In cases of adultery he would like to know whether women were treated in the same way as men. He had noted from the State party's comments on article 6 that the Penal Code of Uruguay punished abortion under articles 325 to 327. He would like to have information on whether women could have abortions in Uruguay and what was meant by punishment for abortion. There was a direct link between the birth-rate, economic

(Mr. Bouziri)

development and health. Deaths from hunger, malnutrition and epidemics in the developing countries were horrendous and something had to be done to control escalating birth-rates. In Tunisia a woman could have an abortion without consulting her husband after she had borne five children.

23. Approximately half of the communications received by the Committee regarding alleged infringements of article 7 had related to Uruguay. He would like to know what specific rights had been suspended in Uruguay as the information available to the Committee on that point was not clear. The representative of Uruguay had admitted that there had been cases of maltreatment of victims by the authorities. It was clear that the Uruguayan authorities had co-operated with the Committee in a number of cases but they had not always done so; as a consequence, a number of replies had not been very satisfactory. He hoped that Uruguay would make every effort to live up to its responsibilities as a party to the Optional Protocol. The statement in the last paragraph of the section of the Uruguayan report concerning article 9 of the Covenant left the door wide open to abuse. Further explanation was needed concerning the state of democracy. How long would the blockage of political rights continue?

24. The Committee tried to help countries to ensure proper respect for the Covenant and for human rights and must follow developments in Uruguay.

25. Mr. ERMACORA expressed appreciation to the representative of Uruguay for his especially thorough statement. It was extremely hard to evaluate a report which must necessarily have shortcomings, because of the factual circumstances of the situation.

26. He asked whether the whole population of Uruguay was affected by the emergency situation or only one group of people. The United Nations held that the human rights situation must be understood in the social, historical and economic context, including an emergency situation. In the case of an emergency situation, particular attention should be paid to States which had a reputation as democratic States and had gone from democratic structures to a more or less dictatorial régime. Mr. Tarnopolsky had raised the important question of how much of the Constitution still remained in force. It was necessary to have an explanation as to how far derogations from the Covenant were strictly required by the exigencies of the current situation and how far the derogations referred to in article 4 of the Covenant extended. What measures did the Government take to control violation of those human rights which the Government might not abrogate?

27. How many places of incarceration existed and where? The representative of Uruguay had stated that 900 persons had been detained either before or after conviction. How far could individuals effectively defend their human rights? The system of habeas corpus was very crucial in that regard and was dealt with in article 17 of the Constitution. On page 15 of the English text of the Uruguayan report, it was stated that the basic requirement for the remedy of habeas corpus to be applicable was that the arrest must have been unlawful. What was the meaning of "unlawful" in the context of the emergency situation? What was the meaning of the

(Mr. Ermacora)

reference to "secret examinations" in article 22 of the Constitution? Article 26 of the Constitution provided that in no case should brutal treatment be allowed in prisons.

28. Article 7 of the Constitution made provision for the right of persons to protection of their honour and for other rights, and stated that no one might be deprived of those rights except in conformity with the law. The Covenant required more than merely protection "in accordance with the law". Those provisions only met requirements of the Covenant if the wording of the Covenant was added to the provisions of the Constitution. He could not see the relationship between the Covenant and the Constitution.

29. With regard to article 253 of the Constitution, the relationship between military jurisdiction and normal jurisdiction was not explained, particularly with regard to the Contentious-Administrative Tribunal.

30. The Uruguayan answer concerning article 26 of the Covenant (rights of ethnic, religious or linguistic minorities) was not satisfactory. How many indigenes were there in Uruguay? Did they enjoy special protection? How far did the Government implement the minimum standard rules for treatment of prisoners? What happened in the case of deaths in suspicious circumstances?

31. It was stated in annex III to the Uruguayan report that, up to 1977 there had been 16 cases of officials who had abused their powers. He would like to know what had happened since 1977. The decision concerning the emergency situation was a sovereign act, but abuses must be controlled and thoroughly investigated, or political hatred would prevail afterwards. He felt that at present the Uruguayan Government was unable to govern the country in conformity with article 4 of the Covenant, because it placed the right to security above the rights set forth in article 7 of the Constitution.

32. He hoped that Uruguay's courage in submitting the report could lead to thorough co-operation and to a contribution to the termination of the emergency situation, within the framework of article 4 of the Covenant at least.

33. Sir Vincent EVANS welcomed the representative of Uruguay. He felt that his presence in the Committee indicated the desire of the Uruguayan Government to continue co-operation with the Committee. The Committee had sincerely endeavoured to adopt a constructive attitude to its work. In his opinion, it had a positive function with regard to human rights. It had therefore avoided political confrontation and tried to be impartial and objective, not only with regard to article 40 of the Covenant but also the Optional Protocol. It must, however, draw attention to shortcomings in the performance by States of their obligations under the Covenant. Otherwise, it would lose all credibility. It was important to bear in mind that the Committee could exercise its functions only on the basis of the information made available to it. Each State party had an obligation to inform the Committee about its own situation, and it was in the interest of each State to do so. It would have been helpful for the Committee and for Uruguay if the Uruguayan

(Sir Vincent Evans)

report had been submitted much earlier and meetings had been held to discuss it also. Both could have improved mutual understanding.

34. In the case of Uruguay, the need for information was particularly acute with regard to the Committee's work under the Optional Protocol. The Committee had tried to give Uruguay a fair hearing, but the information supplied had not been adequate and had sometimes been practically non-existent. As Mr. Tarnopolsky had said, the Uruguayan authorities did not seem to have investigated properly the cases referred to them by the Committee. In many cases which had come before the Committee through communications under the Optional Protocol, it had requested copies of court orders and judgements which had so far not been furnished. He urged the Government of Uruguay to make such information available to the Committee when requested.

35. Full account being taken of the circumstances in which the Government of Uruguay had deemed it necessary to introduce military justice, the situation was fraught with features which were not acceptable, even by emergency standards.

36. With regard to the future, recent information showed that the emergency situation in Uruguay was passing. He asked what steps had been taken and would be taken to rectify the matters which had been brought to Uruguay's attention by the Committee. He understood that plans had been announced for the restoration of democracy and political processes in Uruguay. That was welcome news; it added new dimensions to the questions raised by previous speakers.

37. Mr. AL DOURI said that the presence of the Uruguayan representative showed that Uruguay was willing to resume relations with the Committee. Uruguay sometimes responded to the Committee's request concerning complaints submitted by Uruguayan citizens, but it sometimes took a negative position and remained silent concerning requests addressed to it by the Committee. Now, however, he trusted that there would be positive contact between the Government and the Committee.

38. The introduction to the report was satisfactory, not only because of the information which it contained but also because it showed a process of juridical evolution. The Committee was neutral and impartial, but it must discharge its mandate. As a State party to the Covenant, Uruguay had to meet its obligations under the Covenant. An explanation of why it had been unable to give effect to human rights was therefore not sufficient: article 40 of the Covenant also required States parties to report on the progress made in the enjoyment of those rights. The report before the Committee deliberately side-stepped many of the Covenant's provisions.

39. The report began by referring to the remedies under Uruguayan domestic jurisdiction. He could not help feeling that, if the Government had truly complied with the constitutional provision concerned the Committee would have been spared much effort in discussing communications from individuals in Uruguay.

(Mr. Al Douri)

40. Regarding military jurisdiction, he wished to know what kind of people were generally brought before the military authorities and how the clause in article 178 of the Code of Military Penal Procedure, concerned with offences of lèse-nation, was interpreted.

41. In connexion with article 1 (3) of the Covenant, he wished to know whether the Ambassador of Uruguay considered that Uruguay's close relationship with the Zionist entity, which had refused to recognize the Palestinian people's right to self-determination since its creation in 1948, might not be at variance with Uruguay's obligations under the Covenant.

42. Uruguay was supposed to guarantee equality before the law. The Committee knew, however, that there were people in the country who, believing in their own opinions, had opted for armed resistance to the Government. In the circumstances, he wondered how the law was supposed to apply equally to all.

43. As many members had pointed out, the derogations permitted under article 4 of the Covenant were not intended to permit governments to continue to act indefinitely against the civil and political rights guaranteed in the Covenant. The report indicated that article 31 of the Constitution guaranteeing individual security, could not be suspended except with the consent of the Uruguayan General Assembly. Even if the Uruguayan Assembly consented, however, the State must announce its derogations under article 4.

44. It seemed that, with the measures taken under the state of emergency, there was no proper separation of powers in Uruguay. Indeed, the former President of the Council of State had admitted, in a statement in December 1978, that the Council had failed to limit the assumption of executive power in relation to the observance of the rights of the individual. According to the report, the right to physical integrity was "in general fully and satisfactorily assured". He wondered what that meant: the Committee was well aware that the physical safety of detainees in Uruguay was not safeguarded.

45. Article 15 of the Covenant required that penalties should not be made retroactive. But an act of 1975 expressly provided for retroactive effect in Uruguay.

46. Although article 19 (3) (b) of the Covenant permitted restrictions on certain rights, the bald statement in the report that Act No. 14,068, imposing restrictions on freedom of expression, was in conformity with the provisions of the Covenant was not, to him, satisfactory. He wished to see the text of that Act and to know how it had been applied, particularly since the introduction of the state of emergency.

47. In connexion with article 21 of the Covenant, he wondered what political parties were active in the country. Although article 4 could be invoked to justify limitations on political rights, it was not designed to permit governments to deprive certain political groups of their political rights for protracted periods. He did, however, recognize that the situation in the country was now a little less grave than it had previously been.

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48. Mr. HANGA said that the report was well balanced, detailed and thorough and had been very well introduced. There was a variety of different theories on the separation of legislative, administrative and judicial powers, with one school requiring total separation of those powers and another calling for co-operation between the judiciary and the State. He wondered which school the Uruguayan Government subscribed to.

49. He would appreciate information on the political role of women: whether, for example, they could be employed in the police force, and whether child care services were provided when they were at work. He did not know what the divorce rate was in Uruguay, but wondered whether Uruguayan judges in divorce proceedings were instructed to seek conciliation between the spouses so as to stabilize the family. Similarly, he wondered whether the spouses had equal rights in marriage.

50. Article 70 of the Constitution made schooling compulsory: he wondered whether it was provided free of charge. Could the child of one Uruguayan and one foreign parent acquire Uruguayan citizenship? And were adopted children entitled to the same rights as natural or legitimate children? He would also appreciate information on the structure of the special childrens' courts and the persons involved in running them.

51. He asked what the Uruguayan authorities had done to improve health care in rural areas, which in most countries was subject to discriminatory neglect, and what specific measures were being taken to promote the poorer sectors of society.

52. He understood that there was a resurgence in the trade union movement, which was now recognized by the law, but article 57 of the Constitution required special bodies to discuss and resolve disputes between business owners and workers. That being so, he wondered what role the unions could play in resolving such disputes.

53. Finally, he pointed out that the report mentioned no legislation corresponding to article 20 of the Covenant, calling for a ban on war propaganda.

54. Mr. LALLAH said that, without being cynical, he did notice that there seemed to be equality of treatment for men and women in Uruguay: when the Committee dealt with cases of violations in Uruguay, it found that women had the courage to take part in public affairs, even at the risk of their individual freedoms and human rights.

55. He would describe the system in existence in Uruguay as a unification of the three separate powers of Government - legislative, administrative and judicial - in the military authorities, which escaped the control of popular political bodies. The Council of State, set up specifically to control the exercise of executive power, had failed to fulfil its functions. The establishment of such unified authority was important, not only for the length of its duration, but also for the breadth of its application, which even extended to rights for which article 4 of the Covenant permitted no derogation. The system had been severely criticized, not merely by the Uruguayan people in a recent plebiscite but also by bodies outside Uruguay, including the Committee. Criticism had also been levelled at the steps

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(Mr. Lallah)

taken against people who disagreed in one way or another with the authorities, whether illegally or by making use of various of their political freedoms: he had in mind, for example, Act 14,269 of 1973, which had outlawed 14 political parties, and the crushing of the trade union movement.

56. Given those characteristics of the military authorities, he had been somewhat consoled by the public announcement that public democracy would be established in the period 1984-1985. He hoped for further consolation, however: an assurance that the advent of such democracy would be hastened, and that participation would be open to all those with the right to participate. There was no point in re-establishing democracy if the leaders of most political parties had disappeared or were unable to take part in the exercise.

57. He would never have thought it possible, given the requirements of articles 7 and 10 of the Covenant, to require detainees to pay for the costs of their being held in captivity. He was not aware to what extent the work the detainees performed offset such costs, but felt that to require prisoners to pay for their keep was not in keeping with the spirit of the Covenant.

The meeting rose at 5.55 p.m.