

Guyana  
Uruguay



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Fifteenth session

SUMMARY RECORD OF THE 357th MEETING

Wed. 7 April on [Held at Headquarters, New York  
Thursday, 8 April] 1982, at 10.30 a.m.

Chairman: Mr. PRADO VALLEJO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the  
Covenant (continued)

Organizational and other matters (continued)

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The meeting was called to order at 10.45 a.m.

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

Guyana (continued) (CCPR/C/4/Add.6)

1. At the invitation of the Chairman, Mr. Barton-Scotland (Guyana) took a place at the Committee table.

2. Mr. BARTON-SCOTLAND (Guyana) said that it had not been possible in such a short time and at such a distance to prepare adequate replies to all the questions posed by Committee members at preceding meetings. He assured them that he would refer their questions to his Government for consideration and reply.

3. He was, however, in a position to provide further information concerning the organization of the judiciary in Guyana. All members of the judiciary were appointed by the President acting either after consultation or on advice. The Chancellor and the Chief Justice were appointed by the President after consultation with the Minority Leader. The Justices of Appeal and the Puisne Judges were appointed by the President on the advice of the Judicial Service Commission. All judges were appointed to serve until retirement age and could be removed only for inability to perform their functions or misbehaviour, on the advice of a tribunal appointed to conduct the necessary inquiry.

4. The Judicial Service Commission was composed of the Chancellor, the Chief Justice, the Chairman of the Public Service Commission and two or three other appointed members, one of whom had to be a judge and the others representatives of attorneys at law.

5. Sir Vincent EVANS said that it would be useful, especially with a view to planning the Committee's future programme of work, if the representative of Guyana could indicate how soon the Committee might expect to receive a supplementary report.

6. Mr. BARTON-SCOTLAND (Guyana) said that, in referring the questions of members to his Government, he would also inquire when a report might be submitted and inform the Committee accordingly.

Uruguay (continued) (CCPR/C/1/Add.57)

7. Mr. TOMUSCHAT observed that the representative of Uruguay had referred in his introductory statement to his country's exemplary tradition in the field of human rights. Indeed many courageous initiatives had been taken by Uruguay, in particular, its support of the proposal to establish a post for a High Commissioner for Human Rights. It was precisely for that reason that the crisis in that country was so deplorable.

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(Mr. Tomuschat)

8. He did not agree with those speakers who had described the report as a good one. The current political order was much more determined by a series of Institutional Acts than by the Constitution, which seemed to a large extent to have become inoperative. Little attention had been paid in the report to the state of emergency or to the drastic changes which the political order had undergone over the past ten years precisely because of the assumption of power by the military. The report contained abundant references to past constitutions without describing the current situation in a similarly comprehensive manner. In fact, the report read more like a treatise on the country's constitutional history than a description of current realities. It also dwelled almost exclusively on legal norms and regulations and its tone was rather academic. Although quite long, the report was disappointing. Nevertheless, he appreciated it as a manifestation of the Government's will to co-operate with the Committee.

9. It was a matter of common knowledge that the situation in Uruguay had gradually deteriorated after the Tupamaro movement had begun its activities in 1968. While there might have been serious shortcomings in the Government's over-all performance in the economic and social fields, the resort to violence by the Tupamaros was obviously not the right course. The use of violence by one side merely prompted retaliation in kind by the other. It was implicit from the provisions of the Covenant relating to freedom of expression (art. 19) and participation in the public decision-making process (art. 25) that change was to be brought about through peaceful means. Article 5, in particular, enjoined private citizens as well as States from taking action which entailed a denial of rights protected by the Covenant, including the right to life. It was lawful under the Covenant for a State to take action to combat terrorism. However, the aim of the Covenant was to regulate the declaration of a state of emergency in such a way as to prevent the situation from degenerating into anarchy. Persons guilty or suspected of terrorism were nevertheless entitled to minimum guarantees, and measures taken in accordance with article 4 must not lose sight of the inherent dignity of the human person. While it might seem expedient to use coercion on persons detained for terrorist acts to obtain information, the Covenant did not allow the use of ill treatment to extort confessions.

10. While no decisive objection could be raised to military courts' taking over in an emergency certain functions normally performed by the ordinary courts, provided the former's independence and impartiality were duly protected, it was necessary to know more about the mechanisms for ensuring the independence of judges in Uruguay.

11. It was implicit in the right to a fair trial that sentences to long periods of detention should be handed down in writing. In that connexion, the Committee had never been provided with the text of any court decisions despite repeated requests.

12. The vague and general definition of such criminal offences as subversive association might violate the presumption of innocence required by article 14 (2) of the Covenant inasmuch as any individual hostile to the Government would be

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(Mr. Tomuschat)

liable to criminal sanction merely by discussing political issues with friends. Much fuller information was needed on the scope of such offences and on the practice of courts in dealing with them. It needed to be demonstrated that such broadly framed provisions were truly necessary and not intended solely to criminalize political dissent.

13. The right of detained persons to be informed promptly and in detail regarding the nature of the charges against them had generally not been respected in the cases which had come to the attention of the Committee under the Optional Protocol. Derogations from that right might be permissible but not to the extent practised in Uruguay. The aim seemed to be to demoralize opponents of the Government.

14. With regard to article 14 (3) (b) of the Covenant, he noted that accused persons did not have access to a defence lawyer at the stage of preliminary proceedings. Again, while some restrictions on the right to have legal assistance might be permissible in a state of emergency, the limits of reasonableness seemed to have been transgressed.

15. In addition, long delays seemed to be the rule in bringing cases to trial. While that had been understandable in the early years of the state of emergency owing to the large number of cases pending, a greater effort should be made to bring accused persons speedily to trial in the current circumstances, when there was no justification for a derogation from that right.

16. Many accused persons did not know what stage had been reached in proceedings against them owing to the fact that cases before the Military Judges of First Instance were not tried in the presence of the accused. Accused persons were entitled to be present only in preliminary proceedings and that was not sufficient to comply with the obligation laid down in article 14 (3) (d).

17. The guarantee provided in article 14 (3) (e) of the Covenant had to be interpreted broadly, as extending to all stages in the taking of evidence. There were considerable difficulties in enforcing that right in Uruguay since evidence was taken primarily in the preliminary investigation when the accused had little opportunity of influencing the proceedings. The provisions of article 176 of the Code of Military Penal Procedure (CCPR/C/1/Add.57, p. 5) were dangerous in that they seriously limited the opportunity given to the accused to challenge evidence gathered by the prosecution.

18. Even considering the existence of the state of emergency, there was, on the whole, not much room for derogation from article 14 in the circumstances prevailing in Uruguay. While some of the restrictions might be justified if applied individually, their combined effect was to create a situation of hopelessness for those accused of any offence with political overtones. Urgent consideration should, therefore, be given to introducing major changes in the existing laws.

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(Mr. Tomuschat)

19. Although the Covenant did allow for derogations from article 25, it did not recognize the legitimacy of political power exercised by the Government alone. In all circumstances, political sovereignty was vested in the people; government authorities were merely their trustees and must be accountable to them. In that connexion, he asked who decided when and how normality was to be restored and who was directing the process of drafting a new constitution. Since article 25 of the Covenant could not be suspended indefinitely, he asked when general elections were expected to be held.

20. It was a hopeful sign that the Government had finally submitted a report after a long delay and had sent a representative to explain its position to the Committee. It was particularly gratifying that, despite the Committee's critical views on a number of communications, Uruguay had not availed itself of the possibility of denunciation under article 12 of the Optional Protocol. However, all that was not enough. Attitudes and steps at the diplomatic level did not per se affect the actual enjoyment of human rights. The Government's spirit of co-operation must be translated into measures to benefit aggrieved individuals. Since the Government by its own admission no longer considered the Tupamaro movement to be a real threat, it would be wise to repeal a number of provisions for the suppression and punishment of actions by enemies of the régime and for disciplining certain political currents. A clear and present danger to the public good could be controlled by appropriate means while still observing the rights provided for in the Covenant. With a view to restoring internal peace and tolerance, the possibility of giving amnesty to all persons who had been convicted only of the broadly defined offences established under the state of emergency and who had not been personally responsible for acts of violence should be considered. In its consideration of communications from individuals, the Committee would doubtless regard such an amnesty as an effective remedy.

21. If the Government genuinely wished to improve the situation, it should endeavour to strengthen its control over the police and prison authorities. Abuses had occurred and it might even be argued that a systematic pattern of gross and reliably attested violations of human rights existed. The new orientation and spirit of the Government must be reflected in concrete deeds. Improved medical care should be provided for detainees.

22. He hoped that the Government of Uruguay would not view the current dialogue with the Committee as an occasion for rebutting as many charges as possible and seeking to score a diplomatic victory. It should instead rethink the issue of how to cope with terrorists, on the one hand, and political opponents, on the other. The time had come for a calm and careful reassessment of the situation and for considering the long-term prospects for the development of the country. He urged the representative of Uruguay not to report back to his Government that another diplomatic battle had been waged in an international forum and won or lost but rather to endeavour to convince high-level officials of the need for changes along the lines he had suggested.

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23. Mr. GRAEFRATH said he was gratified that Uruguay had finally submitted a report, although it was not as helpful as it might have been. It referred to a Constitution which had been overruled for some 10 years and did not contain sufficient information on the extent of Uruguay's derogations from the Covenant. Moreover certain references were misleading. References to the Constitution, for example, failed to state to what extent it had been superseded. Similarly, the references to habeas corpus, equality between the sexes under the 1830 Constitution, the information provided on the abolition of the death penalty and the observations on the abolition of torture were all inadequately detailed or misleading.
24. In considering communications pertaining to Uruguay, the Committee had become aware of violations of the Covenant under several articles. Yet no information had been forthcoming from the Government about any follow up to such cases, nor had any details been provided of the suspension of any articles of the Covenant. It was not clear, for example, whether proceedings before a Military Judge of the First Instance took place in the presence of the accused - an important question. More information, particularly under article 14, should be provided.
25. Mr. OPSAHL said it was gratifying that Uruguay considered it beneficial to co-operate with the Committee and that the Government recognized its need for guidance.
26. The consideration of communications was an essential aspect of ensuring respect for human rights. The information provided in reports should facilitate a systematic understanding of human rights in a particular country. If States parties failed to provide information, the Committee had to rely on communications, which would necessarily be one-sided. Both reports from States parties and communications were needed if human rights were to be protected, and it was to be hoped that the Government's co-operation with the Committee and the interaction of the two procedures would accelerate the return to normality in Uruguay.
27. In the past the Committee had raised important questions with respect to individual cases, and some indication of what account had been taken of the Committee's views would be welcome. The Government's suggestions on how the communications procedure could be improved would also be of value. The Government might, for example, wish to comment on communications directly to the Committee. There was also the question of how fact-finding in individual cases could be improved. Procedures under the Covenant had not yet been fully elaborated. Co-operation from States parties was important, since Governments clearly had a role to play in developing such procedures.
28. The observations on remedies in Uruguay's report were rather abstract and hard to understand. All the remedies referred to related to criminal proceedings, yet remedies were required in other situations too. The reference in the report to the possibilities for defence counsel of challenging evidence obtained in the course of preliminary investigation under military jurisdiction was surprising, since it seemed to suggest that the defence would be unable to challenge evidence if more than six days had elapsed since it had been submitted to the court at a preliminary hearing. If that were the case, and a trial took place months or years later, the defendant stood no chance whatever of being acquitted.

(Mr. Opsahl)

29. More information was required on procedures under military jurisdiction. Were hearings oral or written? Was there a written judgement which could be submitted to the Committee? There were various references in the report to acts of law, but such references and the legal texts submitted were inadequate. Further details of the situation in practice were needed.

30. The background information provided in the oral presentation had been useful, although much of it had related to a period before the Covenant had come into force. It would be interesting to know what had happened to the individuals who had represented Uruguay internationally in various human rights initiatives, and to former members of Parliament. Details of the strength of the security forces and of where their loyalties had lain during the crisis would be of interest. It would also be useful to have additional information on the numbers of people who had been detained for political violence and similar offences. In the case of prisoners who were required to contribute to the cost of their imprisonment, what happened if they were unable to do so?

31. Any additional information which Uruguay might supply should be based on authentic sources, not on mere newspaper reports, which seemed to have been the source of some of the details provided by the Uruguayan representative.

32. Mr. AGUILAR said that he shared the satisfaction of other members of the Committee at the submission of Uruguay's initial report. It was gratifying that a senior official had been designated to introduce it.

33. There was a tendency in reports to refer solely to legal provisions, apparently in an endeavour to demonstrate the compatibility of domestic legal systems with the Covenant. Reports rarely provided full details of the political, social and cultural framework, which were necessary for an understanding of the situation. Uruguay had made a valuable contribution to the international protection of human rights, so that there was a particular need to know why human rights there had come under attack. There were, however, positive signs. It seemed that Uruguay was beginning to return to its democratic and free tradition. The number of people imprisoned was declining. Various international human rights organizations had taken great interest in Uruguay, particularly because of the way in which security measures had been abused, an area which was also of concern to the Committee.

34. The provisions of articles 7 and 10 of the Covenant were of particular relevance with respect to Uruguay, in view of the reports of physical assault and mental torture of detained persons. It was gratifying that those responsible for such treatment had, in some cases, been put on trial. Such abuses could only be avoided by educating the security forces and by punishing those who overstepped the boundaries of the law. The Government should make a serious effort to prevent such abuses.

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(Mr. Aguilar)

35. The state of emergency in Uruguay had produced a complex situation with regard to habeas corpus. Military tribunals had acted in a way which was not conducive to impartiality. Some indication of the Government's intentions with regard to the future of military tribunals and the restoration of habeas corpus would be welcome. There was, too, a need to reconsider ambiguous "crimes", such as lack of respect for the armed forces.

36. Full particulars should be provided of the persons proscribed from political life because they had served in an earlier Government, of which there had been many cases. Merely having held a particular post at a particular time could not be equated with subversion.

37. A return to normalcy of the political situation in Uruguay would do much to ensure the implementation of human rights. The most important areas in which improvement should be sought were personal freedom, the treatment of detained persons and the general participation of the population in the public life of the country with full enjoyment of social and political rights.

38. The submission of the report and its presentation by the representative of Uruguay demonstrated genuine political will on the part of that country to carry out the provisions of the Covenant. He associated himself with the previous speakers who had pointed out that the work of the Committee had been impeded by a lack of information on pertinent matters, such as court decisions. The objective of the Committee was to promote and safeguard the observance of human rights by indicating to Governments areas in which improvements could be made. It did not in any way seek to function as a court, but wished to stimulate co-operation with States parties in the effective implementation of the Government. It was very encouraging to note that the Government would submit supplementary reports to add to the information in the current report.

#### ORGANIZATIONAL AND OTHER MATTERS

39. The CHAIRMAN requested the members of the Committee to indicate whether they would be able to serve on the working group for the Committee's summer session in Geneva. The working group would begin its work on 5 July, one week prior to the start of the summer session. He pointed out that Mr. Mavrommatis and Mr. Sadi would be unable to join the working group.

40. Mr. HANGA said that he would be unable to serve on the working group. Nevertheless, he had spoken with Mr. Graefrath, who had agreed to take his place.

41. Mr. OPSAHL said that the Committee should consider setting up two working groups for the next session. Although considerable progress had been made with regard to the consideration of communications, there was still much work to be done on the general comments, particularly in view of the fact that the Committee would adopt its annual report at the next session. Furthermore, it had become apparent at the current session that there was a need to consider the rules of procedure and make further recommendations. A number of proposals concerning the reporting procedure under article 4 of the Covenant would also have to be discussed at the next session.

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42. The CHAIRMAN said that it would be possible to set up two working groups provided that sufficient members were available to serve on them.
43. Mr. AL DOURI said that he would be able to serve on one of the working groups but was unable as yet to say when he would arrive in Geneva. He would communicate that information at a later date to the Secretariat.
44. Mr. AGUILAR said that he would be unable to serve on a working group.
45. Mr. HERDOCIA ORTEGA said that he would be able to serve on one of the working groups.
46. Mr. LALLAH said it had been agreed that Mr. Bouziri would serve on one of the working groups and that Mr. Dieye would act as an alternate. He himself would be engaged in the preparation of the report of the Committee and would be unable to serve on a working group. He suggested that Mr. Movchan should be requested to join one of the working groups. Furthermore, it would be helpful if Mr. Opsahl continued to serve on the working group dealing with general comments in view of his experience in that regard.
47. Mr. BOUZIRI said that each working group would require a minimum of three members in order to work effectively. If less than six members of the Committee could serve, it would be wiser to have only one working group.
48. Mr. OPSAHL said that because of a prior commitment he would only be able to attend meetings of the working group for one or two days. He would like to submit certain proposals at the beginning and then join the working group at a later stage to discuss them.
49. Mr. ERMACORA said that he was in a position similar to that of Mr. Opsahl and would only be able to come for one day or so.
50. The CHAIRMAN said that Mr. Al Douri, Mr. Bouziri, Mr. Graefrath, Mr. Herdocia Ortega, and Mr. Tarnopolsky had indicated that they would be able to serve on the working groups and that Mr. Opsahl would be able to participate in a limited manner. The Committee would request Mr. Movchan to join one of the working groups and would try to persuade another member to join so that each working group would have four members.  
*Prado-Vallejo*
51. Sir Vincent EVANS said he hoped that the Committee would shortly take a decision on the proposal which he had made earlier in the session (CCPR/C/SR.349, para. 4) to add a third paragraph to the decision on periodicity. The proposed amendment represented a compromise between the views he had expressed earlier on the question of supplementary reports and the opinions expressed by the members of the Committee in that regard. It had been supported by the Chairman and by most of the members of the Committee. The Committee should not impose, as had been suggested, a time-limit for the submission of supplementary reports; such a time-limit was unnecessary and would limit the flexibility of the Committee.

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52. Mr. LALLAH said that he would have no problem in supporting the proposal made by Sir Vincent Evans.
53. Mr. OPSAHL said that the proposal made by Sir Vincent Evans had the general support of the Committee and should be adopted.
54. Mr. GRAEFRATH said that he could support the proposal made by Sir Vincent Evans if the words "within one year" were inserted after the word "report" in the first line of the proposed amendment. Such a time-limit would be an incentive to States parties to submit supplementary reports promptly.
55. Mr. HANGA said that he had reservations with regard to the amendment proposed by Sir Vincent Evans. The Committee had taken a decision on periodicity only seven months earlier and should see how that decision worked in practice before considering amending it.
56. Mr. ERMACORA suggested that the words "a supplementary report" should be replaced by the words "subsequent information" since the Committee could not in all cases expect a report.
57. Mr. AGUILAR said that he would have no difficulty supporting the proposed amendment under consideration because it would encourage States parties to submit reports promptly. He could also accept the subamendment proposed by Mr. Ermacora.
58. Mr. TARNOPOLSKY said that he supported the amendment as modified by Mr. Graefrath. He did not, however, think that it was necessary to consider the change proposed by Mr. Ermacora until after the Committee considered what measures should be taken under articles 4 and 40 (1) (b) of the Covenant.
59. Mr. LALLAH said that he supported the subamendment proposed by Mr. Graefrath since it would discourage a State party from delaying the submission of a supplementary report until a year or so before its next periodic report.
60. Sir Vincent EVANS expressed the hope that the Committee would not accept the proposed insertion of the phrase "within one year" because that would limit the flexibility of the Committee in cases where States parties did not submit reports within that time-limit. Experience had shown that the Committee could not rely on States parties to submit reports within a specific time-limit since it took time to compile the relevant information. Although the Committee tried to work on the basis of consensus, there was a limit to the practicality of that approach. The Committee should not be prevented from taking a progressive step because of the objections of one or two members. The matter under consideration had been discussed at two or three sessions. He strongly urged the Committee to take a decision on it promptly and to reject the idea of a time-limit of one year.
61. The CHAIRMAN said that in the absence of a consensus the Committee would have to continue consideration of that question the following day.

The meeting rose at 1.05 p.m.

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