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on Civil and  
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HUMAN RIGHTS COMMITTEE

Fifteenth session

SUMMARY RECORD OF THE 359th MEETING

Held at Headquarters, New York,  
on Thursday, 8 April 1982, at 10.30 a.m.

Chairman: Mr. TOMUSCHAT

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The meeting was called to order at 10.50 a.m.

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

General comments under article 40 (4) of the Covenant and Questions relating to the consideration of supplementary reports (continued)

1. Sir Vincent EVANS said that after he had held consultations with colleagues there seemed to be general agreement on the text of his draft additional paragraph 3 to the decision on periodicity. The text of that paragraph was the same as had been proposed earlier with the insertion of the words "within one year, or such other period as the Committee may decide", before the word "following". That addition would only apply in cases where States parties submitted supplementary reports within one year or unless the Committee decided on some other period.
2. Mr. BOUZIRI expressed satisfaction that the draft additional paragraph proposed by Sir Vincent Evans had taken account of the different views of the members of the Committee. It was a generally acceptable text which would facilitate the work of the Committee and the States parties.
3. Mr. PRADO VALLEJO said that discussion of the draft additional paragraph should not have begun until the text was available in all languages. Now that he had seen the Spanish version, he had some reservations with regard to the wording. However, he would not oppose adoption of the text if that was the Committee's wish.
4. Mr. HANGA said that the French version of the draft additional paragraph did not completely correspond to the English. Although he did not wish to prevent the Committee from reaching consensus, he had reservations as to whether the paragraph in question was in conformity with the provisions of the Covenant. It might, therefore, be wiser to defer consideration of that question until the next session of the Committee.
5. Mr. DIEYE said that since there did not seem to be much disagreement over the proposed draft paragraph, the text could perhaps be modified in order to take account of the views expressed.
6. The CHAIRMAN said that, in view of the time factor, the Committee would have to defer further consideration of the draft additional paragraph proposed by Sir Vincent Evans until its next session.
7. At the invitation of the Chairman, Mr. Giambruno (Uruguay) took a place at the Committee table.
8. Mr. GIAMBRUNO (Uruguay) said that his Government had derogated from articles 9, 19 and 25 of the Covenant to a limited degree because of the public emergency which threatened the life of the nation. At no time, however, had

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Uruguay derogated from the articles from which there could be no derogation in accordance with article 4 (2) of the Covenant. It seemed that the members of the Committee had not understood the gravity of the emergency situation in Uruguay caused by terrorist acts and foreign intervention. There was abundant proof of both of those phenomena. That situation should be clearly understood in order to comprehend why it was necessary to curtail the exercise of certain fundamental rights in Uruguay.

9. With regard to the question as to what Uruguay would do in the light of the observations made by the Committee after considering relevant communications under the Optional Protocol, he said that his Government would provide the Committee with all necessary information in the future. Nevertheless, it should be asked whether the Committee's opinion concerning either the admissibility of those communications or their substance was infallible. The Optional Protocol itself did not give precise guidelines in that regard. Furthermore, there was the question of what a State party could do if it found an error in the observations or decisions of the Committee. It should be possible to set up some sort of machinery permitting the Committee to review its decisions in the light of additional information. His Government had misgivings with regard to the publicity resulting from certain decisions taken by the Committee on a number of cases. Such publicity had been used against his Government for political purposes in other international forums. In general, an attempt should be made to improve the procedures used by the Committee.

10. With regard to the question as to whether the Covenant had been widely publicized throughout the country, he said that Uruguayan citizens were well acquainted with the legal instruments concerning human rights, particularly the Covenant. The Covenant had been published in the newspapers, seminars on the Covenant had been held in law schools and judges had been fully informed of the obligations which it imposed. Concerning the exercise of the right to habeas corpus, he observed that that right had been suspended only in cases which came under the prompt security measures régime, which had been imposed in order to deal with an emergency situation resulting from acts of terrorism and subversion. Nevertheless, in all other cases habeas corpus was fully observed. Furthermore, since Uruguay was returning to a state of normalcy, the Government was considering abolishing the prompt security measures régime and restoring the full exercise of the right to habeas corpus. The Committee would be fully informed when that took place.

11. There were no grounds for maintaining that there was no right of appeal against the indictment in cases involving offences of lèse nation. Article 14 of Act No. 14,068 provided that in such cases an appeal might be lodged against the indictment with the Supreme Court of Justice. In actual practice in some 50 to 60 such cases decisions had been appealed. The law had been enacted to serve as a counterweight to the powers which had been granted to the Military Examining Magistrates. With regard to the independence of the judiciary, he pointed out that Act No. 8 had limited only the administrative functions of the judiciary, not the general exercise of its powers; throughout all the years of the crisis in the

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country the judicial branch of the Government had continued to function normally in other respects. Act No. 12, which superseded Act No. 8, restored the total independence of the judiciary in Uruguay and the balance of powers between the three branches of the Government.

12. His Government would reply in detail in a future report to the objections raised by members of the Committee regarding derogations from certain articles of the Convention. He wished to emphasize, however, that at no time during the past 10 years had the Government violated the right to life as provided for in the Covenant. On the contrary, it had made great efforts to protect that right in conditions of civil war and had provided full explanations in other international forums, including the Inter-American Commission on Human Rights and the United Nations Commission on Human Rights, concerning the cases of individuals who had died while in prison. Controversy over the deaths which had occurred in prison had been stirred up by those responsible for the campaign to slander Uruguay. The rate of death in prisons in Uruguay was among the lowest in the world and prison conditions were excellent, in particular, the recreational and health care facilities provided. His Government would be glad to provide details concerning any death in prison into which the Committee might wish to inquire. In one of the cases referred to by a member of the Committee, the detained person had died of a heart attack but the detractors of Uruguay had spread the lie that he had been murdered. Another prisoner, a Tupamaro leader, had had the decency to testify to the true circumstances of the death of the individual in question. As to allegations of torture, he quoted from a pamphlet in which the Tupamaros urged their followers who were arrested, especially women, to charge the police and military with ill-treatment and torture in order to win the sympathy of the public. The former Ambassador of the United Kingdom to Uruguay, who had been abducted and held by the Tupamaros for eight months, had observed in a book recounting his experiences that the common personality trait of his many captors was their viciousness rather than their commitment to a specific ideology. In assessing the situation in Uruguay it was essential to bear in mind such facts. While armed struggle might be regarded as legitimate in certain specific circumstances, as some members of the Committee had observed, it should be remembered that the Tupamaros had taken up arms against a country which was one of the most pluralistic in the world, where all parties, even the most extremist, had their place and where refugees from all parts of the world found asylum.

13. Concern had been expressed over the broad search powers accorded to the authorities under the State Security and Internal Order Act. Those powers were absolutely necessary owing to the nature of the subversive movement, which operated through "columns".

14. The provisions of Institutional Act No. 12 regarding the appointment of judges by the President should not cause any surprise. Previously, candidates for judgeships had had to obtain the support of one of the main parties in the General Assembly, which was no more a guarantee of independence than the new system. Moreover, judges were appointed by the executive in a number of countries, including the United States.

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15. In accordance with the Constitution, legal proceedings were free of charge for persons declared indigent in accordance with the law. While individuals might, in some circumstances, be required to pay for legal costs and the cost of their incarceration, no one had been obliged to remain in prison for lack of funds.

16. Mr. Dieye had inquired regarding the distinction between ordinary and exceptional remedies. He referred members to the abundant reference materials which his Government had provided to the Committee secretariat. Ordinary remedies were those available against sentences that had not yet acquired the status of res judicata, whereas exceptional remedies, on the other hand, were available against sentences which had acquired that status. The definitions of parole and release on bail were set out in the Code of Procedure.

17. As to the questions raised regarding the competence of military courts, he emphasized that the State Security and Internal Order Act had been adopted by both Houses of the legislature in response to a grave threat to the security of the nation. The Act conferred jurisdiction on military courts for offences of lèse-nation, which had already been defined in article 330 of the Constitution. Such offences constituted threats to the life of the nation, and the defence of the nation in such times of danger was appropriately the responsibility of the military. The military courts operated in a genuinely independent manner. As to charges that persons had been held incommunicado indefinitely and that judgements of military tribunals were not handed down in writing, he drew attention to the Code of Military Penal Procedure, which provided that preventive arrests were to be carried out in the manner least detrimental to the suspect and his reputation and that, in any event, preventive detention could not exceed 12 days. Persons so held were entitled to communicate with the judge through a defence attorney, to attend proceedings at which witnesses were heard and to communicate in writing with the head of the establishment in which they were held and with the judicial authorities. Thus, it was an error to think, as some members of the Committee seemed to, that accused persons had been tried without legal defence or that court sentences had been handed down orally. While his Government had not provided the Committee with the text of specific judgements, such judgements were always provided in writing to both the prisoner and his defence attorney and published in law digests. They could thus be consulted by any interested party. Accused persons were entitled to legal assistance in the form of a court-appointed defence attorney or an attorney of their own choosing.

18. Some members had referred to the distinction between persons detained for acts of violence and those arrested for their opinions. He emphasized that not a single person had been arrested in Uruguay for his opinions. Subversion, on the other hand, had a specific legal meaning, and 985 persons had been arrested for that offence, only 15 of whom had not yet been sentenced.

19. With regard to the suspension of political rights, he emphasized the transitory nature of the measures adopted to meet special circumstances in the country's political life. The measures would, moreover, be revised by a three-member commission, and in any event only some 25 persons continued to be affected by them. A gradual return to normality was planned.

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20. Several members had expressed the view that the Constitution appeared to have become inoperative. However, the dissolution of the legislature did not destroy the very foundations of the political system and, although the Institutional Acts had introduced changes, they took as their point of reference the Constitution.

21. The plebiscite on a new constitution which had been held had been a sign of the Government's good faith and not a farce, as depicted in the world press. The new constitution had been rejected by the voters apparently because, with their strong democratic traditions, they had considered that a disproportionate role would be assigned to the military in some of the proposed new institutions. The proof that the Government had not orchestrated a "no" vote as a pretext for delaying a return to normality was that, immediately after the plebiscite, it had begun to explore new avenues. Thus, elections were planned for November 1982 to select the leaders of the country's political parties as an essential step towards the resumption of normal political life. In addition, during 1983 the political parties would participate with the Government in the drafting of a new constitution, which would be submitted to a referendum at the time of the general elections planned for the following year. In that way, total political normality would be restored.

22. At the international level, the Uruguayan Government had long supported the right of the Palestinian people to establish their own State, since every people had the right to self-determination. Uruguay had provided a battalion which would offer logistic support to the peace-keeping force in Sinai. That could hardly be criticized - all States had a duty to support peace-keeping operations. Uruguay's position was quite clear: it wished to participate in the establishment of a Palestinian State.

23. Uruguayan women had enjoyed full civil rights since 1946. They could aspire to prominent positions in Uruguayan society. The current President of the Supreme Court and the Minister for Education were, for example, both women. Divorce had been legal in Uruguay since 1908, earlier than in any other country in Latin America.

24. Uruguay's record in the field of education was enviable. Free primary, secondary, technical, and higher education were available. Although the provision of free education was costly to the Government, it was a cherished tradition. Primary and secondary education were compulsory.

25. Abortion was prohibited, with a few exceptions, although a more liberal trend was becoming apparent. There were no racial minorities in Uruguay, since the indigenous population had been eliminated by the early settlers. Uruguay was firmly committed to racial equality, and had been one of the first signatories of the International Convention on the Elimination of All Forms of Racial Discrimination.

26. Various members of the Committee had referred to the inadequate information provided by the Government. It would have been in Uruguay's interest to have submitted more detailed information, a point which would be made to the

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Government. Not all of the population had been subject to the restrictions imposed under the state of emergency. Uruguay was a peaceful and tranquil land, where restrictions were being eased.

27. The press was gaining ground rapidly. Since 1981, 10 new opposition newspapers had been established, although 1 had been closed since it had published articles which infringed current legislation. Notwithstanding that, there was a virtually free press in Uruguay, with no prior censorship. The opposition press was in fact very critical of the Government and the security forces.

28. Reference had been made in the Committee to the 1979 and 1980 reports of the Inter-American Commission on Human Rights. It was regrettable that no reference had been made to the 1981 report, in which Uruguay failed to appear, owing to the progress it had made in the political and social fields. Account had to be taken of current conditions if a balanced picture was to be presented.

29. The Council of State did not consist of military personnel as had been stated in the Committee; all its members were civilians. It had been established as a provisional body following the dissolution of parliament. The Minister of Justice had recognized that it had not been completely effective in defending human rights in Uruguay, although it had had some effect. The Council was not a parliament, but it had acted to curb government power on occasion. The Supreme Court of Justice was also a civil body, and it too had clashed with the Government on various occasions. The idea that the executive, legislature and judiciary formed a monolithic whole was false.

30. The family was the fundamental unit of Uruguayan society. In case of divorce, proceedings had to begin with conciliation hearings. Uruguay had established a Children's Code, with various subsidiary organs, which promoted the interests of minors, an achievement of which the country was particularly proud. Any child born in Uruguay had Uruguayan nationality, as did children of Uruguayan parents born abroad. Uruguay's health and education facilities were in advance of those in some European States. Facilities were modern and covered the whole country, including remote areas. Health care was free for nationals and foreigners.

31. Trade unions played a role in the life of the country. The Government supported free trade unions, which could not, however, be used as political tools by any party. Given the country's recent history, the Government wanted to ensure that trade unions concerned themselves only with trade union matters, in which area they were free to promote their interests. The right to strike was guaranteed by the Constitution. Changes had been made in trade union legislation, and the observations made by ILO in the past were no longer valid. Some trade union members had been imprisoned, but for sedition and not for carrying out trade union activities. Five former members of parliament were also prisoners, but they too had been imprisoned for their subversive activities.

32. The time-limits on the submission of evidence in preliminary investigations under military jurisdiction, to which reference had been made, were necessary.

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Uruguay's political and security position was improving, and it seems likely that the remaining restrictions would be eased.

33. The Uruguayan Government would supplement its report to provide additional information on all the matters raised by members of the Committee.

34. The CHAIRMAN said that Uruguay's next report would be due in February 1983, and that the supplementary information requested could be included therein.

35. Mr. TARNOPOLSKY said that while the information provided by the representative of Uruguay had been helpful, many questions remained unanswered. It would be of great assistance if the information requested could be submitted to the Committee within a year. The Committee was certainly not infallible but, if errors had been committed, it should be borne in mind that the Committee had always been ready to consider additional information from Uruguay.

36. Mr. GRAEFRATH said that many references had been made to subversives and terrorism. It was important to distinguish subversive acts from those of social democrats and communists, which could not be equated with terrorism. The Committee did not claim to be infallible, but clearly the quality of its decisions depended to a large extent on the co-operation it received from Governments. The Committee reproduced in full the evidence submitted to it, in an endeavour to avoid misleading quotations by the parties concerned.

37. Mr. PRADO VALLEJO said that he had received the opinion of the Colegio de Abogados of Uruguay that, in practice, Institutional Act No. 12 did not ensure the independence of the judiciary, as provided for in the Constitution. The judiciary was subordinate to the executive, contrary to what the representative of Uruguay had stated.

38. Mr. GIAMBRUNO (Uruguay) said that the Government would make every effort to submit all the information required by members of the Committee. If members required details of specific cases, they would be provided also. There was no persecution of communists as such in Uruguay, any communists in prison were there because of their subversive activities. It was true that the Ministry of Justice presided over the legal system, but that did not mean that the judiciary was not independent.

#### ORGANIZATIONAL AND OTHER MATTERS (continued)

39. The CHAIRMAN said that the Committee would continue its consideration of Uruguay's report at its next session, in Geneva, when the question of Arabic as a working language would also be considered. Mr. Prado Vallejo had agreed to act as the eighth member of the two Working Groups.

#### CLOSURE OF THE SESSION

40. The CHAIRMAN declared the fifteenth session of the Human Rights Committee closed.

The meeting rose at 1.15 p.m.