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on Civil and
Political Rights**

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Sixth session

SUMMARY RECORD OF THE 143rd MEETING

Held at Headquarters, New York,
on Wednesday, 23 April 1979, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

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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: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 AND 1978 (continued)

Spain (CCPR/C/4/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Morenilla Rodríguez (Spain) took a place at the Committee table.

2. Mr. MORENILLA RODRIGUEZ (Spain) thanked the members of the Committee for the understanding they had shown over the efforts made by Spain to comply with the obligation which it had entered into upon ratifying the International Covenant on Civil and Political Rights and over Spain's good intentions that its political transition should culminate in a system which effectively guaranteed the exercise of the rights and freedoms recognized in the Covenant and in the new Spanish Constitution.

3. As had been stated in the Committee, constitutions were usually commendable but they all had drawbacks or imperfections. The important thing was for the written constitution to be put into effect and, in the case of Spain, the task of putting the Constitution into effect belonged to members of the legislature, the Administration and the law courts, with the co-operation of every citizen and the political parties, and under the watchful eye of the press. That task and the task being performed by the Committee, was the only possible response to the wave of violence that seemed to be engulfing the world, since the effective guarantee of human rights was the only method of attaining a more just society where the effective protection of the common weal was entrusted to the judicial authorities.

4. After noting the difficulty of giving an adequate answer to all the questions raised in the Committee since many concerned the development and implementation of the Constitution, a task which was already under way, he said that, in any event, he would transmit the questions to his Government, which would, in turn transmit them to the legislature.

5. First of all, as a general observation, he pointed out that 60 legal texts had been submitted as additional documentation with the report by Spain (CCPR/C/4/Add.1). Those texts would make it possible to follow the evolution of Spanish legislation since the Political Reform Act of 4 January 1977, which marked the legal beginning of the transition from the previous autocratic régime to the present democratic system. The legislative documents submitted were closely related to article 2 of the Covenant and showed that the Spanish experiment was an attempt to change the political system by legal methods, repealing or replacing

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those laws of the previous régime which had amounted to a deprivation or restriction of the public freedoms guaranteed by the Covenant. The previous legal system, which dated in large part to the period before the Civil War and included legislation more than a century old (the Civil Code, procedural laws, the organization of the judiciary, the law on credits and loans), was still in effect wherever it had not been superseded by the legislation set out in the documents annexed to the report. Thus, at no time had there existed a legislative or political vacuum, since the State administration had also remained intact, incorporating the structural reforms demanded by the new political situation.

6. Secondly, the new democracy in Spain had sought to take firm root through national reconciliation, as embodied in the Amnesty Act. For that reason, the purges or clearing-up operations referred to by certain members of the Committee had not and could not have occurred.

7. Thirdly, the constituent phase had not precluded intense legislative activity, at the same time, by the Cortes and the Government to repeal or amend earlier legislation affecting human rights and public liberties. A department had also been established, in the office of the President of the Government, which had the task of co-ordinating all legislative development and drawing up the appropriate initial drafts of legislation to develop the Constitution.

8. He then replied to the different questions relating to each of the articles and paragraphs of the Covenant. With regard to article 1 of the Covenant, he explained that, even if the article was interpreted in its broadest sense, the relevant rights under it had already been attained by the Spanish people upon ratification of the Political Reform Act, which had instituted the democratic régime, and the new Constitution, which gave it shape, as stated in the preamble, in order to "protect all Spaniards and peoples of Spain in the exercise of human rights, of their cultures and traditions, and of their languages and institutions". Accordingly, taken together with article 2, which proclaimed "the indivisible unity" of Spain, the right to self-government of the different nationalities and regions was recognized and guaranteed, while the functions of the self-governing communities were regulated under a separate chapter.

9. It had been asked, in connexion with article 2, paragraph 1, of the Covenant, if the obligation to speak Castilian might be a hindrance to Spaniards born abroad or to foreigners acquiring Spanish nationality through marriage. In that regard, he said that article 3 of the Constitution made it the duty of Spaniards to know Castilian, but did not imply that knowledge of the language was a prerequisite for acquiring Spanish nationality or that a penalty was imposed on those who did not

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speak it. The same article laid down that all the different peoples of Spain had a duty to know Castilian.

10. In relation to the applicability of the Covenant and its validity as a source of internal law, in accordance with article 2, paragraph 2, he referred to the various interpretations that existed in relation to its "self-executing character". Under the new Spanish Constitution, it was evident that the Covenant, which had been ratified by Spain, formed part of Spain's internal law, since article 96 of the Constitution laid down that "validly concluded international treaties, once officially published in Spain, shall form part of the internal legal order". However, it had the force of an interpretative standard for the fundamental rights and freedoms recognized in the Constitution, article 10, paragraph 2, of which provided that those standards "shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain".

11. Replying to a question concerning two institutions related to the effective implementation of the Covenant, the ombudsman and the Office of the Public Prosecutor, he noted that the former was provided for in the Spanish Constitution in the shape of the People's Advocate (Defensor del Pueblo), who, under article 54 thereof, was "a supreme instrument of the Cortes Generales, appointed by them to defend [fundamental] rights; for this purpose, he may supervise Administration activities, reporting thereon to the Cortes Generales", and who, under article 162, had the right to lodge appeals on grounds of unconstitutionality and individual appeals (recursos de amparo) before the Constitutional Court. However, he did not have the right to lodge individual appeals before the ordinary courts, since that was one of the functions of the Public Prosecutor who, under article 124, had the mission of "promoting the working of justice in defence of the rule of law, of citizens' rights and of the public interest as safeguarded by the law, whether ex officio or at the request of interested parties, as well as that of protecting the independence of the courts and securing through them the satisfaction of social interest".

12. In response to the various questions asked with regard to article 2, paragraph 3, of the Covenant he said that the Constitution established sufficiently effective machinery to protect individual rights. In addition the right of appeal to ordinary courts in criminal, civil, labour or administrative cases, the relevant chapter of the Constitution also established preferential summary procedures with a view to providing immediate protection of individual rights by by-passing the slowness of the ordinary jurisdiction. In order to protect fundamental rights, an appeal could be lodged on the grounds of the unconstitutionality of law. That procedure could not, however, be initiated by individuals, because it did not affect civil rights; it had been established in order to ensure that public authorities observed the law. Nevertheless, individuals could initiate proceedings

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on grounds of unconstitutionality indirectly through the intermediary of the People's Advocate (Defensor del Pueblo) or members of Parliament, who were empowered to initiate such proceedings under article 162. Civil rights were guaranteed by the right of appeal to the Constitutional Court or through summary channels in ordinary courts, in accordance with the provisions of article 53 of the Constitution.

13. In response to the question of whether jurisdictional protection was afforded only to Spanish nationals or was also extended to foreigners, he explained that that question stemmed from the fact that, in some places, the Constitution referred to "Spaniards" and "citizens", and in other places, for example, in articles 17 and 24, the words "every person" were used. The question of whether or not that lack of uniformity had been deliberate on the part of the authors of the Constitution would become clearer with the passage of time and, in that connexion, the Constitutional Court would have the final word. Furthermore, the law on the status of aliens would undoubtedly incorporate the precept, set forth in the Covenant.

14. With regard to article 3 of the Covenant, he had also been asked in what way men and women actually enjoyed equality in Spain. Under the new legislation, the Civil Code had been reformed with respect to the legal régime governing marriage and the Penal Code had been amended to remove the penalties for adultery and for the sale of contraceptives, inter alia. Those changes were not a dead letter; but they were a reflection of the radical transformation which had occurred in such matters in Spain.

15. With regard to article 4 of the Covenant concerning the suspension of individual rights, article 55 of the Constitution stipulated that the rights recognized in articles 17, 18 (paras. 2 and 3), 19, 20 (paras. 1 (a) and (d)), 21, 28 (para. 2) and 37 (para. 2) could be suspended only when a state of emergency or siege was declared under the terms of the Constitution. It should be pointed out that article 55 of the Spanish Constitution had, to a certain extent, a broader scope than article 4 of the Covenant since it specified which rights could be suspended, whereas the Covenant seemed to imply that the exercise of all rights could be suspended, with the exception of those expressly mentioned in article 4, paragraph 2. In the context, he explained that the Constitution did not refer to the state of alarm in connexion with the suspension of rights because when a state of alarm was declared, the exercise of fundamental rights was not suspended. According to article 116 of the Constitution, an organic law, which must be adopted by an absolute majority in Parliament, would govern any such state of alarm, emergency or siege, as well as the corresponding powers and restrictions. The same article stipulated the conditions in which such states could be declared and the authorities which were competent to declare them as well as their duration, and specified that the declaration of states of alarm, emergency and siege should not modify the principle of the responsibility of the Government and its agents as recognized by the Constitution and by law.

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16. Article 4 of the Covenant stated that any State party availing itself of the right of derogation should immediately inform the other States parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it had derogated and of the reasons by which it had been actuated. Since 1976, no state of alarm, emergency or siege had been declared in Spain, and therefore it had not been necessary to provide information on that subject.

17. Referring to the special national court (Audencia Nacional), he explained that it had jurisdiction over the entire national territory. That court, which was composed of ordinary judges, tried offences that exceeded the jurisdiction of territorial courts; it had been established in order to solve the practical problems that arose when a case was tried by courts in different parts of the country, as had occurred, for example, with regard to such offences as currency counterfeiting, drug trafficking, economic offences on a national scale, prostitution, and so forth.

18. He had been asked whether anti-terrorist laws adopted in the future might contain provisions affecting the right of a detainee to legal assistance. In that connexion, he explained that, although the relevant law had not yet been adopted, the objective of the provisions currently in force was to provide the Government with an effective instrument to combat terrorism while safeguarding guarantees of individual rights, including the right of a detainee to legal assistance. The report had made no reference to those provisions because they did not entail any restriction or suspension of individual rights.

19. With regard to the death penalty, article 15 of the Spanish Constitution stipulated positively that it had been abolished, except as provided for by military criminal law in time of war. Furthermore, the penalty of rigorous imprisonment for life had been abolished in Spain five years earlier. The previous legislation had provided for a maximum penalty of 40 years in prison in cases in which the death sentence had been commuted to rigorous imprisonment. Currently, the maximum penalty was 20 to 30 years in prison, and, under a preliminary draft law, the system of penalties would be changed entirely. Spanish law also provided penalties for the offence of genocide.

20. With reference to article 7 of the Covenant, it could be said that the Spanish Parliament had adopted an extremely progressive attitude; draft legislation was currently under consideration on the classification of torture. A radical reform had also been implemented with respect to the treatment of inmates of prisons. The General Penal Institutions Act, which was under consideration by the Cortes, would become a model law in every way because it incorporated the Standard Minimum Rules

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for the Treatment of Prisoners elaborated by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Penal Institution Regulations currently in force were to a large extent based on the Criminal Procedure Act, under which all the rights of individuals were scrupulously protect by judicial control: the examining judge had to monitor the condition of detainees during the period of investigation, and the judge who handed down the sentence had to monitor its application.

21. With regard to conventions concerning slavery, he pointed out that Spain had ratified the Geneva Slavery Convention in 1927 and the New York Protocol amending the Slavery Convention in 1976. It had also acceded to the Supplementary Convention on the Abolition of Slavery, the Slaves Trade, and Institutions and Practices Similar to Slavery in 1967.

22. Referring to article 9 of the Covenant and in response to a question concerning bail, he said that the Constitution did not set any limit on the amount of bail set because that question was governed by the Criminal Proceedure Act. In accordance with very long-standing judicial practice, bail was determined on the basis of the wealth of the person who had to pay it and the magnitude of the offence.

23. With regard to compensation for unlawful arrest (art. 9, para. 5, of the Covenant), he pointed out that, although such compensation was not expressly provided for in the Constitution, article 121 was so broad in scope that it did cover the matter. Cases of unlawful arrest by the police and failure to comply with the requirement that the detainee be released, and similar acts by private individuals, were covered by the Penal Code, according to which criminal liability for an offence also entailed civil liability, including compensation for damages. A law currently under consideration would provide for compensation not only for unlawful arrest but also for judicial malfeasance.

24. Freedom to enter and to leave a country was set forth in the Spanish Constitution in terms similar to those of the Covenant. Article 12 of the Covenant used the words "Everyone lawfully within the territory", while article 19 of the Constitution stated that "Spaniards ... have the right freely to enter and leave Spain". In that respect, the Constitution would undoubtedly be more restrictive until such time as the law concerning aliens and practice relating to the implementation of article 13 of the Constitution established the actual scope of the relevant public rights and freedoms. The allusion to political or ideological reasons in the last paragraph of article 19 of the Constitution was aimed at strengthening freedom of expression and ideology; thus, if legal restrictions were to be placed on the right of movement, it would not be possible in any case to invoke political or ideological considerations.

25. With regard to article 13 of the Covenant, he noted that up to now it had been possible to expel aliens from Spain by administrative means if they were undocumented or had entered the country without fulfilling the legal requirements or by judicial means under the Danger to Society and Social Rehabilitation Act. The latter Act dealt with anti-social persons who prevented citizens from freely exercising their rights or who disturbed the public peace, such as vagrants,

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beggars, prostitutes, drug addicts, alcoholics and those who were referred to in Spain as gamberros (hoodlums). It called for security measures to be taken in the light of the degree of social danger posed by a person - a criminological concept based on an assessment of the potential of certain persons to become delinquents. Since it had been shown that that concept could constitute interference in a person's life, it had been decided to repeal the Act. Under the new legislation, security measures would fall within the purview of the Penal Code. The Danger to Society Act had been aimed at integrating the individual, through rehabilitation, into the society in which he was going to live; since it had been recognized that aliens did not necessarily share the moral standards of Spanish society, they had had the choice of either accepting them or leaving the country. In any event, security measures could always be appealed and could not be enforced until a final sentence was handed down.

26. With regard to article 14 of the Covenant, he noted that the Spanish judiciary had succeeded in maintaining its independence under the previous régime, thus continuing a tradition that had won it the respect of the people. Under the previous system, judges and ordinary courts had not intervened in actions relating to public freedoms, which had always fallen within the competence of special tribunals. Under the Constitution, any limitation of public guarantees was always submitted to the courts. The authors of the Constitution, who had included members of all the political parties, had entrusted that task to the judges and courts because they had been aware of the tradition of prestige, independence, honesty and integrity that had characterized the Spanish judiciary. During the elections of 1977, the referendum and the more recent elections, the political forces had requested the examining magistrates of the electoral districts to supervise the counting of the ballots. As a result, the Constitution included a provision according to which, in addition to their traditional functions judges would have "those which were expressly allocated to them by law as a guarantee of some right" (art. 117, para. 4).

27. With regard to the selection of judges and the apolitical nature of the judiciary, he noted that in Spain judges had never been either elected or appointed. Both judges and public prosecutors were chosen by means of examinations that were open to anyone holding a degree in law. In the selection of judges, only character and legal training, rather than political views had ever been taken into account. A judge began his career at the age of 25 or 26 in a minor district and was promoted by seniority to higher duties. Under all political régimes, the people had viewed the judiciary as the guarantor of their rights and firmest supporter of their freedom. Membership in a political party had been considered a form of partiality that would lead to conflicts in the administration of justice. Although judges could, like every one else, have political views and participate in elections, they did not belong to trade unions or political parties.

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28. The provisions regarding the judiciary were set out in the Constitution under a separate title, as were those relating to the Crown, the Cortes Generales and the Government. Judges were not civil servants, but rather persons who had been invested with the sacred power of deciding on the disputes that were brought before them. Article 127, paragraph 1 of the Constitution provided that the law should lay down the system and methods of professional association for judges, magistrates and prosecutors. It had been said in the Committee that a professional association of Judges might serve as a means for exerting pressure to change laws or other legislative measures. That was envisaged in the Constitution, and particularly in the Penal Code, which provided that if a judge, in handing down a sentence, observed that a law was manifestly unfair, he must so inform the Government with a view to having it changed. In Spain, judges exerted that pressure in fulfilment of an obligation and in exercise of a fundamental duty.

29. With regard to legal assistance to aliens in police and judicial matters, he pointed out that articles 17 and 24 of the Constitution did not refer to "Spaniards" but to "every person". That could be interpreted as reflecting concern on the part of the authors of the Constitution that the right in question should be extended to everyone. Any doubt in that regard should be dispelled by article 10, paragraph 2, of the Constitution and the interpretative rules set forth in the Covenant.

30. With regard to military jurisdiction, there was currently under way a thorough reform of the Code of Military Justice and of the procedural laws, in order to limit the scope of military jurisdiction in accordance with article 117, paragraph 5, of the Constitution, which provided that the principle of jurisdictional unity was the basis of the organization and operation of the courts and that the law should regulate the exercise of military jurisdiction strictly within military limits and in cases of siege, in accordance with the principles of the Constitution. Article 117, paragraph 6, of the Constitution prohibited courts of exception, since it was, of course, contrary to the concept of an independent judiciary to take away from it powers which were inherent in it, such as the protection of public freedoms, and to entrust those powers to courts of exception.

31. In response to a question concerning loss of nationality and freedom to change nationality, he said that the provisions of article 11 of the Constitution applied to persons of Spanish origin, since under the Penal Code, naturalized aliens could lose Spanish citizenship if they committed the crime of treason or a crime against internal security. Part I of the Civil Code established the different means of acquiring nationality; on the other hand, Spaniards could lose their citizenship if they accepted the nationality of another country, if they served in foreign armed forces or in other cases mentioned by the Code.

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32. With regard to the right of asylum which was recognized in article 13, paragraph 4, of the Constitution, he pointed out that Spain had ratified the Convention and Protocol relating to the Status of Refugees.

33. Replying to a question on restrictions of the right set forth in article 17 of the Covenant, he said that such restrictions were established by the Constitution and required judicial action and parliamentary supervision. In order to protect that right, the Penal Code defined offences against honour.

34. The right set forth in article 18 of the Covenant was fully guaranteed by the Constitution; it should also be noted that article 18, paragraph 3, of the Covenant established the limitations on that right, which derived from respect for the enjoyment of the same right by other persons.

35. Article 172 of the Penal Code specified which associations were illegal and thus defined the actual scope of freedom of association and expression. In that connexion, questions had been raised with regard to the question of truthful information and the freedom enjoyed by the republican parties in Spain. The principle of "exceptio veritatis" was applied in the Penal Code with regard to numerous offences; for example, in order for there to be an offence against honour (slander, libel), the information in question must be false. The application of that principle imposed a restriction on the exercise of freedom of expression. With regard to the second point, the Constitution did not prohibit activities by republican parties in Spain, and such parties actually did exist. Non-violent republican propaganda was legal. Moreover, the form of government could be changed in accordance with procedures established by the Constitution.

36. With regard to freedom of association, free masonry posed a special problem, since the Associations Act and the Constitution laid down the basic requirement that by-laws should be made public, and an association seeking to have secret by-laws could not be recognized.

37. With regard to the relationship between Church and State, article 16 of the Constitution was decisive and entailed a radical change with respect to the past. Paragraph 3 of that article contained a provision whose specific implications would have to be determined by the Legislative Branch or the Constitutional Court but which could not be construed as discriminatory. It was true that only a church wedding had civil effects, provided that the local magistrate was notified; when a wedding was solemnized according to another rite, a civil ceremony also had to take place. However, the new legislation governing relations with the Holy See and the future provisions of the Civil Code concerning marriage would clarify the significance of those arrangements.

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38. An observation had been made with regard to article 27, paragraph 3, of the Constitution, which seemed to confer a right on parents, regardless of the age of their children. In that connexion, he pointed out that the article in question should be interpreted in the light of other articles of the Constitution (for example, article 12, according to which Spaniards attained their majority at the age of 18 years) and in the light of the rules governing patria potestas in the Civil Code.

39. With regard to the question of the criteria applied in order to determine which were the significant social and political groups mentioned in article 20, paragraph 3, of the Constitution, the matter would be settled by legislation, but political and social groups that were fairly well established in Spanish society would unquestionably be taken into consideration.

40. With regard to the means by which racist ideas were fought, he noted that although the question was regulated by the new Penal Code, the only means now provided for was that laid down by the current Penal Code in its article 172 concerning illegal propaganda, including that aimed at establishing in Spain a totalitarian régime subject to international control.

41. With regard to freedom of education, it should be regarded as the right to give instruction without interference for political, religious or moral reasons within the limits set in article 20, paragraph 4, of the Constitution, which coincided with those laid down in article 19 of the Covenant.

42. With regard to article 20 of the Covenant, questions had been raised concerning propaganda for war. The Penal Code did not deal with that matter specifically, although it could be regarded as falling within the scope of illegal propaganda. The courts would have to hand down a ruling in that connexion, although it should be pointed out that in Spain the interpretation of penal provisions by extension or analogy was prohibited.

43. Replying to a question concerning the rights of assembly and demonstration, he noted that Act No. 62/1978 established a procedure directly safeguarding the rights of individuals and that article 1 of that Act listed a series of rights, including freedom of expression, assembly and association. With regard to restrictions on the right of association, article 22, paragraphs 2 and 4, of the Constitution were sufficiently explicit. Examination of article 22 of the Constitution in conjunction with the new law on political parties of 4 December 1978 made clear the scope of that right. The law on political parties laid down the requirement that their by-laws should be placed on file and made available for public inspection, which made it possible to determine whether there was any evidence of illegality.

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44. He also wished to stress the freedom enjoyed by political parties, which, according to article 6 of the Constitution, "reflect political pluralism, contribute to the formation and expression of the popular will, and are a basic instrument of political participation. They may be established and may carry on their activities freely, subject to compliance with the Constitution and the law. Their internal structure and functioning shall be democratic". That freedom extended to the advocacy of ideas that were contrary to the provisions of the Constitution, provided that they did not call for its violent overthrow.

45. With regard to article 23 of the Covenant, there was a bill under consideration which conferred patria potestas jointly on the father and mother. In the event of disagreement between them, the judge decided whom it was to be conferred upon in each specific case, taking into account at all times the interests of the children. With regard to the right of children to assistance, which was referred to in the Constitution, that was a legal concept covering a wide range of obligations on the part of parents that were dealt with fully in a number of articles of the Civil Code; the latter also laid down the grounds for loss of patria potestas, while certain types of abuse of children by their parents (maltreatment, seduction, etc.) were defined as offences in the Penal Code.

46. With regard to article 25 of the Covenant, the Constitution adopted the principle of one person, one vote, and a number of articles specified forms of direct participation by citizens in public affairs, such as the right of petition (art.29) and in the administration of justice, popular initiatives and the institution of the jury (art. 125), not to mention participation in legislative activities, through parties and elections, and direct participation in public office. In that connexion, there was a long tradition in his country guaranteeing that the process of filling vacancies in public office was fully public at every stage. In the event of irregularities, it was possible to resort to action under administrative law, including proceedings in the Supreme Court.

47. With regard to article 26 of the Covenant, the Constitution condemned discrimination and the Civil Code established equality of the sexes. A bill establishing equality before the law for children both in and out of wedlock was currently under consideration.

48. With regard to article 27 of the Covenant, there were no Jewish or Moslem minorities of Spanish origin in Spain, since the country's historic evolution had not permitted their existence. Jews and Moslems living in Spain were of foreign origin and had settled in the country recently. The gypsy minority was marginal, not owing to ethnic discrimination but because of socio-economic factors. In order to correct that situation, an interministerial commission had been set up to

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study the problems of that nomadic community, which had always met with great sympathy in his country.

49. With regard to the possibility of discrimination against different nationalities and regions, he noted that, according to article 2 of the Constitution, the latter was based on the indissoluble unity of the Spanish nation, the common, indivisible fatherland of all Spaniards, and recognized and guaranteed the right to autonomy of the nationalities and regions making up the nation as well as solidarity among all of them. As to the question of whether the legislative assemblies of each region could enact legislation that did not conform to the provisions of the Covenant. It was his understanding that such legislation must reflect the provisions of the Constitution and the Covenant.

The meeting rose at 1.15 p.m.