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Fifty-seventh session

SUMMARY RECORD OF THE 1521st MEETING

Held at the Palais des Nations, Geneva
on Friday, 19 July 1996, at 3 p.m.

Chairman: Mr. BÁN
later: Mr. AGUILAR URBINA

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GE.96-17405 (E)

The meeting was called to order at 3.10 p.m.

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

Third periodic report of Peru (continued) (CCPR/C/83/Add.1; HRI/CORE/1/Add.43/Rev.1; CCPR/C/57/LST/PER/4)

1. The CHAIRMAN invited members of the Committee who had not yet done so to ask questions regarding the information provided by the Peruvian delegation under part I of the list of issues (CCPR/C/57/LST/PER/4).

2. Mr. BUERGENTHAL thanked the Peruvian delegation for having answered most of his questions, but he would welcome further information on two points. First, on the question of compensation granted to victims of human rights violations in cases where those responsible had subsequently been granted amnesty, he noted that there had, in fact, been provisions for compensation. However, in the light of article 6 of Law No. 26,479, which forbade access to information, details of an investigation and, in general, the entire file, how could the victims prove their right to compensation once amnesty had been granted?

3. Secondly, he found it hard to see how the impartiality of the military courts could be guaranteed when neither the accused nor his lawyer could know the identity of the judges and, therefore, could not be certain that the judges had no bias or personal interest in a case. Generally speaking, the procedure described by the Peruvian delegation did not seem satisfactory from the standpoint of the Covenant.

4. Lastly, the Peruvian delegation had referred the Committee to information in the possession of the International Committee of the Red Cross (ICRC). The delegation was surely aware that, unfortunately, the Human Rights Committee had no access to that information, although it would, of course, be very interested in ICRC's information concerning the situation in Peruvian prisons over the past few years.

5. Ms. MEDINA QUIROGA expressed regret that the Peruvian delegation had often confined itself to stating that the information provided by non-governmental organizations (NGOs) was unreliable. She also found it unfortunate that the delegation had not answered a number of the specific questions asked by members of the Committee and based directly on the periodic report (CCPR/C/83/Add.1) and Peruvian law. The Committee was responsible for monitoring the way in which the Covenant was implemented by States parties and it was, therefore, necessary for those States to provide specific answers to the questions they were asked during the consideration of their periodic reports.

6. A number of her own questions had not been answered. In particular, was it possible to bring an appeal before an ordinary, independent and impartial court in cases of aggravated terrorism? It was her understanding that there were three types of appeal in Peru: a remedy of annulment before the Supreme Council of Military Justice, an application for reconsideration of the facts before a military court (according to what the Peruvian delegation had stated orally) and a kind of appeal to the Supreme Court - but only in capital cases - under the Constitution. In general, how were the independence and impartiality of the courts guaranteed? The military trial and appeal courts were not in compliance with article 14 of the Covenant, since the judges were serving military officers.

7. She asked whether examining magistrates could hand down sentences in trials for terrorist activities in the civil courts. It was her understanding that only the "faceless judges" were empowered to do so. Furthermore, what regulations governed the right to a defence? As she had stated on other

occasions, it seemed that lawyers were permitted to spend only 15 minutes a week with their clients in detention and that that interview took place in public. Did lawyers have the right to ask to cross-examine all witnesses, including members of the police and armed forces implicated in the case? If it was true that defence lawyers could meet with judges for only five minutes, it was difficult to see how they could perform their functions correctly under such conditions. Moreover, how was the right to a defence ensured in view of the expeditious nature of the judicial procedure?

8. She noted that legislation currently in force provided a partial remedy to the problem of people who were held in custody after having been pardoned, but wondered what happened to those to whom that legislation did not apply.

9. Furthermore, it seemed that a person could be prosecuted for not having an identity card, yet no one, apparently, could be tried unless he had one. She asked for an explanation of those points.

10. The Peruvian delegation had stated that Law No. 26,723 had been adopted in accordance with the Constitution. Had there been a referendum on that occasion? On a more general point, how was the National Council of the Judiciary compatible with articles 150, 154 and 158 of the Constitution? The Peruvian Government could not invoke the need for judicial reform in that regard. It was imperative to ensure that reforms did not violate the human rights of the population.

11. Lastly, Law No. 26,248 had restored the remedy of habeas corpus in cases involving terrorism, but that remedy was apparently part of a special procedure. She asked what that procedure consisted of.

12. Mr. Aguilar Urbina took the Chair.

13. Mr. BÁN thanked the Peruvian delegation for having answered most of his questions. It had not, however, replied to his question concerning the exact date on which the state of emergency had been declared. That was a very important point since the state of emergency had been in force for about five years, which was a long time. Moreover, it was clear that many of the rights which were guaranteed by the Covenant and could not be derogated from except in the context of an officially declared state of emergency had been restricted during those years. And it was important for the Committee to have precise information on the duration of the state of emergency in order to evaluate how the Covenant had been implemented in Peru throughout that period.

14. The information provided by the Peruvian delegation on the question of compensation for victims of human rights violations had been new to him since neither the periodic report (CCPR/C/83/Add.1) nor the Committee's other sources of information had mentioned compensation measures. He would be grateful if the Peruvian delegation could provide further, more specific information on that point.

15. Mr. BHAGWATI said that he, too, regretted the Peruvian delegation’s failure to reply to a number of questions. In particular, he still did not know whether the Constitutional Court had, in fact, been established and its judges appointed. Had that court begun to function?

16. He also wondered whether the Office of the Ombudsman had been set up, whether anyone had been appointed to that post and, if so, what that person's responsibilities were. It was his understanding that, under the Constitution, the Ombudsman would not have access to confidential security-related material without the authorization of the Ministry of Defence, the Ministry of the Interior or the Ministry of Foreign Affairs. Exactly which documents were involved and who determined whether they were confidential or security-related? He noted that the Ombudsman could be prevented from

carrying out his mandate if the information he needed fell into the prohibited category.

17. Judges' appointments must be confirmed every seven years. What criteria were used in that procedure and were there any guarantees against improper refusal to confirm a judge's appointment?

18. The Constitution of 1993 had extended the death penalty to terrorist activities, that penalty having been limited to treason in time of war under the previous Constitution. That was in complete contradiction with the international instruments to which Peru was a party, particularly the American Convention on Human Rights or San José Pact. He wondered why the Constitution of 1993 had introduced the death penalty for terrorist activities.

19. Was it true that defence lawyers had no access to the evidence in trials of civilians before civil or military courts under Decree-Laws Nos. 25,475 and 25,659? And if so, how could lawyers defend their clients in that type of trial? The accused would obviously not have the benefit of a fair trial.

20. The CHAIRMAN said he, too, would like further information on several matters. In particular, with regard to the independence of judges, he noted that the Peruvian delegation had denied that the other branches of power interfered in judicial matters. It had also stated that all legal reforms had been undertaken at the behest of the public and that 90 per cent of those consulted had approved of the reforms. However, it was well known that public opinion was easy to manipulate and could, therefore, be considered a form of interference. It would be interesting to know exactly what was meant by the words "90 per cent of the people interviewed" and what percentage of people in Peru were aware of the international obligation entered into by their Government, particularly the International Covenant on Civil and Political Rights. It was unlikely that those people included many experts on the implementation of the Covenant.

21. He was also concerned by the question of disappeared persons and asked the Peruvian delegation to provide fuller and more specific information on that matter. In particular, was the burden of proof on the families and friends of such persons?

22. In conclusion, he said it must be remembered that the Committee was not a political body; it had been established under the International Covenant for Civil and Political Rights and, in that capacity, was responsible for studying the way in which States parties met the legal obligations that they had undertaken in becoming parties to that instrument.

23. Speaking in his capacity as Chairman, he invited the Peruvian delegation to reply to the questions asked orally by members of the Committee.

24. Mr. HERMOZA-MOYA (Peru), replying to the question whether members of Sendero Luminoso and those of the Tupac Amarú Revolutionary Movement had been treated in the same way, said that the law made no distinction between subversive groups; all those who committed acts of terrorism were given equal treatment. Moreover, no one could be prosecuted for his ideas in Peru.

25. In reply to a question on the measures adopted on 5 April 1992, he observed that, until that date, the situation in Peru had been heading towards disaster. As a result of terrorist activities, the principal institutions had no longer functioned, and the Judiciary had been powerless and living in fear because of constant threats from terrorist groups. Therefore, on 5 April 1992, the Government had decreed a defensive strategy that had made possible the arrest of the main leader of Sendero Luminoso on 12 September of that year.

26. With regard to the question whether capital punishment infringed the rights guaranteed by the Peruvian Constitution, as he had already stated, there was no provision for capital punishment in criminal law on terrorism, and the death penalty was therefore not applicable in such cases.

27. As to the possibility of the detention of innocent people - a problem which was in fact not limited to Peru, he explained that inquiries resulted in arrests, not the reverse. Only after investigation would the police arrest and detain a suspect.

28. The “peasant patrols” were institutions which had existed for decades in the indigenous communities of Peru and helped to protect the interests of those communities. They had not been set up by the Peruvian authorities.

29. Allegations of cruel, inhuman or degrading treatment of people in police custody must be rejected as unfounded. The few cases that might have existed in the past had been brought before the competent courts, and those responsible had been punished. Moreover, the idea of abuse of authority by police officers did not apply only to cases involving terrorism. Complaints of torture or ill-treatment by the police or the prison authorities must be made before the Public Prosecutor’s Office, which was authorized to refer them to the competent court and to request the prosecution of those presumed responsible. There was, therefore, a well-established procedure in that regard.

30. It had been asked whether the anonymity of judges (the "faceless judges") was compatible with the process of pacification of the country. Although that process was well advanced, it had not yet been completed; however, there had already been a considerable decrease in cases involving terrorism. Under Peruvian law, the "faceless judges" were a temporary institution and would disappear as the pacification process continued. When that process was completed, there would be no further need for that institution.

31. With regard to the relaxation of repressive laws, he explained that the Government was currently endeavouring to make the legislation that had preceded the Amnesty Law less rigid. For example, the adoption of the Repentance Law had enabled over 4,000 people to be released. In comparison, the Amnesty Law had affected only a very small number of offenders.

32. In reply to a question on the effects of the Amnesty Law, he explained that that law was an integral part of the national pacification process; it concerned a specific offence and made it possible to terminate legal proceedings undertaken for such offences.

33. With regard to compensation for victims of the human rights violations covered by the Amnesty Law, he said that the amount of compensation was established by the judicial, and not the political, authorities. In the La Cantuta University case, the court's decision had involved compensation of the victims as claimants for criminal indemnification. The State had been responsible for paying that compensation and had done so in compliance with that decision. The right to compensation was indeed guaranteed in cases where amnesty had been granted without a trial. However, the State could not unilaterally set the amount of compensation, which depended on the outcome of a civil procedure. Thus, the victims or their families must bring an action against the State in order to be compensated. In short, the right to compensation did, indeed, exist in such cases; only the procedure was different.

34. In reply to a question on the suspension of the remedy of habeas corpus, he said that he had already explained in detail the legal provisions in force on that matter. Peruvian law did not include the concept of prisoners of conscience. No one could be prosecuted for his opinions. The Government was

planning to establish a procedure for dealing with any complaints from people in detention who considered themselves innocent. He assured the Committee that all cases of that type would be handled with full respect for the law and human rights.

35. On the question about the functioning of the ordinary courts in cases involving terrorism, he said that there were two phases to the procedure. In the first, a judge conducted a preliminary criminal investigation to determine the responsibility of the accused. That judge was responsible for assembling the evidence, but was not competent to hand down a decision. The second phase was that of the "oral judgement", which was handed down by a collegiate court, which was currently still composed of "faceless judges". However, as he had already stated, that procedure was of a merely temporary nature. In all cases, the right to a defence was guaranteed without restriction. The Committee had been falsely informed that the defence lawyer was permitted to spend only five minutes with the judge. Furthermore, prisoners were permitted to meet in private with their lawyers, who could question all parties involved in the arrest or charging of their clients, during both the police investigation and the judicial examination. There were no limitations on the right to a defence.

36. A problem had arisen with regard to individuals acquitted under a Supreme Court decision that had annulled a previous conviction against which a remedy of annulment had been applied for. A person thus acquitted and found to be innocent might be rearrested under a new warrant. Fortunately, there was a law which stipulated that such people must remain at liberty. There were also cases of people who had been acquitted in the same manner but who had been rearrested because they had not obeyed a summons to appear before the judge; that was considered contempt of court and constituted grounds for arrest.

37. It had been asked whether it was possible for a person to be tried for terrorism simply because he had no identity papers. That was not possible, since being in that situation did not constitute a criminal offence. However, at the time when terrorists had been acting with impunity, they had attacked the premises where voter identity cards had been stored and had filled them out fraudulently. It was possible that a terrorist who had been found in possession of a voter identity card or some other stolen or falsified identity card had claimed to have been arrested because he had had no papers. Possession of a stolen or falsified document was, obviously, an ordinary offence because it constituted a breach of public confidence (la fé pública), but in no circumstances could it result in prosecution for terrorism.

38. It had been asked whether the Constitution had been amended in relation to the system of judicial coordination. That had not been done since the Judicial Coordination Act did not alter the structure of the State powers as established in the Constitution. The Act had established a body responsible for inter-agency coordination headed by the President of the Supreme Court and which included, inter alia, the Attorney General, the National Council of the Judiciary, the Ombudsman and representatives of lawyers and law professors, in other words, all the institutions associated with the functioning of the Judiciary. None of the elements of that judicial coordination council's mandate constituted interference in the function of the Judiciary. On the contrary, that body had been created to rebuild a Judiciary with restored credibility.

39. There was no special procedure for the remedy of habeas corpus; the applicable procedure was the one established by law, and that guarantee remained unaffected.

40. The law on the reorganization of the Judiciary had introduced administrative regulations aimed at facilitating procedures for litigants. Previously, it had often happened that the plaintiff or his lawyer constantly

interrupted the judge, sometimes in an attempt to influence him in various ways. In addition to the risk that such practices posed for proper judicial process, they wasted time. There were currently two procedures by which a litigant could address the judge.

41. The first consisted of an information sheet which allowed the litigant or his lawyer to ask the judge questions on the progress of the case, when the judge would hand down his decision, etc. The reply could be made only by the judge in charge of the case, who must return the signed document to the litigant within 24 hours. That document concerned the progress of the proceedings. Secondly, the litigant could request his lawyer to be present when he appeared before the judge, but only on condition that the other party was informed of that fact so that he could also be present with his lawyer. That measure was designed to create equitable conditions for the exercise of his rights. That procedure existed in other countries as well.

42. He confirmed that judgements handed down by military courts could be reviewed only by an ordinary court. Only the Supreme Council of Military Justice could reconsider decisions handed down by a military court.

43. It had been asked how long the emergency measures would remain in force in Peru. He explained that the state of emergency was no longer needed in many parts of the country; it had been more or less rescinded in 65 to 70 per cent of the territory and was maintained only in areas where there was still terrorist activity.

44. In reply to the questions concerning the Constitutional Court, he said that the Peruvian Constitution provided for two bodies responsible for monitoring observance of the Constitution: the Constitutional Court and the "Ombudsman". The strength of those two institutions stemmed precisely from the fact that their members had been elected by Congress and that the candidacies for those posts had been decided by virtual consensus rather than by a decision of the majority in the Government. There was, therefore, a guarantee that the Constitutional Court would be a faithful guardian of the Constitution. As to the "Ombudsman", he would officially take up his duties on 11 September 1996, but he had already set up the task forces that would assist him and was already receiving complaints.

45. Questions had been asked about the confirmation of judges' appointments every seven years. That was a long-standing procedure in Peru and did not constitute a form of political monitoring; it was a means of verifying a judge's intellectual capacity and integrity through an examination of any complaints that might have been filed against him. Judges actually participated in that procedure, which was therefore neither secret nor impromptu.

46. Neither the Executive nor the Legislature intervened in the appointment of judges. It was the National Council of the Judiciary, a collegiate body composed of representatives of all the professional associations, which made a rigorous selection from among the candidates; it appointed judges and could dismiss them if a complaint that they had failed to perform their duties was upheld. In other words, judges' security of tenure was based on their strict adherence to regulations and their respect for the law and professional ethics. Judges were not transferred for political reasons in Peru. The Judiciary could therefore be said to be absolutely independent of the other State powers, and the State could not influence judicial decisions or amend them for political or other reasons. Furthermore, the reorganization of the judicial system, with the establishment of coordination between institutions, had been approved by the great majority of participants in the system, themselves parties in trials, because it restored the respectability of the Judiciary. That reorganization was contrary to neither the Peruvian Constitution nor the Covenant.

47. Concern had been expressed about the burden of proof in complaints made by the families of disappeared persons. That burden lay not on the families themselves, but rather on the judge and the prosecutor, who were responsible for collecting evidence to substantiate the complaint. Of course, that did not preclude the right of the parties filing such complaints to submit any evidence at their disposal.

48. The CHAIRMAN gave the floor to members of the Committee who wished to comment on the replies to the various questions.

49. Mr. BRUNI CELLI noted that several members of the Committee had made specific mention of the problem of the compatibility of certain Peruvian laws with the Constitution and the Covenant. He quoted from a decision (No. 4.24.95) handed down by the higher court which had considered an appeal against a decision by the judge of the Sixteenth Criminal Court in Lima (16° Juzgado Especializado en lo Penal), which had declared article 1 of the Amnesty Law inapplicable in a case that had come before it. In its decision, the higher court had stated that, although judges were, of course, bound by the provisions of the Constitution and the law, they must ensure the application of amnesty in carrying out their functions and that the exercise of the judicial function implied respect for the principle that judges were not competent to consider the intentions that had underlain the provisions of the Amnesty Law. The higher court had further stated that although international instruments were part of national law under article 55 of the Constitution, they did not have the rank of constitutional law, much less primacy over any other law of the Republic. In those circumstances, and in view of the obligation incumbent upon the Committee, he repeated his earlier question: how were all those laws, provisions and practices compatible with the Covenant?

50. Ms. MEDINA QUIROGA raised the problem of persons who were prosecuted for the offence of terrorism because they had not been in possession of identity papers. She read out extracts of Supreme Decree No. 09-95 of 3 December 1995, article 1 of which stipulated that the President of the Republic could grant pardons to persons who had been arrested for the crime of terrorism and were being held in custody, unless there were indications that they had been charged with terrorism because they had not had identity papers. Such a situation was, therefore, clearly envisaged by the very wording of a supreme decree.

51. The CHAIRMAN, speaking in a personal capacity, said he was concerned at the fact that Peru seemed to consider that the country's domestic bodies had a right to express an opinion on the compatibility of Peruvian laws with the international instruments it had ratified.

52. Mr. REYES-MORALES (Peru) explained, in order to dispel a misunderstanding, that he had referred to 4,000 terrorists who had "repented" and had requested the benefit of a special law, quite separate from the Amnesty Law, which was known as the "Repentance Law". The decision handed down by the judge of the Sixteenth Criminal Court in Lima was a good example of the independence demonstrated by Peruvian judges in carrying out their judicial functions. But that case also clearly showed Peru's respect for a principle set forth in international instruments, that of the plurality of judicial bodies. The decision in question had been the subject of an appeal to a higher court, which had reversed it.

53. He also noted that there had been some confusion regarding the distinction between the crime of terrorism and that of aggravated terrorism or treason. In the first place, the crime of terrorism was defined as the act of provoking, creating or maintaining a state of public disorder, alarm or terror by actions which posed a threat to life, physical integrity, individual freedom, property, the safety of buildings and communications, etc.

54. Aggravated terrorism or treason required that the following conditions should be met: (i) use of booby-trapped vehicles or similar devices, explosive devices, weapons of war or similar weapons capable of killing; (ii) stockpiling or illegal possession of explosive substances or materials that could be used to produce explosives intended to be used for the above-mentioned acts; (iii) being one of the leaders of a terrorist organization; (iv) belonging to an armed group, gang or team responsible for murder; (v) communicating information, data, plans or other documents that facilitated the execution of the acts mentioned in subparagraphs (i) and (ii); and (vi) taking advantage of a teaching post to influence students' attitudes towards terrorists. The distinction between the two crimes was all the more important since it determined which court was competent to try persons charged with such acts: the ordinary courts for terrorism and the military courts for aggravated terrorism.

55. It was the difference between those two crimes that justified the difference in jurisdiction. It had been said that anyone tried in a military court was certain to be convicted. Nothing was farther from the truth, and his delegation, which had precise statistics, was in a position to state that 28 terrorists had recently been acquitted by a military court and released. There were other cases where a military court, considering that there were insufficient grounds for a charge of aggravated terrorism but that the accused were guilty of terrorism, had waived jurisdiction in favour of an ordinary court, a fact which in no way meant that there had been two judgements.

56. His delegation considered that it had thus replied to all the additional questions asked by members of the Committee.

57. The CHAIRMAN thanked the Peruvian delegation for its detailed replies. There was not enough time to complete the consideration of the report of Peru, and so the best solution would be for members to make their final remarks on the matters covered in part I of the list of issues immediately. The Peruvian Government would be invited to reappear before the Committee at the October 1996 or March 1997 session, at its convenience, so that the consideration of the report could be completed. If there was no objection, he would take it that the Committee wished to adopt that procedure.

58. It was so decided.

59. Ms. MEDINA QUIROGA thanked the Peruvian delegation for its replies. The Committee fully understood the terrible situation in which Peru found itself with regard to terrorism, but it was nevertheless seriously disturbed by the way in which the State was currently combating that problem. She continued to have grave misgivings, particularly about the status of the rights enshrined in the Covenant under the Peruvian system.

60. The Constitution considered treaties as laws; any law adopted after the Covenant’s entry into force could therefore amend it, and that had in fact happened. Since all the rights enshrined in the Covenant were also established in the Constitution, judges could apply the latter directly, but all the available information showed that that was not what was occurring. There were even cases where provisions of the Constitution, which were already in themselves unacceptable, were not respected; for example, the maximum duration of police custody was supposed to be 15 days, but there was a decree-law which authorized extension of that time-limit. The law establishing the National Council of the Judiciary was also a source of concern since it granted that body prerogatives with regard to appointment and punishment which such a council should not have. She emphasized that the Council was composed not only of judges, but also of civil servants with very important responsibilities in the Executive. The prerogatives granted to the Council by the law in question were in complete contradiction with articles 150 and 158 of the Constitution, which attempted to ensure the

autonomy of the Council, and consequently the independence of the Judiciary. The Peruvian delegation had assured the Committee that the Executive never intervened in court judgements, but it must be remembered that the intervention of the Executive was not necessarily direct; only a system that guaranteed the security of tenure, appointment and promotion of judges could ensure true independence.

61. The use of military courts to try civilians was totally incompatible with article 14 of the Covenant. How could magistrates who were serving officers, dependent on the military hierarchy, and in addition saw terrorists as enemies, be expected to display the impartiality and objectivity required by their position? The manner in which the right to a defence was ensured was also a source of concern, because of the restrictions imposed on meetings between lawyers and judges. Those regulations, which were prejudicial to the defence, also made the situation of judges more precarious.

62. She realized that the struggle against terrorism could not be waged without a few isolated abuses and hoped that the Peruvian State would soon overcome terrorism, but she had a duty to remind it of its international obligations.

63. Mr. BUERGENTHAL welcomed the Peruvian delegation's assurance that the Committee's recommendations would be brought to the attention of the Government. The Committee's mission was to provide assistance to States, and it was in that spirit that he was expressing his concerns. The main problem was that Peru gave the impression that it considered that the end justified the means. While the Committee was inclined to allow States a certain latitude in their fight against terrorism, there was a threshold beyond which the measures taken were purely and simply illegal. The amnesty laws, the anti-terrorist laws and the laws governing the procedures of the military courts fell into that category. The Peruvian Government had also misinterpreted the right granted to States by article 4 of the Covenant, apparently in the belief that certain restrictions could be maintained even after the lifting of a state of emergency. People who were still in prison, having been sent there as a result of a trial during which legal guarantees had not been respected, must be retried or released. It was encouraging that some victims of abuses or their families had received compensation, but it was also important for the authorities to continue along those lines. The Amnesty Law, and in particular article 6 of that Law, posed a serious problem since proceedings had been discontinued in a number of cases, a fact which made it impossible for the victims to file an appeal. In conclusion, he hoped that the creativity demonstrated by Peruvian legislators in the drafting of the amnesty and anti-terrorist laws would be placed wholly at the service of the Peruvian people.

64. Mr. KLEIN thanked the delegation. The Committee was concerned not only about past events, but also about the current situation, which remained disturbing despite the fact that some positive steps had been taken. The Committee was aware of the dangers of terrorism for the public but, although the Government considered that peace had been restored, there did not yet seem to have been any progress with regard to respect for the law. Despite the strenuous denials of the Peruvian delegation, there were many allegations of torture inflicted during investigations, and legal guarantees were not respected. It was important to change that situation, beginning by re-establishing the full independence and impartiality of the Judiciary, prosecuting those responsible for violations and ensuring that victims were compensated.

65. The impunity ensured by the amnesty laws constituted a continuing violation of article 2 of the Covenant, and he regretted that the delegation had not replied to his question whether the Government planned to amend those laws or, at least, open investigations to establish the truth with regard to the allegations that had been made. That failure to respond led him to

believe that a legal situation which represented a permanent infringement of the Covenant would persist. He nevertheless hoped that the dialogue between the delegation and the Committee would bear fruit in the near future.

66. Ms. EVATT praised the Peruvian delegation's fortitude in the face of the many questions asked by the Committee, which had, in its turn, attempted to understand the situation in Peru. However, she still had a number of concerns, the first of which was the incompatibility of certain provisions of the Constitution with the Covenant and of certain laws and practices with the Constitution. There was still excessive recourse to incommunicado detention, which exposed detainees to the risk of ill-treatment or torture. Furthermore, many people, whether prisoners of conscience or innocent persons, were still unjustly detained. Their release was an absolute priority. There were restrictions on judicial impartiality, and the amnesty laws went beyond what could be considered reasonable measures. Far from furthering the reconciliation process, those laws threatened to arouse among the public a resentment which might lead to new unrest. In general, the Peruvian Government seemed to feel that it had been released from its obligations under the Covenant merely because it was fighting terrorism. However, it must not be forgotten that the restoration of law and order could be effected only according to law and that, if rights must be restricted, the need for those restrictions must be duly established and they must be limited to the minimum necessary to achieve a legitimate goal. She hoped that, at its next meeting with the Committee, the delegation representing Peru would be able to report real progress.

67. Mr. PRADO VALLEJO thanked the Peruvian delegation for its willingness to cooperate. The Committee was concerned at the situation created by terrorism, but it had not forgotten that Peru was also fighting another scourge: drug-traffickers, whose activities influenced all aspects of life in Peru. That complex problem was faced by many Latin American countries. However, the impunity enjoyed by those responsible for past abuses, the absence of legal guarantees and the continued detention of innocent people were human rights violations that could, unfortunately, not be denied. The Andean Commission of Jurists, of which he was a member, had recommended major reforms to the Peruvian Government, and the Committee had also communicated its goals and concerns. It was to be hoped that the Peruvian Government would consider those two sets of recommendations and, at its next meeting with the Committee, be able to report on the reforms that had been carried out.

68. Mr. KRETZMER said he realized that the Committee must have seemed harsh in its remarks to the Peruvian delegation, which he thanked for its attention. The Minister of Justice had twice argued that the detention of innocent people was not a particular problem in Peru. A State that rigorously implemented all the provisions of article 14 of the Covenant could be legitimately excused if, despite its efforts, one or two people had been unjustly convicted and imprisoned; however, such an excuse was hardly possible for a State which was in violation of numerous provisions of article 14. It was clear from all that had been said that no member of the Committee thought the secret trials before military courts met the minimum legal guarantees set forth in article 14. It was true that Peru was faced with a difficult problem, and one might wonder how judges could conduct fair trials in a country where 300 judges had already been assassinated. In such a situation, the only possibility was to resort to the procedures covered by article 4 and to proclaim a state of emergency, derogating from the rights set forth in that article. It was then possible to place individuals in pre-trial detention during the period that strictly corresponded to the emergency situation until a return to normal enabled a fully equitable procedure to be restored.

69. The presence in Peru of a large number of very active NGOs was to the country’s credit. Generally speaking, however, it was unconvincing to sweepingly deny the allegations of reputable NGOs, without even offering to open an investigation. The same was true of torture, the reality of which had

been purely and simply denied by the delegation, which had not stated whether investigations had been or would soon be carried out. He hoped that the next report would include information on that matter.

70. Mr. POCAR said he was not unaware of the difficulties that the Peruvian Government had faced and was still facing in fighting problems such as terrorism and drug-trafficking, but he emphasized that, even in its fight against those scourges, the Government was obliged to ensure respect for fundamental human rights and the international obligations it had undertaken. In that regard, the fact that the international instruments to which Peru was a party were considered part of domestic law did not preclude the possibility that their provisions should take precedence over those of ordinary laws; for example, the Amnesty Law adopted by the Peruvian Government, was contrary to the provisions of the Covenant. However, he had no doubt that the Peruvian authorities would endeavour to ensure full respect for the provisions of international instruments, within the framework of the provisions of the Peruvian Constitution, thereby demonstrating their political will to do all they could in the interests of the entire population.

71. Mrs. CHANET thanked the Peruvian delegation for having replied, at least in part, to the complex questions asked by the members of the Committee.

72. With regard to the extension of the scope of application of capital punishment under the new Constitution of 1993, she remained convinced that, despite the Peruvian delegation's claim that the measure was a symbolic one, it was contrary to the provisions of article 6 (1) of the Covenant. Furthermore, while it was true that no country was immune from miscarriages of justice, most of which were due to a failure to fully implement article 14 of the Covenant, the fact that justice in Peru was administered in a clandestine and expeditious fashion by military courts doubtless increased the likelihood of error, particularly in cases involving terrorism.

73. The arguments adduced by the Peruvian delegation to refute the allegations of torture made by numerous NGOs and United Nations bodies were unconvincing. If it was really true that there had been no cases of torture or ill-treatment in Peru, the Government would not have felt the need to adopt an amnesty law benefiting the police and security forces in particular. Furthermore, she still had doubts as to whether it was possible for the victims of acts of torture and ill-treatment to obtain compensation. She hoped that the delegation would duly communicate the Committee's observations to the Peruvian authorities and that those recommendations would be taken into consideration during the preparation of Peru’s fourth periodic report.

74. Mr. BRUNI CELLI said he, too, hoped that the dialogue with the Peruvian delegation would prove fruitful and would be reported to the Peruvian authorities. The members of the Committee were aware of the problems that Peru had had to face during the past 10 years and of the difficulties caused in Peru, as in other countries, by situations associated with terrorism. In facing that challenge, it was important to ensure respect for the rule of law, justice and democracy. He hoped that, at the next session of the Committee, the Peruvian delegation would report progress in that regard.

75. Mr. BHAGWATI said he hoped the Peruvian delegation did not doubt that its dialogue with the Committee was intended only to help the Peruvian Government to overcome the obstacles that were impeding implementation of the rights set forth in the Covenant. In his opinion, one of the principal remaining obstacles in that regard was the lack of impartiality and independence of the Judiciary, a situation which was inconsistent with the guarantee of a free and democratic society.

76. If the identity and deliberations of judges, both civil and military, were kept secret, if defence lawyers did not have access to the evidence and could not cross-examine witnesses, how could citizens hope to be protected

against infringements of their rights? Further information was also needed on the role of the National Council of the Judiciary. And, like Mrs. Chanet, he had doubts about the wisdom of extending the scope of application of capital punishment, even though the Peruvian delegation had stated that the death penalty was never imposed in practice. In his opinion, the Peruvian Parliament's decision to restore the death penalty for acts of terrorism was contrary to article 6 (1) of the Covenant. It was to be hoped that the comments made by members of the Committee would be duly brought to the attention of the Peruvian Government and that, in the interests of the Peruvian people, a new legal system conforming to the provisions of the Covenant would be set up before the submission of Peru's fourth periodic report.

77. Mr. FRANCIS associated himself with all the remarks made by members of the Committee following the consideration of the third periodic report of Peru. He hoped that specific replies to the questions left unanswered would be provided at the Committee's next session. While Peru was, according to its Constitution, a democratic State under the rule of law, there were still many gaps in the implementation of the provisions of the Covenant. He expressed the hope that the Peruvian authorities would, as a matter of urgency, take all necessary steps to restore full respect for democratic principles.

78. Mr. ANDO said he, too, shared the concerns expressed by the members of the Committee regarding the continuing obstacles to the protection of human rights in Peru. In that regard, he stressed the importance of the economic situation of the indigenous and rural populations, the precariousness of which could only lead to repeated human rights violations. He hoped that the Peruvian Government would also bear that in mind in taking steps to further promote and protect all human rights throughout the country.

79. Mr. LALLAH said he associated himself particularly with the concerns expressed by members of the Committee regarding the impartiality and independence of the Judiciary in Peru. He had been surprised by the Peruvian delegation's attitude towards NGOs, whose role, in his view, was not only to assist international human rights organizations but also, more importantly, to come to the aid of States parties. Thus, NGOs were usually in the best position to draw the attention of the governmental authorities to cases of human rights violations of which they would not necessarily have been aware. That applied particularly to cases of torture. NGOs also played a valuable role in providing information to political entities, university communities and the general public, and for that reason the Peruvian Government should make every effort to encourage their activities.

80. Mr. BÁN thanked the Peruvian delegation for the explanations it had provided, particularly regarding the enforcement of the Amnesty Law; however, he noted that that law gave the victims of torture, ill-treatment and unfair trials no right to compensation. He therefore hoped that the Peruvian Government would reconsider the principles that had prompted it to enact such a law.

81. The CHAIRMAN thanked the Peruvian delegation warmly for having agreed to continue a fruitful dialogue with the Committee and expressed the hope that that dialogue would be continued in the future. The Committee was composed of legal experts, who expressed their opinions in a personal capacity and in an objective manner, independent of any propaganda or political opinion. He hoped that the Committee's objective analysis of the situation of human rights in Peru would be taken into consideration by the Peruvian Government and that, at its fifty-eighth session, the Committee would be informed of the measures taken to implement its recommendations.

82. Mr. HERMOZA-MOYA (Peru) assured the Committee that all the concerns expressed by its members would be brought to the attention of the Peruvian Government and that Peru would continue its efforts to restore the guarantees

of the rights of the individual and society. As members would recall, the Peruvian Government had invited the Working Group on Arbitrary Detention and the Special Rapporteur on the independence and impartiality of the Judiciary to visit Peru in order to report to United Nations bodies on the situation there.

83. The Peruvian delegation withdrew.

The meeting rose at 6 p.m.