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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Ad Hoc Working Group on the Situation of Human Rights in Chile in accordance with paragraph 4 of Assembly resolution 3448 (XXX) of 9 December 1975.

ANNEX

Report of the Ad Hoc Working Group to inquire into the present
situation of human rights in Chile, submitted in accordance
with General Assembly resolution 3448 (XXX)

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction	1 - 33	5
<u>Chapter</u>		
I. Relations with the Government of Chile	34 - 72	14
II. The state of siege	73 - 99	23
III. Constitutional developments	100 - 115	33
A. Commission on Constitutional Reform	102 - 105	33
B. Council of State	106 - 111	34
C. Constitutional acts	112 - 113	35
D. The legislative committees (Comisiones Legislativas)	114 - 115	36
IV. Liberty and security of person	116 - 301	37
A. International standards relative to liberty and security of person	116 - 119	37
B. Chilean constitutional and legal provisions relative to liberty and security of person	120 - 132	38
C. Arrest and detention in Chile	133 - 229	42
1. Recent cases of arrest and detention statistics	134 - 142	42

<u>Chapter</u>	<u>CONTENTS (continued)</u>	<u>Paragraphs</u>	<u>Page</u>
	2. Number of persons deprived of their liberty in connexion with national security matters . . .	143 - 145	43
	3. Procedure of arrest and detention in Chile . . .	146 - 158	44
	4. Recent cases of arrest and detention reported to the Group	159 - 195	47
	5. Places of detention in Chile	196 - 210	56
	6. Detention of persons indicted ("Procesados") or convicted in connexion with State Security . . .	211 - 214	61
	7. Length of detention without trial	215 - 220	62
	8. Enforcement of legal norms governing arrest and detention	221 - 227	64
	9. Release of detained persons	228 - 229	66
D.	Missing persons	230 - 288	67
	1. Persons reported dead: the "list of 119"	231 - 240	67
	2. Detention of eight persons in Valparaíso	241 - 247	68
	3. Official investigations	248 - 252	70
	4. Recent cases of missing persons	253 - 288	72
E.	Difficulties encountered by lawyers and agencies engaged in defending persons detained in connexion with the state of siege	289 - 301	78
V.	Torture and cruel, inhuman and degrading treatment . . .	302 - 372	81
	A. The institutionalized practice of torture	302 - 337	81
	1. General considerations	302 - 311	81
	2. Methods of torture	312 - 321	84
	3. Places and establishments of detention	322 - 337	87
	B. The specialized organs of State security	338 - 372	90
	1. General considerations	338 - 341	90
	2. The DINA	342 - 372	90
VI.	The judiciary	373 - 406	98
VII.	Exile	407 - 435	107
	A. The question of refugees and diplomatic asylum . . .	408 - 414	107
	B. The question of expulsion and deprivation of nationality	415 - 435	108
VIII.	Freedom of association	436 - 442	113
IX.	Intellectual freedoms	443 - 476	115

<u>Chapter</u>	<u>CONTENTS (continued)</u>	<u>Paragraphs</u>	<u>Page</u>
A.	Legislative, governmental and judicial measures affecting intellectual freedoms	444 - 448	115
B.	Present situation as regards intellectual freedoms	449 - 476	116
X.	The present situation of women, children, youth and the family	477 - 490	122
XI.	Economic, social and cultural rights	491 - 495	125
XII.	Concluding observations	496 - 522	127
XIII.	Adoption of the report	523	134

Annexes

I.	General Assembly resolution 3448 (XXX) of 9 December 1975	135
II.	Commission on Human Rights resolution 3 (XXXII) of 19 February 1976	138
III.	Telegram dated 20 February 1976 addressed to the Government of Chile by the Chairman of the Commission on Human Rights and reply dated 14 May 1976 from the Minister for Foreign Affairs of Chile to the Chairman of the Commission on Human Rights	141 141
IV.	Statement by the <u>Ad Hoc</u> Working Group issued as a press release at United Nations Headquarters, New York, on 26 May 1976	144
V.	Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 3 B (XXIX) of 31 August 1976	147
VI.	Letter dated 12 April 1976 from the Minister for Foreign Affairs of Chile to the Chairman of the Commission on Human Rights	149
VII.	Memorandum presented to the <u>Ad Hoc</u> Working Group on 24 May 1976 by the representatives of the Government of Chile	152
VIII.	Letter dated 25 May 1976 from the Ambassador Delegate of Chile to the United Nations Commission on Human Rights addressed to the Chairman of the Commission on Human Rights	155
IX.	Two letters dated 3 June 1976 and two letters dated 4 June 1976 from the Chairman of the <u>Ad Hoc</u> Working Group addressed to the Permanent Representative of Chile to the United Nations Office at Geneva	157
X.	Letter dated 2 July 1976 from the Minister for Foreign Affairs of Chile to the Chairman of the Commission on Human Rights	162
XI.	Telegram dated 12 July 1976 from the Acting Chairman of the <u>Ad Hoc</u> Working Group to the Minister for Foreign Affairs of Chile	164

	<u>Annexes</u> (continued)	<u>Page</u>
XII.	Letter dated 31 July 1976 from the Chairman of the <u>Ad Hoc</u> Working Group to the Minister for Foreign Affairs of Chile	165
XIII.	Letter dated 19 August 1976 from the Minister for Foreign Affairs of Chile to the Chairman of the <u>Ad Hoc</u> Working Group	168
XIV.	Note verbale dated 25 August 1976 from the Permanent Mission of Chile to the United Nations Office at Geneva addressed to the Chairman of the <u>Ad Hoc</u> Working Group	170
XV.	Note verbale dated 25 August 1976 from the Chargé d'affaires a.i. of the Permanent Mission of Chile to the United Nations Office at Geneva addressed to the Chairman of the <u>Ad Hoc</u> Working Group	171
XVI.	Telegram dated 26 August 1976 from the Minister for Foreign Affairs of Chile to the Chairman of the <u>Ad Hoc</u> Working Group	188
XVII.	Note verbale dated 30 August 1976 from the Permanent Mission of Chile to the United Nations Office at Geneva addressed to the Chairman of the <u>Ad Hoc</u> Working Group	189
XVIII.	Photographs of five missing persons	191
XIX.	List of some missing persons	194
XX.	Note verbale dated 6 September 1976 from the Permanent Mission of Chile to the United Nations Office at Geneva addressed to the Chairman of the <u>Ad Hoc</u> Working Group	197
XXI.	List of some missing children	198
XXII.	Letter dated 8 June 1976 from five Chilean lawyers addressed to the Ministers for Foreign Affairs attending the Sixth General Assembly of the Organization of American States in Santiago	199
XXIII.	Letter dated 18 August 1976 addressed to the President of the Supreme Court of Chile by 300 Chilean citizens concerning the expulsion of two lawyers	209
XXIV.	Letter dated 18 August 1976 addressed to the President of the Supreme Court by 10 Chilean law professors concerning the expulsion of two lawyers	219
XXV.	Petition presented to the Court of Appeal by Mr. Jaime Castillo Velasco	225

INTRODUCTION

1. This is the third report of the Ad Hoc Working Group which was originally established under resolution 8 (XXXI) of the Commission on Human Rights to inquire into the present situation of human rights in Chile. As directed by the Commission on Human Rights in that resolution, the Group submitted a progress report on its initial findings to the Secretary-General for inclusion in his report on the protection of human rights in Chile to the thirtieth session of the General Assembly under resolution 3219 (XXIX) (A/10285). The Group further reported on the results of its inquiries to the Commission on Human Rights at its thirty-second session (E/CN.4/1188).
2. The conditions in which the Ad Hoc Working Group was established, its mandate and the manner in which it performed its functions in 1975 were described in the report which the General Assembly examined at its thirtieth session. It may, therefore, be sufficient to recall that under resolution 8 (XXXI) of the Commission on Human Rights of 27 February 1975, the Group was to inquire "into the present situation of human rights in Chile" in the light of various resolutions previously adopted by United Nations, ILO and UNESCO organs, in particular General Assembly resolution 3219 (XXIX) of 6 November 1974, in which a solemn appeal was made by the Assembly to Chile to restore basic human rights and fundamental freedoms.
3. The inquiry was to be conducted by the Group on the basis "of a visit to Chile and oral and written evidence to be gathered from all relevant sources". An appeal was addressed by the Commission on Human Rights to the Government of Chile to extend its full co-operation to the Working Group in fulfilling its task, including the granting of all necessary facilities and complete freedom of movement in the country for this purpose. The Secretary-General was requested to render to the Ad Hoc Working Group all assistance which it might require in its work and the Economic and Social Council was asked to make arrangements for the provision of adequate financial resources and staff for the implementation of the Commission's resolution.
4. In conformity with resolution 8 (XXXI), the Ad Hoc Working Group was established consisting of five members of the Commission on Human Rights, appointed in their personal capacity by the Chairman of the Commission and operating under his chairmanship. The composition of the Group is as follows: Mr. G.A. Allana of Pakistan (Chairman-Rapporteur), Mr. Leopoldo Benites of Ecuador, Mr. A. Diéye of Senegal, Mr. F. Ermacora of Austria and Mrs. M.J.T. Kamara of Sierre Leone.
5. The 1975 progress report of the Ad Hoc Working Group to the General Assembly described in detail the circumstances in which, in spite of formal assurances given by the Chilean Government, the Group on 4 July 1975 was suddenly and unexpectedly refused entry into Chile "until a more auspicious occasion" (A/10285, para. 57). As indicated in the progress report (*ibid.*, para. 4) and in the statement of the Chairman-Rapporteur of the Group before the Third Committee of the Assembly (A/C.3/640), that report was based on the extensive written material on the situation of human rights in Chile which was made available to the Group and on relevant data furnished by many persons of Chilean origin and of other nationalities, who offered to appear before the Group in Latin America, in the United States and in Europe.
6. The progress report of the Ad Hoc Working Group, which was transmitted to the General Assembly under the cover of a note by the Secretary-General dated 7 October 1975, was referred to the Third Committee for consideration under agenda item 12, "Report of the Economic and Social Council". In its consideration of this

question, the Third Committee also had before it the report of the Secretary-General (A/10295) and letters and documents dealing with the situation of human rights in Chile submitted by the Permanent Representative of Chile to the United Nations. 1/

7. The question of the situation of human rights in Chile was discussed in the Third Committee at the 2144th to 2148th and 2150th to 2155th meetings. Representatives of 43 Member States took part in the discussion. 2/ The representative of Chile made statements expressing his Government's views regarding the situation of human rights in his country, the progress report of the Working Group and the allegations made against his Government during the debate.

8. At the 2154th meeting of the Third Committee, on 11 November 1975, a draft resolution entitled "Protection of human rights in Chile" (A/C.3/L.2172), sponsored by 38 countries, was introduced. At its 2155th meeting, the Third Committee adopted the draft resolution by a roll-call vote of 88 in favour, 11 against and 20 abstentions.

9. The General Assembly, at its 2433rd plenary meeting on 9 December 1975, adopted the draft resolution proposed by the Third Committee by a recorded vote of 95 to 11, with 23 abstentions, as General Assembly resolution 3448 (XXX) (see annex I).

10. In paragraph 2 of resolution 3448 (XXX) the Assembly called upon the Chilean authorities to take, without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile was a party. Bearing in mind the fact that Chile was a party to the International Covenant on Civil and Political Rights and referring to various articles of that Covenant, the Assembly asked the Chilean authorities to ensure that

"(a) The state of siege or emergency is not used in Chile for the purpose of violating human rights and fundamental freedoms ...

"(b) Adequate measures are taken to end the institutionalized practice of torture and other forms of cruel, inhuman or degrading treatment or punishment ...

"(c) The rights of all persons to liberty and security of person, in particular the rights of those who have been detained without charge or are in prison solely for political reasons, ... are fully guaranteed and steps are taken to clarify the status of those individuals who are not accounted for;

"(d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed ...

1/ A/10303, A/C.3/639, A/C.3/642. A document in Spanish entitled "La Situación Actual de los Derechos Humanos en Chile", volume II, of 703 pages, was also distributed to the members of the Third Committee by the Chilean delegation.

2/ For summaries of the discussion, see A/C.3/SR.2144-2148 and 2150-2155.

"(e) No one, in accordance with article 15, paragraph 2, of the Universal Declaration of Human Rights, shall be arbitrarily deprived of Chilean nationality;

"(f) The right to freedom of association, including the right to form and join trade unions, shall be respected ...

"(g) The right to intellectual freedoms ... shall be guaranteed."

11. The Assembly expressed its appreciation to the Chairman and the members of the Ad Hoc Working Group for their report, which it considered had been prepared in a commendable manner notwithstanding the refusal of the Chilean authorities to permit the Group to visit the country. The Assembly deplored this refusal, which had been signified to the Secretary-General and the Group notwithstanding previous solemn assurances given by the Chilean authorities, and urged the Chilean authorities to honour those assurances. The Assembly invited the Commission on Human Rights to extend the mandate of the Ad Hoc Working Group, as constituted, to enable it to report to it at its thirty-first session on the situation of human rights in Chile and, in particular, on any development which occurred to re-establish respect for human rights and fundamental freedoms. The President of the thirtieth session of the General Assembly and the Secretary-General were requested to assist in any way they might deem appropriate in the re-establishment of basic human rights and fundamental freedoms in Chile.

12. In accordance with resolution 8 (XXXI) of the Commission on Human Rights, the Ad Hoc Working Group was required to present its report on the results of its inquiries to the Commission at its thirty-second session, held in Geneva between 2 February and 6 March 1976. Bearing in mind the interest for the Commission of having at its disposal for consideration of the question the detailed information and the findings which were contained in the progress report submitted to the General Assembly, the Group decided that its report to the Commission on Human Rights would be in two parts, the first part being constituted by the progress report (A/10285) and the second part being a separate report containing new material updating the progress report.

13. The second part of the report of the Ad Hoc Working Group was prepared during a series of meetings held in Geneva from 12 to 30 January 1976. In a letter dated 29 December 1975, which he addressed to the Permanent Representative of Chile to the United Nations Office at Geneva, at the request of the Chairman-Rapporteur of the Ad Hoc Working Group, the Director of the Division of Human Rights had informed the Permanent Representative of Chile that the Group would appreciate receiving any further oral or written information relevant to its inquiry into the present situation of human rights in Chile which the Government of Chile might wish to bring to the attention of the Group. In his reply dated 22 January 1976 the Permanent Representative of Chile stated that in addition to the information which was consistently submitted to the Secretary-General, directly or through the Division of Human Rights, his Government would continue to co-operate with the United Nations in its function for promoting universal respect for human rights, and that it would also continue to respond to requests for information on specific cases addressed to it by the Secretary-General, directly or through the Division of Human Rights. 3/

3/ For the text of the letter of the Director of the Division of Human Rights and the reply of the Permanent Representative of Chile thereon, see E/CN.4/1188, annexes II and III.

No new material was, however, forwarded for consideration in connexion with the preparation by the Group of its report to the Commission on Human Rights.

14. In preparing the supplementary report the Group examined written material gathered from relevant sources relating to the present situation of human rights in Chile, including information submitted by intergovernmental and non-governmental organizations. Documents submitted by the Government of Chile to the General Assembly as well as data contained in statements by representatives of Chile to the General Assembly were analysed by the Group in drafting its report. The Group also heard oral testimony from persons having direct information, and in some cases personal knowledge, of recent developments and the current state of respect for human rights in Chile.

15. The report of the Ad Hoc Working Group to the Commission as described above, of which the second part was issued on 4 February 1976 (E/CN.4/1188), dealt with relevant developments as regards the situation of human rights in Chile subsequent to 30 August 1975 as well as with certain matters which, as indicated by the General Assembly and the Commission on Human Rights, had special relevance as regards the situation of human rights in Chile. The annexes to the second part included the full text of a statement made on 12 January 1976 before the Group by Bishop Helmut Frenz of the Evangelical Lutheran Church in Chile, the text of a statement by Dr. Sheila Cassidy, a British medical practitioner in Chile, delivered to the Group on 19 January 1976, the text of the testimony of Mr. Enrique Kirberg B., former Rector of the State Technical University, Chile, and that of a letter dated 14 November 1975 from Cardinal Silva Henríquez, Archbishop of Santiago, addressed to General Pinochet Ugarte, President of the Republic of Chile.

16. The Commission on Human Rights considered the report of the Group at its thirty-second session (1353rd and 1360th meetings). The discussions, in which most of the members of the Commission took part, as well as observers from Member States not represented on the Commission and representatives of specialized agencies and non-governmental organizations, are summarized in the records of those meetings and reflected in chapter VI of the report of the Commission on Human Rights to the Economic and Social Council on the thirty-second session. 4/ The observer for Chile availed himself of the opportunity to state the position of his Government and made a statement at the 1358th and 1359th meetings of the Commission.

17. At its 1360th meeting, on 19 February 1976, the Commission on Human Rights adopted, by 26 votes to 2, with 4 abstentions, a draft resolution proposed by Austria, Bulgaria, the Byelorussian Soviet Socialist Republic, Cuba, Cyprus, Senegal, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, Upper Volta and Yugoslavia, as resolution 3 (XXXII) (see annex II).

18. In emphasizing its responsibility to promote and encourage respect for human rights and fundamental freedoms for all, the Commission referred in this resolution to the Universal Declaration of Human Rights, to various provisions of General Assembly resolution 3452 (XXX) of 9 December 1975 and to its own resolution 8 (XXXI) of 27 February 1975. While noting supreme decree No. 187,

4/ Official Records of the Economic and Social Council, Sixtieth Session, Supplement No. 3 (E/5768), paras. 63-86.

which had been promulgated in Chile on 20 January 1976, the Commission expressed its profound distress at the consistent, flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment and punishment, arbitrary arrest, detention and exile, which have taken place and, according to available evidence, including that contained in the report of the Working Group, continued to take place in Chile, "soon after the adoption of General Assembly resolution 3448 (XXX)".

19. Having referred to General Assembly resolution 3452 (XXX) of 9 December 1975 by which the Assembly adopted the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, the Commission reaffirmed its own condemnation of such practices. It stated its conclusion that the practice of torture had been systematically employed by some State agencies in Chile, particularly by the Dirección de Inteligencia Nacional (DINA), and called upon the Chilean authorities to take effective measures to investigate and put an end to such activities of those agencies and of individuals in relation to acts of torture.

20. In paragraph 4 of its resolution the Commission repeated the provisions of paragraph 2 of General Assembly resolution 3448 (XXX) and in its turn called upon the Chilean authorities to take without delay all necessary measures to restore and safeguard basic human rights and fundamental freedoms by ensuring in particular to this end that the provisions of articles 4, 7, 9, 15, 19 and 22 of the International Covenant on Civil and Political Rights and of article 15, paragraph 2, of the Universal Declaration of Human Rights were fully respected.

21. In accordance with General Assembly resolution 3448 (XXX), paragraph 4, the Commission extended the mandate of the Ad Hoc Working Group in its previous composition, the members to continue to work as experts in their personal capacity, and requested the Group to report to the General Assembly at its thirty-first session on the situation of human rights in Chile, "in particular any developments, legislative or otherwise, which may occur to re-establish respect for human rights and fundamental freedoms in implementation of General Assembly resolution 3448 (XXX) and all other relevant resolutions and decisions of United Nations bodies". Having accomplished this mandate, the Group would cease to exist. Once again the Secretary-General was requested to render to the Ad Hoc Working Group all the assistance which it might require in its work, and a recommendation was addressed to the Economic and Social Council to make arrangements for the provision of adequate financial resources and staff for the implementation of the Commission's resolution. The Commission decided to consider the question of the violation of human rights in Chile at its thirty-third session, as a matter of high priority. 5/

5/ In approving resolution 3 (XXXII), the Commission considered and submitted administrative and financial implications for the following activities, provided they were subsequently approved by the Economic and Social Council: organizational meetings in May 1976; a field mission to Chile of three weeks, in the event that the Government of Chile agreed, as well as one week in another Latin American country, for the purpose of gathering written and oral information; (if the mission to Chile did not materialize, meetings in Geneva and a field mission to Latin American countries in summer 1976 for the purpose of gathering information); meetings in Geneva in late summer 1976, essentially for drafting the report to

22. Also on 19 February 1976, acting on a proposal made by the representative of Yugoslavia, the Commission on Human Rights decided without a vote to authorize its Chairman to address a telegram to the Government of Chile urging it to desist from holding the contemplated military trial that had been announced in the press of 13 Chilean personalities and to release them without further delay. 6/ A reply was received from the Government of Chile, dated 14 May 1976, which contained information on the persons involved as well as some general considerations. 7/

23. By its decision 145 (LX) of 12 May 1976 the Economic and Social Council approved the Commission's decision to extend the mandate of the Ad Hoc Working Group within the terms of the Commission's resolution and requested the General Assembly to make arrangements for the provision of adequate financial resources and staff for its implementation. In its resolution 1994 (LX), also of 12 May 1976, the Economic and Social Council requested the Ad Hoc Working Group, in fulfilling its mandate, to ascertain any effect which any measure taken by the Chilean authorities might have towards the re-establishment of respect for human rights and fundamental freedoms in Chile. It also appealed to the Chilean authorities to comply with the requests made and the guarantees sought by the Commission on Human Rights for the restoration of basic human rights and fundamental freedoms.

24. By its decision 149 (LX) the Economic and Social Council of 12 May 1976 confirmed a decision by the Commission on Human Rights at its thirty-second session to refer to the Ad Hoc Working Group certain confidential documents and communications which were considered by the Commission on Human Rights under Council resolution 1503 (XLVIII) of 20 May 1970. These documents, which contain a number of communications from individuals and organizations concerning violations of human rights in Chile and the replies to these allegations by the Government of Chile, were made available to the Group and were considered in the preparation of its report to the General Assembly.

25. The next chapter of this report updates and deals in greater detail with the contacts which were maintained since the thirtieth session of the General Assembly by the Ad Hoc Working Group with the Government of Chile. In response to a proposal by the Minister for Foreign Affairs of Chile contained in the letter dated 12 April 1976 and in which the Minister for Foreign Affairs expressed the view "that it would be useful to meet with the Ad Hoc Working Group to review the form that

the General Assembly; travel of the Chairman-Rapporteur to United Nations Headquarters for the presentation of the report to the General Assembly; and another series of meetings in Geneva in January 1977 for the preparation of the Group's final report to the Commission. These plans were somewhat modified in the course of the year in the light of developments and the requirements of the work of the Group.

6/ For the text of the telegram see Official Records of the Economic and Social Council, Sixtieth Session, Supplement No. 3, chap. XX, sect. B, decision 1 (XXXII).

7/ The text of the telegram sent by the Chairman of the Commission on Human Rights and of the reply of the Foreign Minister of Chile is reproduced in annex III to the present report.

the collaboration extended by the Government should assume, with a view to enabling the Group objectively to achieve the task entrusted to it when its mandate was extended by the Commission on Human Rights", the Group met with representatives of the Government of Chile between 18 and 24 May 1976 at United Nations Headquarters, as suggested by the Government of Chile. 8/

26. In conformity with the programme of its work for the current year which it had approved, the Group held meetings in Mexico City from 12 to 23 July 1976, at United Nations Headquarters in New York from 26 to 31 July 1976 and at the United Nations Office at Geneva between 23 August and 10 September 1976. In the course of its meetings, the Group had an exchange of views with the representatives of the Chilean Government and reviewed with them the current human rights situation in Chile. Emphasis was laid on the need for co-operation between the Group and the Chilean Government. The representatives of that Government proposed that two members of the Group should be appointed by mutual agreement to visit Chile. Mindful of its terms of reference, the Group submitted a counter-proposal that the Chairman and one other member of the Group should be appointed, their mission being to prepare for the arrival of the other three members. The first visit by the Chairman and another member of the Group would take place 10 days before the arrival of the other three members. The Group deeply regrets that its proposal was not accepted by the Chilean Government.

27. During these meetings, the Group received oral testimony from 43 persons in Mexico, 22 in New York and 26 in Geneva. Most of the persons who appeared before the Group to furnish information were Chilean nationals, some of whom had left Chile very shortly before they appeared before the Group. Some of the witnesses who were not of Chilean nationality had recently visited Chile and were in a position to observe directly the situation of human rights in that country. In the preparation of this report the Group also took as a basis written material from reliable sources relating to the present situation of human rights in Chile, including information from the Organization of American States and also information submitted by non-governmental organizations. Information sent by the Government of Chile, including texts of legislative provisions, lists of persons released from detention, press reports on measures in the economic field, and statements of various personalities and the General Assembly of the Organization of American States, was also made available to the Group, and such information was carefully examined. 9/

8/ See text of the statement by the Ad Hoc Working Group in Press Release HR/1340 of 26 May 1976, reproduced in annex IV.

9/ (a) The General Assembly of the Organization of American States met in Santiago from 4 to 18 June 1976. It had before it the "Second Report on the Situation of Human Rights in Chile" prepared and approved by the Inter-American Commission on Human Rights of the Organization of American States. The report, which appeared under the symbol OEA/SER.L/V/II.37, is of great interest, in particular as regards the detailed analysis in the light of the American Convention on Human Rights of legal provisions recently promulgated in Chile and their application. It bears on the period from 2 August 1974 to 12 March 1976 and was approved unanimously by the following eminent members of the Inter-American Commission: André Aguilar, Chairman, Carlos A. Dunshee de Abranches, Vice-Chairman, Justino Jiménez de Aréchaga, Robert F. Woodward and Genaro R. Carrió. The Chilean

28. During its August session in Geneva, the Group was informed of the adoption by the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 31 August 1976, by 15 votes to 2, of resolution 3 B (XXIX), entitled "Question of the human rights of persons subjected to any form of detention or imprisonment", relating to the situation of human rights in Chile (see annex V).

29. The Group continued its work on the basis of the rules of procedure which it had adopted at the beginning of its activities, 10/ amended slightly in order to make them accord with resolution 3 (XXXII) of the Commission on Human Rights.

30. The Working Group asked many of the witnesses if they had any objection to their names being revealed. It did so whenever it felt that their statements were such that it might wish to bring them to the attention of the Government of Chile, in order to ascertain the point of view of that Government. If a witness expressed fear and requested the Group not to divulge his name, such a commitment was given by the Group. The Group has, however, reported on certain facts and situations where the source of the information is not revealed, since it considers that disclosure of such facts and situations would be of particular relevance regarding the current situation of human rights in Chile.

31. The Group considered that its report to the thirty-first session of the General Assembly should be in the nature of a continuation of the reports it submitted previously to the Assembly and to the Commission of Human Rights. It has

member, Professor Manuel Bianchi, presented a reservation. Although no formal or informal contacts took place between the United Nations Ad Hoc Working Group and the Inter-American Commission on Human Rights, the similarity of conclusions in the respective reports is striking. The General Assembly of the Organization of American States, which had before it the observations of the Government of Chile on the report of the Inter-American Commission on Human Rights (OEA/Ser..P/AG/doc.667/76), adopted on 17 June 1976 a resolution in which, inter alia, the Government of Chile is strongly urged to continue adopting and implementing the necessary procedures and measures for effectively preserving and ensuring full respect for human rights in Chile. In that resolution the Government of Chile was also requested to continue giving the Inter-American Commission on Human Rights all co-operation necessary to carry out its work and at the same time to provide appropriate guarantees to persons or institutions that might provide information, testimony or other types of evidence.

(b) The Fifth Conference of Heads of State or Government of Non-Aligned Countries, which was held in Colombo, Sri Lanka, from 16 to 19 August 1976, adopted a political declaration in which, inter alia, in paragraph 116 it expressed its deep concern about the flagrant violations of human rights in Chile and about the fact that the Military Junta had not allowed the Ad Hoc Working Group of the United Nations Commission on Human Rights to visit Chile. The Conference also expressed its solidarity with the resolutions to this effect passed during the twenty-ninth and thirtieth sessions of the United Nations General Assembly, with the pertinent decisions of various United Nations specialized organizations, particularly the ILO and UNESCO, and with those passed by the Dakar Conference on Raw Materials, the World Conference of the International Women's Year, and the Commission on Human Rights in February 1976, and reiterated the decisions previously passed by the non-aligned countries on this matter, reaffirming their solidarity with the Chilean people.

10/ For the text see A/10285, annex II.

endeavoured, therefore, to mainly centre its study on the situation of human rights in Chile during the current year, while avoiding, as far as possible, duplicating information which it has previously submitted to United Nations organs.

32. The Group is still of the view that an investigation based on observations within Chile would be invaluable to its study in its totality. Such a visit, if the Chilean authorities were to co-operate with the Group, would permit a comprehensive verification of allegations made before it and of the denials of the existence of violations of human rights repeatedly expressed by the Chilean Government, and would possibly enable it to make its own suggestions and recommendations as to the problem of the restoration of human rights in Chile, which is the declared purpose of the General Assembly. Obligated, however, as it is to confine its work to the assessment of testimony and written material, including that presented by the Government of Chile outside Chile, the Group is confident, nevertheless, that the assessment that it is presenting to the Assembly of the present situation of human rights in Chile is accurate and reliable. The Group hardly needs to repeat that in the performance of the noble functions entrusted to it, its members have maintained throughout their investigation an attitude of complete objectivity and detachment from any political considerations in assessing facts and in arriving at conclusions, which the following chapters of this report will successively unfold.

33. The Ad Hoc Working Group wishes to express its warm appreciation to Mr. Marc Schreiber, Director of the Division of Human Rights, who has continued to work as Principal Secretary of the Group since its inception, having been so designated by the Secretary-General, and to Mr. Henri Mazaud, as well as to Mr. Costas Papademas, who has acted as Secretary of the Group, and to the various members of the Division of Human Rights and other members of the Secretariat who have assisted it untiringly in a spirit of dedication in the performance of its function.

I. RELATIONS WITH THE GOVERNMENT OF CHILE

34. The report which the Ad Hoc Working Group submitted to the General Assembly at its thirtieth session (A/10285) described in detail the relations which developed between the Chilean Government and the Group, in particular the response of the Chilean Government to the appeal of the Commission on Human Rights and the Economic and Social Council for full co-operation by the Government with the Group in fulfilling its task. That co-operation, under the terms of resolution 8 (XXXI) of the Commission on Human Rights, related essentially to enabling the Group to visit Chile in order to inquire into the situation of human rights in that country and granting all the necessary facilities, including complete freedom of movement to the Group for that purpose. The Group's report to the General Assembly contained data, together with copies of correspondence, as regards the initial assurances given by the Government of Chile before various United Nations organs concerning a visit of the Group to Chile in June 1975 and the sudden decision of the Chilean Government to withdraw its consent. The Group reported its decision, in the light of this unforeseen development, to continue to perform its functions, as authorized by the Commission on Human Rights and the Economic and Social Council, on the basis of oral and written evidence which the Group could gather outside Chile.

35. Last year's report of the Group to the General Assembly also referred to the position which the Chilean Government had adopted at the time of its refusal to allow the investigation in Chile, to the effect that, the visit being an essential element of the resolution which laid down the Group's terms of reference, the Group could not continue to function. The report also referred to the Group's statement that it would continue with its task, as it considered that it could not "accept unilateral and unwarranted interpretations of decisions taken by the United Nations, which the Government of Chile has chosen to give in order to suit its own purposes" (*ibid.*, para.60).

36. It will be recalled that in its resolution 3448 (XXX) of 9 December 1975 the General Assembly deplored this refusal of the Chilean authorities to allow the Ad Hoc Working Group to visit the country, notwithstanding previous solemn assurances given by the authorities in this regard, and urged them to honour those assurances. The Group is aware of the fact that a number of Governments of States Members of the United Nations had approached the Chilean Government through diplomatic channels in order to obtain a change of attitude by the Government of Chile.

37. Direct contacts between the Chilean authorities and the Group were resumed in the course of the present year. The Group has seized all occasions to obtain information as to the official Chilean views concerning the situation of human rights in that country and data available to the Government. In a letter dated 29 December 1975 the Permanent Representative of Chile to the United Nations Office at Geneva was informed that the Group would appreciate receiving further oral and written information which the Government of Chile might wish to bring to its attention with a view to the preparation of its report to the thirty-second session of the Commission on Human Rights. In answering this letter, which the Director of the Division of Human Rights sent at the request of the Chairman of the Ad Hoc Working Group, the Permanent Representative of Chile referred on 22 January 1976 to the information which the Chilean Government had submitted to the General Assembly, to the Secretary-General and to the Director of the Division of Human Rights and said that his Government would continue to respond to requests for information on

specific cases. No special updated information was, however, submitted directly to the Group by the Chilean Government for consideration in relation to its report to the Commission on Human Rights (E/CN.4/1188, chaps.II and III).

38. During the consideration of the report of the Ad Hoc Working Group by the Commission on Human Rights, the observer for Chile stated that his delegation was ready to co-operate with the Ad Hoc Working Group in order to establish rules which would enable the Group to fulfil its mandate and the Government of Chile to co-operate with it. The observer for Chile further stated that such rules would have to be agreed upon between the Group and his Government and that he hoped that a date, place and agenda for the first meeting between the Group and the representatives of the Government of Chile could be arranged (E/CN.4/SR.1359, para.6).

39. Following the adoption by the Commission of resolution 3 (XXXII), members of the Ad Hoc Working Group had informal contacts with the observers of the Government of Chile. It was confirmed during those meetings that the Government of Chile would be willing to meet with the Group and discuss the modalities of further co-operation between that Government and the Group, including the possibility of a visit by the Group to Chile. It was informally agreed that the Government of Chile would inform the Group of its intentions before the end of April 1976.

40. By a note verbale dated 20 April 1976, the Permanent Mission of Chile to the United Nations Office at Geneva transmitted to the Division of Human Rights a letter dated 12 April 1976 from the Minister for Foreign Affairs of Chile addressed to Mr. Leopoldo Benites, the current Chairman of the Commission on Human Rights (see annex VI). A copy of that letter was subsequently sent to the Chairman of the Ad Hoc Working Group. In his letter, the Minister for Foreign Affairs of Chile proposed, inter alia, that a meeting between the Ad Hoc Working Group and representatives of the Chilean Government should be convened. He expressed the belief that a review by both parties of the form which the collaboration to be extended by the Government should assume would be useful "with a view to enabling the Group objectively to discharge the task entrusted to it when its mandate was extended by the Commission on Human Rights". The Chilean Government proposed that the meetings should be held from 17 to 21 May in New York and suggested as agenda items, inter alia, questions relating to the competence of the Ad Hoc Working Group, its procedures, its handling of matters of a general nature, and "the problem created by the on-the-spot observation".

41. Consistent with the Group's attitude of seeking to obtain the co-operation of the Government as envisaged in the resolution establishing it, the Group agreed to change the plans it had made to meet in Geneva from 24 to 28 May 1976.

42. Between 18 and 25 May extensive exchanges of views took place in New York between the members of the Group and representatives of the Government of Chile - Ambassador Sergio Diez, Mr. Miguel Schweitzer, Jr. and a member of the Permanent Mission of Chile to the United Nations. The Group was particularly interested in ascertaining whether the Government of Chile was then ready to respond positively to the resolutions of the Commission on Human Rights, which provided for its inquiries into the present situation of human rights in Chile on the basis in particular of a visit to Chile. It could not, however, obtain either a firm commitment that the circumstances permitted the Chilean Government to consent to the Group's visit before the Group prepared its next report to the General Assembly, or even a declaration of principle that it was the intention of the Government of Chile to agree to a visit of the Group.

43. The representative of the Government of Chile indicated that the position of the Government in this respect would be determined by the Group's attitude with respect to the other matters raised in the letter from the Foreign Minister of Chile of 12 April 1976. Under the circumstances the Group agreed to discuss these matters on the understanding that no decision or commitment would be taken in regard to them until such time as the question of the visit of the Group to Chile had been settled to the satisfaction of the Group.

44. The Group approached these discussions in a spirit of accommodation and expressed its readiness to take into account the views of the Chilean Government to the extent that those views would permit the Group to perform its functions as envisaged by the competent United Nations organs and in conformity with the international standards governing investigations by international bodies. At the final stage of the negotiations, on 24 May 1976, the representatives of the Government of Chile presented to the Group a memorandum as a working paper in which they elaborated the points of agreement and the points on which the Government of Chile would not be prepared to accept the views of the Group (see annex VII).

45. As regards its mandate, the Group was ready to accept the position that its future reports to the General Assembly and the Commission on Human Rights should cover the situation of human rights in Chile as from the adoption of the resolution of the Commission extending the mandate of the Group, it being understood that such a decision would in no way affect the substance and conclusions of previous reports of the Group, either in part or as a whole. Nevertheless, cases and situations already mentioned in previous reports which continued to exist could be studied by the Group and its findings or conclusions recorded in the reports. The Group felt, however, that it could not diminish or depart from its terms of reference as they were determined by the Commission on Human Rights and decisions of other appropriate United Nations organs.

46. As regards its procedures, the Group could not accept the point of view of the Government of Chile that it should confine its study of the current situation of human rights in Chile to an examination of specific cases, information about which would have to be communicated to the Government of Chile in advance for its observations. According to the proposals of the Chilean Government, all such observations would have to be the subject of further exchanges of views with the representatives of the Government of Chile, and then they would have to be incorporated in the reports of the Group.

47. The Group expressed concern about the safety of the persons who appeared before it as witnesses and of the members of their families, as well as of the persons who were referred to in the testimonies. The Chilean representatives offered certain general assurances in this regard. The Group expressed its readiness to communicate cases of alleged violations of human rights in Chile to the Chilean authorities for their observations and comments, but it could not agree that cases would be communicated where there was no express consent forthcoming to that course of action by the witnesses concerned for fear of reprisals. The Group also maintained that cases which were not communicated to the Government of Chile could be utilized in the assessment by the Group of the current situation of human rights in Chile. They could also be included in the Group's report to the General Assembly and the Commission on Human Rights.

48. In the course of the exchanges of views, the Chilean representatives agreed that the Group could describe in its reports situations of a general nature affecting human rights, other than specific instances of violation of such rights

of individuals. The Chilean representatives also agreed in the course of the discussion not to insist on the condition that description of situations should be based solely on information emanating from Chilean governmental sources or available to the specialized agencies.

49. There was no agreement on the interpretation to be given to the provisions of article 4 of the International Covenant on Civil and Political Rights under which, even in time of public emergency, no derogation from certain rights stated in the Covenant can be made. Furthermore the provision also states that derogation from obligations of States parties under the Covenant in time of public emergency "which threatens the life of the nation" may be made to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination, and that no derogation may be made in any event from several provisions of the Covenant, including the right to life and the prohibition of torture, cruel, inhuman or degrading treatment or punishment. The Chilean representatives wished to subject the application of such provision to the right of Chile as a sovereign State to judge and regulate such emergency situations. The Group felt that it could not deviate from accepted international standards, having regard to article 4 of the International Covenant on Civil and Political Rights, now part of positive international law as regards Chile.

50. In view of the inability to agree on those points, the Group and the representatives of the Government of Chile had to agree that no further progress could be made at that stage. The Group, for its part, concluded that, to its regret, the exchange of views had not resulted in a significant improvement of the co-operation with the Government of Chile, and in particular that in view of these developments the Group would not be able to visit Chile during the summer, in time for the preparation of its report to the General Assembly. It stated its readiness to meet with representatives of the Government of Chile in the future, in order to ascertain the possibilities of co-operation, taking into account the mandate and the work and programme of the Group.

51. Immediately after the conclusion of the negotiations between the Ad Hoc Working Group and the representatives of the Government of Chile, Mr. Sergio Diez sent to Mr. Leopoldo Benites, in his capacity as Chairman of the Commission on Human Rights, a letter dated 25 May 1976, in which certain proposals were made, including the suggestion that one or two United Nations delegates could be designated - or even delegates from the Working Group itself if it so preferred - in order to make an on-the-spot investigation of the degree of veracity of the accusations made against Chilean authorities or civil servants and to verify the observations which the Government formulated in each case. In the letter it was stated that such a visit could take place if the points of disagreement between the Government of Chile and the Group were resolved by common accord to the satisfaction of both parties. This letter, when brought to the attention of the Group at its last meeting in New York, on 25 May 1976, appeared to the Group, according to its contents, to be of a personal character. The Group, however, was subsequently informed that this letter had been made public in a press communiqué released by the Permanent Mission of Chile to the United Nations in New York on 27 May 1976. The full text of the letter is reproduced in annex VIII to this report.

52. The Group considered, therefore, that its only possible course of action was to pursue the work entrusted to it by the Commission on Human Rights in conformity with the resolutions of the General Assembly and the Economic and Social Council

and to continue to gather for this purpose oral and written evidence from all sources which might be made available to it, to analyse it in detail and to assess and evaluate it. The position of the Group was made public in a statement which it made available to the press on 26 May 1976 (see annex IV).

53. Upon the conclusion of the New York negotiations, the Chairman of the Ad Hoc Working Group addressed several letters, dated 3 and 4 June 1976, to the Government of Chile through the Permanent Representative of Chile to the United Nations Office at Geneva (see annex IX). He referred in those letters, inter alia, to persons who had disappeared, and to the suggestion that had been made by the Chilean representative during the New York meetings to the effect that further meetings be held between the Group and representatives of the Government and the Group's expressed readiness to hold such meetings. The Chairman of the Ad Hoc Working Group proposed the dates of 26 and 27 July 1976 for those meetings, which would be held at United Nations Headquarters in New York, and inquired as to the views of the Chilean Government concerning the matters which might usefully be discussed.

54. In one of the letters dated 4 June 1976 the Chairman referred to the provisions of General Assembly resolution 3448 (XXX) and Commission on Human Rights resolution 3 (XXXII) and stated that the Group would be greatly helped in its work if the Government of Chile agreed to transmit to it information on any of the matters referred to specifically in those resolutions. ^{1/} Dates for submission of such information were suggested in the light of the programme of activities of the Group, which had to lead to the preparation of its report in time for its consideration by the General Assembly at its thirty-first session. The text of the press communiqué issued by the Group in New York on 26 May 1976 was also formally transmitted by the Chairman of the Group to the Government, and inquiries were made concerning some specific cases on which the Group requested the Chairman to obtain information.

55. On 7 July 1976, at the time when firm arrangements had already been made for the meetings in Mexico, in accordance with the programme of work of the Group drawn up in February 1976, the Permanent Mission of Chile to the United Nations Office at Geneva deposited with the Director of the Division of Human Rights in Geneva the text of a communication dated 2 July 1976 received by telex from the Minister for Foreign Affairs in Chile and addressed to the Chairman of the Commission on Human Rights, who immediately brought it to the attention of the Ad Hoc Working Group at the beginning of the meetings in Mexico (see annex X).

56. The letter from the Foreign Minister questioned the dates of 26 and 27 July proposed by the Group for meetings with representatives of the Government as being too late for the preparation of the report by the Group to the General Assembly and its communication for comments to the Chilean Government. Referring to the matters which might be the subject of discussions between the Group and the representatives of the Government of Chile, the Foreign Minister indicated that the same points which had been discussed previously in New York should be taken up again. He stated that it was only after the outstanding problems had been

^{1/} Paragraph 2 of General Assembly resolution 3448 (XXX); paragraph 4 of Commission resolution 3 (XXXII).

resolved that it would be possible for the Government of Chile to co-operate fully. The Minister indicated that the Government of Chile was displeased by the decision of the Group to meet in Mexico City in view of the nature of the relations between Chile and Mexico. Summing up the points made in the letter, the Foreign Minister asked the Chairman of the Commission on Human Rights to urge the Working Group to change its arrangements, to cancel its decision to meet in Mexico, to advance the dates proposed for the meeting with the Chilean Government's representatives and to accept the "terms of rapprochement and collaboration of the Chilean letter to the Chairman of the Commission of 12 April 1976".

57. On the first day of the meeting in Mexico City, on 12 July 1976, under the temporary chairmanship of Mr. Leopoldo Benites, in the absence of the Group's Chairman, the Group decided to send an interim reply in the form of a telegram to the Minister for Foreign Affairs of Chile. In that telegram the Group's Acting Chairman reiterated, on behalf of the Group, its readiness to hold consultations with representatives of the Government of Chile either at United Nations Headquarters in New York between 26 and 30 July 1976 or at the United Nations Office at Geneva between 23 August and 10 September, when the Group would be holding meetings in accordance with its programme of work. In this telegram the Group stated it would also be prepared, during those periods, to hear any persons or representatives of institutions that the Chilean Government might wish to propose as being in a position to furnish the Group with information which the Government might deem appropriate. It was further stated in the telegram that because of the obligations deriving from the Group's terms of reference the Group would specially appreciate an opportunity of meeting with representatives of the Chilean Government between 23 and 27 August in order to enable it to include in its report to the General Assembly the authorized views of the Chilean Government. The full text of the telegram addressed by the Group to the Foreign Minister of Chile is reproduced in annex XI to this report.

58. On 30 and 31 July 1976, the Ad Hoc Working Group, meeting at United Nations Headquarters in New York under the chairmanship of the Chairman, who had been prevented for reasons of health from attending the meetings of the Group in Mexico, considered thoroughly the terms of the letter from the Minister for Foreign Affairs of Chile of 7 July 1976 and unanimously approved the text of a letter which the Chairman was requested to address to the Foreign Minister. In that letter, dated 31 July 1976 (see annex XII), the Group found it necessary to point out to the Government of Chile that, consistent with United Nations practice, letters to the Working Group should be addressed to its Chairman. The Group also remarked that within the framework of its mandate and the administrative and financial arrangements made to enable it to exercise its functions, it had to retain final responsibility for determining its programme of work.

59. After replying to the points made by the Foreign Minister concerning the dates of further joint meetings with the representatives of the Government of Chile and clarifying the question of the information which the Group requested the Chilean Government to submit, the Working Group stated, inter alia, that as a United Nations body it could not depart from the principles guaranteeing the protection of human rights which had been accepted by the international community in United Nations instruments and, in particular, from those that were legally binding on the Chilean Government; nor could the Group agree to limitations on methods of inquiry generally recognized as applicable in investigations conducted by international bodies.

60. As regards the proposal advanced on behalf of the Government of Chile by the Foreign Minister that one or two United Nations delegates or delegates from the Working Group, to be appointed jointly by the Government of Chile and the Working Group, could be designated in order to make on-site inspections for certain specific purposes, the Group stated that it did not consider itself competent to express itself as to a United Nations representation by other than its own members. In so far as the members of the Group were concerned, it was the Group's firm belief that, in accordance with the resolutions under which it had been established and under its mandate, it had to continue to perform its functions, in particular concerning its visit to Chile, as one Group, as constituted by those resolutions. Finally, the Group replied to the objections which the Foreign Minister had communicated to the Group meeting in Mexico City.

61. No representative of the Chilean Government appeared before the Working Group during the Group's meetings in New York in July 1976, although Mr. Miguel Schweitzer, a representative of that Government especially concerned with relations with the United Nations as regards the question of human rights in Chile, was present in New York at that time. A private conversation took place, however, between the Chairman of the Working Group and Mr. Schweitzer during that time.

62. In accordance with its programme of work, the Ad Hoc Working Group was to meet at the end of August and the beginning of September 1976 in Geneva, principally for the purpose of drafting its report to the General Assembly. In a note verbale dated 20 August 1976 the Permanent Mission of Chile to the United Nations Office at Geneva informed the Division of Human Rights that two representatives from the Government of Chile would be available to meet with the Group as from 25 August.

63. Mr. Sergio Diez and Mr. Luis Winter Iguait met with the Group on 25, 27 and 30 August 1976. On 25 August Mr. Diez handed to the Group several communications addressed to the Chairman of the Group. In a letter dated 19 August 1976 (see annex XIII), the Minister for Foreign Affairs of Chile stated that the Chilean Government was prepared to continue the conversations with the Working Group, with a view to arranging the co-operation needed to carry out the mandate entrusted to it by the Commission on Human Rights. The letter further stated in particular that, while the Government of Chile had never thought of imposing on the work of the Group restrictions other than those internationally recognized in instruments signed by the Government, by international practice and by universally accepted legal theory, it was considered that the inalienable rights of Chile should be recognized and treated with the dignity to which it is entitled as a sovereign State, including the assurance that the actions of international organizations concerned in relation to it should be objective and impartial. The Foreign Minister, therefore, referred once again to the claim of the Chilean Government to be associated in the drafting of the rules of procedure enabling the Working Group to fulfil its mandate, for the stated purpose of harmonizing Chile's status as a sovereign State and the necessities of an international investigation.

64. The letter further referred to the question of guarantees regarding the safety of witnesses appearing before the Group, to the demand of the Government to be advised of specific cases of alleged violations of human rights in sufficient detail. As regards guarantees, the statement was made that as a matter of course, no reprisals would be taken against persons concerned in the cases dealt with or against their relatives.

65. A note verbale from the Permanent Mission of Chile to the United Nations Office at Geneva, dated 25 August 1976 (see annex XIV), provided some information in response to the inquiries made by the Chairman on behalf of the Ad Hoc Working Group on 3 June 1976. Another note verbale of the same date (see annex XV) furnished information on behalf of the Government with respect to matters listed in the Chairman's letter of 4 June 1976, i.e. those referred to in General Assembly resolution 3448 (XXX). The Government's comments on the various issues as stated in the communications from the Chilean Government were carefully examined by the Group.

66. As regards the question of the rules of procedure of the Group, the Group wishes to point out that it adopted them after an initial meeting with the Chilean representatives and after having given due consideration to the views of the Government of Chile on 22 May 1975; that the rules closely follow the "Model rules of procedure for United Nations bodies dealing with violations of human rights" as transmitted by the Economic and Social Council to such groups; that no formal concurrence of the Governments concerned to such rules is called for by United Nations practice; that such rules have been utilized without the need of such concurrence in other instances of United Nations investigations. The Group was at no time averse to examining modalities of its work in consultation with the Government of Chile, in particular those that would apply to investigations inside Chile. It was the original intention of the Group to proceed with such consultations upon its arrival in Chile in June 1975.

67. At its meetings with the representatives of the Government of Chile on 25 August 1976, the Group raised once more the question of the Chilean Government's intentions as to the visit which the Group should make to Chile, under its terms of reference. The representatives of the Government made a formal proposal to the Group in this respect, i.e. that two members of the Group, to be chosen by agreement between the Government of Chile and the Group, should visit Chile in January 1977 for the purpose of conducting an inquiry under conditions to be further specified, without prejudice to the possibility of a subsequent visit of the whole Group to Chile.

68. The matter of the safety of witnesses appearing before the Group, and even more that of persons inside Chile to whom those witnesses or documents available to the Group refer, is of considerable complexity. Reliable information which the Group receives about conditions in Chile shows that a general statement by the Government may not be adequate for this purpose, i.e. in reassuring the persons concerned or the Group itself in the light of its responsibilities. This matter would, therefore, have to be further explored with the representatives of the Government.

69. After considering the proposal of the representatives of the Government of Chile, the Group informed them that it had agreed unanimously to accept the proposal that two of its members would visit Chile in January 1977, before the thirty-third session of the Commission on Human Rights, these two members to be the Chairman and another member selected by the Group. Such a visit would, however, have to be considered as a preparatory one and the two members would be followed one week to 10 days later by the other three members of the Group.

70. By a telegram dated 27 August 1976 addressed to the Chairman of the Group (see annex XVI), the Foreign Minister of Chile stated that the Government of Chile could not accept the counter-proposal of the Group, and that it regretted that its offer

had not been accepted, because it was "convinced that it would have helped to institute effective co-operation between the Government of Chile and the Ad Hoc Working Group ... and would have made it possible to verify in a trustworthy manner the situation with regard to human rights in the country". It was stated in this communication that the Government of Chile maintained its offer "in the conviction that it would be considered by the Group in the near future".

71. Further meetings were held between the representatives of the Government of Chile and the Group on 7 and 30 August 1976 and various matters were discussed relating to the legislation recently enacted in Chile, as well as to specific cases of alleged violations of human rights of individuals in Chile. In those meetings the Group took up the matter of Chileans in exile whose passports are stamped with the words "Válido sólo para salir del país". After the Group had explained the difficulties experienced by such persons, Mr. Diez agreed to take the matter up with his Government. The substance of these discussions was taken into account by the Group in preparing the present report.

72. In the light of the foregoing, the Group can, therefore, only report to the General Assembly that contacts with the Government of Chile as regards the performance of the functions entrusted to the Group have been maintained, that exchanges have taken place outside Chile on some of the matters of concern to the Group, and that the atmosphere in which the recent conversations took place had improved. The Group could not, however, obtain agreement for its entry into Chile in time for the presentation of this report to the General Assembly, nor did it find it possible to accept a proposal that would have divided it, contrary to what it considers is the intention of the Commission on Human Rights, which established it, and the General Assembly, which confirmed its composition.

II. THE STATE OF SIEGE

73. The progress report which the Working Group submitted to the General Assembly at its thirtieth session in 1975 described the Chilean constitutional and legislative provisions relevant to the inquiry conducted by the Working Group (A/10285, chap.III), as well as the impact on human rights of the State of Siege and of the extension of the jurisdiction of the special military courts (*ibid.*, chap.IV, sect. A). The Working Group on the basis of the provisions of article 4 of the International Covenant on Civil and Political Rights, stated that it had not found any serious elements attesting to the existence or danger of a degree of internal disturbance which could have motivated the extensive suspension of constitutional guarantees that had occurred in Chile. The Government had not shown any objective motivation for the existence of an emergency situation of a sufficient degree or, for the necessity of extensive restrictions on or suspension of a number of human rights (*ibid.*, para. 122). The Working Group also found that the invocation of the State of Siege was being used in Chile as a justification or a cover for all kinds of measures derogating from the normal application of laws and sound judicial procedures (*ibid.*, para. 108). It expressed the view that real restoration of human rights in Chile would not be possible until either the state of siege as then applied was revoked or at least its effects were defined with greater precision as to matters such as arrest, detention, trial, length of imprisonment and the exercise of human rights in general (*ibid.*, para. 123).

74. In the report which it subsequently submitted to the thirty-second session of the Commission on Human Rights in 1976, the Working Group described the provisions of decree-law No. 1181 of 11 September 1975, which modified the state of siege over the entire national territory from the level of "internal defence" to the level of "internal security" (E/CN.4/1188, chap.I, sect. B). It will be recalled that decree-law No. 640 of 10 September 1974 had provided that a state of siege may be declared in any of the following degrees:

- (a) State of siege because of a situation of "internal or external war";
- (b) State of siege in the degree of "internal defence", which is applicable in the event of civil commotion caused by rebel or seditious forces organized, or about to be organized, openly or clandestinely;
- (c) State of siege in the degree of "internal security", which is applicable when commotion is caused by rebel or seditious forces which are not organized; and
- (d) State of siege in the degree of "civil commotion", which is applicable in the other cases provided for in the legislation in force.

75. From 11 September 1973 to 10 September 1974, the whole of Chile was under a state of siege at the level of "internal or external war". It hardly needs to be stated that there was no such war during that period. From 11 September 1974 to 10 September 1975 the country was under a state of siege at the level of internal defence. Decree-law No. 1181 of 11 September 1975 provided that as from 11 September 1975 and for a period of six months, all the national territory would

be under a state of siege at the level of internal security. 1/ Decree-law No. 1369 of 11 March 1976 extended the state of siege at the level of internal security for a further period of six months, that is, until 11 September 1976. 2/

76. The legal consequences of the change in the level of the state of siege from "internal defence" to "internal security" for criminal jurisdiction, procedure and penalties are regulated by decree-law No. 640 of 10 September 1974, as amended by decree-law No. 1009 of 5 May 1975. 3/ Under the state of siege at the level of internal defence, the military courts exercise war-time military jurisdiction and apply war-time military procedures and penalties. Essentially these are the "council of war" provisions which were described in paragraphs 92-94 of the report submitted to the General Assembly at its thirtieth session (A/10285). Article 8 of decree-law No. 640, as amended by article 8 of decree-law No. 1009, provides, on the other hand, that in the case of a state of siege at the level of internal security, military courts will exercise their jurisdiction and use the procedures appropriate for peace-time except as regards certain crimes. This article also provides that when peace-time procedures are applied during a state of siege at the level of internal security, penalties will be increased by one or two levels of punishment. According to the memorandum dated 25 August 1976 submitted by the Chilean Government to the Working Group, war-time military procedures remain applicable to four offences: subversion, sabotage, kidnapping and terrorism (see paras. 78 and 88).

77. The peace-time military judicial system has been described as having two instances: the military or naval court in the first instance and the courts martial of appeal (naval or military) in the second instance. The court martial of appeal for all military matters other than naval consists of two judges of the court of appeals of Santiago (an ordinary civil court of second instance), a judge advocate of the carabineros, an air force judge advocate and an army judge advocate. The naval court martial of appeal consists of two judges from the court of appeals of Valparaiso (an ordinary civil court of second instances), an actively serving or retired naval officer with the rank of captain and the naval judge advocate. The judgements of the courts martial may be appealed to the Supreme Court of Justice (E/CN.4/1188, para. 27).

78. An exception is provided in article 9 of decree-law No. 640, as amended by decree-law No. 1009, for certain offences referred to in the Law on the Security of the State. In these cases, during a state of siege, at the level of internal security or of ordinary internal unrest, the war-time military courts (councils of war) shall hear the cases. Nothing is said in these articles about the procedure or penalties applicable. The provisions of the Law on the Security of the State which warrant trial by war-time military courts during the state of siege, level of internal security or of ordinary internal unrest, are articles 4,

1/ See, for a comparison of these two levels of the state of siege given by the representatives of the Chilean Government, A/C.3/639, pp. 35-36; A/10295, annex, pp. 2-4.

2/ The Chilean Government stated its reasons for continuing the state of siege in a memorandum to the Working Group dated 25 August 1976 (see para. 88 below).

3/ Published in the Diario Oficial of 8 May 1975.

5 (a) and (b) and 6 (c), (d) and (e). 4/ Article 4 of this law and its seven paragraphs cover, inter alia, crimes against internal security, including attacks against the constituted government, provocation of civil war, inciting, financing or taking part in attacks or subversions, revolts, rebellion or resistance to the government. This article also covers incitement to military disobedience, assisting in the organization of private armies, the conducting of propaganda in favour of a violent change in the social or governmental order and the spreading within the country or the sending abroad of false or tendentious information intended to overthrow the republican and democratic system of government or to disturb the constitutional order, the security of the State or the monetary and economic system (E/CN.4/1188, para. 28).

79. Article 5 (a) refers among others to attacks upon persons or kidnapping done with the purpose of disturbing internal security or of intimidating the population. Finally, article 6, paragraphs (c), (d) and (e), include, inter alia, encouraging or promoting the destruction or impairment of public services or of services used in economic activities such as industries, agriculture and mining. Also included are hindering access to public property and poisoning water or food intended for public use or consumption. Military trials according to the "time of war" procedures are described in the progress report, and represent very severe restrictions in the rights of the defence (ibid., para. 29).

80. It is evident that because of the general terms used in these provisions a very wide range of interpretation is left open to those authorities charged with their application. It is thus difficult to see why, in a situation where any disturbances that may exist are the result of admittedly unorganized opposition, the minimum judicial protection of the peace-time military judicial system is not provided. Lastly, this major exception makes it possible to bring before the war-time military courts a striking number of offences, which include most activities likely to be made punishable at a time of unrest (ibid., para. 30). Such a situation is inherent in the existence and the perpetuation of the state of siege.

81. At a meeting with the Working Group on 30 August 1976, a representative of the Government of Chile explained that the offences for which war-time military jurisdiction was applicable are defined in the Chilean Penal Code and in decree-laws. The Working Group has observed in this connexion that the term "subversion" has hitherto been rarely used in Chilean penal legislation, and then in a limited sense. However, the definitions of the term as contained in decree-laws were so wide as to be capable of providing pretexts for the arrest and trial of practically every person in Chile whom the authorities fear, dislike or wish to eliminate from normal life.

82. The above consequences do not occur only from interpretations given to legal provisions. The Working Group has repeatedly received concrete evidence of the extensive abusive use of terms such as "subversion" and "danger to the security

4/ As noted in paragraph 76 above, the Chilean Government in its memorandum of 25 August 1976 referred only to four offences for which war-time military jurisdiction is applicable. Additional offences giving rise to war-time military jurisdiction are cited in paragraph 78.

of the State". Mr. Herman Montealegre, a distinguished Chilean lawyer who had studied theology for several years and who was active in seeking to uphold human rights in Chile, was detained on the ground that he had committed subversive acts. When one of his lawyers who made a petition on his behalf asked the advocate for the Government for a copy of the report or for a statement of the reasons, showing the subversive acts which Mr. Montealegre was supposed to have committed, this was refused. He was given no indication whatsoever as to why Mr. Montealegre had been deemed to have committed subversive acts. Subsequently the Government claimed that a house belonging to Mr. Montealegre had been used as a "drop" for Communists. The Working Group has heard from several persons who had known Mr. Montealegre for many years that he had not been active in any political movement, that he had not been identified with any political tendency and that the only ideology which he professed was a human rights ideology.

83. The Working Group has received strong evidence that, though at the present level of the state of siege peace-time military tribunals should normally be competent, most of the trials, in fact, are conducted by military courts applying war-time procedures.

84. It is an indication of the arbitrariness of decisions taken as to whether a person should be tried before a peace-time military tribunal or a war-time military tribunal that a prominent Chilean lawyer who made a statement to the Colegio de Abogados calling for the upholding of human rights was charged with and tried for subversion before a war-time military court.

85. Further evidence of the arbitrariness and capriciousness of the authorities in placing persons before war-time tribunals was given to the Working Group in connexion with the case of Mr. Eric Schnake. Mr. Schnake, a former senator of the Unidad Popular, was condemned to 25 years of imprisonment in the "Fach" trial. He is at present imprisoned in the Capucino annex to the Santiago Penitentiary. In 1975 he applied for the application of decree No. 504, asking that he be expelled from Chile. Upon making this application his family was told that he would be tried again before the Naval Court in Valparaiso. Thereupon his family presented a document to the authorities, on 16 December 1975, requesting that the accusations on which he would be tried should be given to him in writing. As they received no reply for some months, a group of foreign lawyers who went to Chile in May 1976 decided to take up his case. On 3 June 1976 Madame Colette Auger, a French lawyer, went to see Mr. Camposano, the Naval Attorney of the Valparaiso Judiciary, and Mr. Dontec, the Naval Attorney of the Valparaiso Jurisdiction. Mr. Camposano informed Mme Auger that as of 3 June 1976 no further charges had been made against Eric Schnake in the Naval Court of Valparaiso. He stated that the investigations were still not completed despite the fact that more than two years had passed since Mr. Schnake's initial arrest and just under two years since his first conviction, on 30 July 1974. When Mr. Camposano made it clear that up till then there were no concrete charges against Mr. Schnake, Mme Auger asked that he should state in writing that Mr. Schnake had not been the subject of any formal accusation. She also asked him to state in writing the crime of which Mr. Schnake would be accused, and, if accused, whether the case would be conducted according to peace-time or war-time procedure. To her astonishment, she was notified in the afternoon of the same day, 3 June 1976, that an accusation of subversion had been made in the Naval Court of Valparaiso and that Mr. Schnake would be tried according to war-time military procedures. Mme Auger saw Mr. Schweitzer, the Minister of Justice, and complained to him that the accusation against Mr. Schnake had been derived from pure fantasy,

as within the space of a few hours she had first been told that there was no charge against Mr. Schnake and then told that charges for subversion had already been instituted against him. Mr. Schweitzer declined to comment. ^{5/}

86. In its report to the Commission on Human Rights in 1976 the Working Group pointed out that under the state of siege, severe limitations were placed on the right to be free from arbitrary arrest and detention and especially on a detained person's right to "take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful", as provided in article 9 of the International Covenant on Civil and Political Rights (E/CN.4/1188, para. 66). The Working Group also noted that severe limitations on the right to a fair trial were imposed even under the peace-time military procedures (ibid., para. 70).

87. On the basis of the evidence available to it, the Working Group maintained its finding that it was not possible to conclude that the present situation existing in Chile placed the life of the nation in danger, and that the far-ranging and pervasive restrictions on human rights which existed in Chile were not required by the exigencies of the situation and therefore were in contravention of article 4 of the International Covenant on Civil and Political Rights, to which Chile is a party (ibid., paras. 59-60).

88. In a memorandum to the Chairman of the Working Group dated 25 August 1976 (see annex XV), the Permanent Mission of Chile to the United Nations Office at Geneva stated that in the view of the Chilean Government the identification of emergencies that threatened the life of the nation was the exclusive prerogative of the Government of Chile. Nevertheless, the Chilean Government had sought to explain the reasons which had led it to impose the state of siege. The Government referred to the progress allegedly made in the process of normalization and pointed to legislative decree No. 1181 of 11 September 1975, which had reduced the state of siege to the level of "internal security". The Government asserted that during the state of siege constitutional safeguards were preserved with full effect, subject only to the exception embodied in the powers granted to the Executive under the state of siege. The Government also asserted that it had taken particular care to regulate the exercise of these powers in such a way that they provided those affected by them with the broadest guarantees and that, within the limitations inherent in these powers, those persons would continue to enjoy their individual safeguards. The Government also contended that the emergency measures it had taken were those provided for under the legal system of Chile. Basically the memorandum repeated points previously made by the Chilean Government.

89. The Working Group does not accept the contention of the Chilean Government that by examining whether evidence and situations exist which could justify the maintenance of the state of siege it has encroached upon the jurisdiction of a sovereign State. International practice shows without doubt that in examining a situation involving derogation of human rights, the examining body is entitled, and, indeed, duty bound, to assess whether the imposition of a state of emergency is

^{5/} See also the case of Senator Luis Corvalán, in chap.VI, para. 402.

"strictly required by the exigencies of the situation" and also whether its continuation is warranted in all the circumstances. 6/ The competence of the Working Group in examining this aspect of the problem and in coming to its own conclusions is well-founded in international law.

90. The Working Group has given further consideration to the reasons advanced by the representatives of the Chilean Government to justify the maintenance of the state of siege, such as subversive radio broadcasts, foreign subversive publications, weapons brought into the country and the use of violence by elements opposed to the Government (E/CN.4/1207, p. 5).

91. In a statement made to the Working Group on 30 August 1976, the representative of the Government of Chile asserted that there was a continuance of radical propaganda from foreign radio stations, and that documents were distributed in Chile calling for the unseating of the present Government. Furthermore, there was a recent instance of the discovery of arms. On 27 August 1976 the Permanent Mission of Chile to the United Nations Office in Geneva transmitted to the Working Group a copy of an article in El Mercurio on 15 August 1976 reporting the discovery in Santiago of arms belonging to an allegedly pro-Communist group, "Red September". The following items were said to have been found in the search: eight USI sub-machine-guns of Swedish manufacture, 18 magazines for the sub-machine-guns, and 2,500 No. 9 rounds of sub-machine-gun ammunition; anti-gas masks; disguises and make-up; a Smith and Wesson 9-mm pistol and a set of equipment for forging identity cards. The owner of the weapons, one Luis Avandafio Baeza, was alleged to have taken refuge in the Embassy of Venezuela and was reportedly denounced by his father. The Chilean Government stated that "this new discovery of arms confirms ... the Chilean Government's oft-repeated statement that the situation is far from normal and that existing emergency measures are proving every day to be justified by events ...". The article in El Mercurio stated that from the printed false identity cards it seemed that the owner of the weapons was forging "all kinds of papers in order to be able to leave the country". According to El Mercurio "sources in the National Directorate of Intelligence refused to confirm or deny the fact that various

6/ See European Commission on Human Rights, first Cyprus Case No. 176/56, II Yearbook of the European Convention on Human Rights, p. 177; European Court of Human Rights, the Lawless Case, IV Yearbook of the European Convention on Human Rights, p. 72; "It is for the Court to determine whether the conditions laid down in the exercise of the exceptional right of derogation have been fulfilled ...". In the Greek Case the European Commission of Human Rights considered that the burden was upon the then Greek Government to show that the conditions justifying measures of derogation had been and continued to be met. Yearbook of the European Convention on Human Rights, 1969, p. 72, para. 154. The Commission found that the respondent Government had not satisfied it that there was a public emergency threatening the life of the nation. Ibid., paras. 165, 217. It may also be recalled that in the report which it submitted to the Organization of American States in 1974, the Inter-American Commission on Human Rights took into account and applied international standards and criteria relevant to the imposition of a state of siege and stated that during its stay in Chile "it did not observe anything resembling a 'state of war'". E/CN.4/1166/Add.3, "Report on the status of human rights in Chile" (OAS doc. OEA/Ser.L/V/II.34, doc. 21/Corr.1), para. 4.

identity cards were found belonging to persons who, according to Communist party propaganda, 'had disappeared'. By these means the party approaches international organizations to seek assistance in locating those persons." The father of the alleged owner, Mr. Oswaldo Avendaño Baeza, is reported to have said that his son had "some sort of contact with the Vicariate of Solidarity 'although I do not know why'".

92. At a meeting with the representatives of the Government of Chile on 30 August 1976 the members of the Working Group indicated to the Chilean representatives that the Working Group could only verify whether the arms had, in fact, been found if it were able to make on-the-spot investigations in Chile. In any event, however, a few instances of the discovery of relatively small quantities of arms which, even if used, could not lead to the overthrow of a strong military government, did not amount to justification for the continuance of a state of siege and far-ranging suspension of constitutional guarantees of human rights.

93. The information before the Working Group tends to confirm that, even if a substantial margin of appreciation is left to the Chilean Government, on balance, the successive decrees extending the state of siege have come to represent, in fact, a serious abuse of power. It is worth while to recall, in this connexion, the test used by the European Commission of Human Rights in the Greek Case to determine whether conditions were present which warranted the continuance of emergency powers. In paragraph 207 of its opinion, the Commission stated that it did not find, on the evidence before it, that the factors mentioned by the then Greek Government "were beyond the control of the public authorities using normal measures, or that they were on a scale threatening the life of the ... nation". 7/

94. A group of foreign observers who recently visited Chile said that they found no evidence whatsoever which indicated that the Government was fearful of violence or rebellion. The observers were apparently able to walk freely about, to enter the Supreme Court and meet with its President, for two hours, without ever having been scrutinized or interrogated. One of the members of the group who had an attaché case was never asked upon entering the Supreme Court to open it in order to make sure that there were no weapons inside. There was no security check. The observers found it paradoxical that the Government claimed there were threats of violence or rebellion whereas the situation seemed to be totally under control. According to them, another piece of revealing evidence was that Chileans engaged in trade emphasized that the climate in Chile was favourable for foreign investment because the country was under the full control of the Government.

95. In this connexion, the Group wishes to point out that Mr. Tom Harkin, Mr. Toby Moffat and Mr. George Miller, members of the United States Congress, visited Chile in March 1976. In written testimony, a signed copy of which was submitted by them to the Group after they returned to the United States, they wrote, inter alia:

7/ Yearbook of the European Convention on Human Rights, 1969, the Greek Case, p. 100, para. 207.

"We visited Chile from March 10 to March 15, 1976, and met with a broad variety of people: residents of the poorest neighbourhoods of Santiago, farmers, lawyers and businessmen, a nutritionist and a paediatrician, General Gustavo Leigh, member of the junta and head of the Air Force; former President Eduardo Frei and other leaders of the Christian Democratic Party, trade union people, the current Ministers of Labor, Finance, Economy and Justice; families with imprisoned or disappeared relatives, and some prisoners themselves; Cardinal Raul Silva; and with U.S. Ambassador David Popper and other U.S. Embassy officials.

"Among the impressions received and opinions formed as a result of these interviews, we have agreed that there are a few main observations which are undeniable:

"(1) Fundamental human rights are still being violated in Chile, and the state of siege imposed by the junta has created a lawlessness and a lack of accountability which effectively prevents a solution of the human rights problem under the existing situation.

"(2) The economic policies which the junta has committed itself to, including controls on wages but none on prices, and the firing of hundreds of thousands of people, are dependent on repression, intimidation, and the state of siege which has characterized the junta from its first day in power.

"...

"... The military leaders of Chile are determined to purge Chile of all political activities and consciousness. As General Leigh told us, he and his colleagues have been 'nauseated by politics'. They are battling an internal enemy which they are convinced exists, an enemy which has no guns, no financial means, no media expression - an amorphous internal enemy which the Chilean government describes as part of 'the international Marxist conspiracy'. The human price of battling this enemy has been of no concern to the junta."

96. It has been pointed out to the Working Group that under the Constitution of Chile the state of siege was intended to prevent activities directed against the security of the State but should in no event be used as a weapon of punishment or as a substitute for the courts of justice, as has occurred in Chile. It has also been pointed out to the Working Group that according to the spirit of the Constitution, the powers conferred by the state of siege should not be used as an instrument for the mass detention of members of the public, as is also occurring presently in Chile. The Working Group wishes to recall in this connexion that the General Assembly and the Commission on Human Rights have appealed to the Chilean authorities to ensure "that the state of siege or emergency is not used

for the purpose of violating human rights and fundamental freedoms contrary to article 4 of the International Covenant on Civil and Political Rights". 8/

97. It is an indication of the extremes to which the state of siege has led that all elections have been forbidden in Chile, even in private clubs, sporting and trade union and students' organizations. No meetings of more than six persons are allowed. The Working Group heard of one case in which a football club could not continue to function because it could not hold a meeting to elect its officers. Similarly, trade unions have been hindered in carrying out their functions because many of their leaders have been detained or expelled, or have disappeared, and they cannot meet to elect new leaders (see A/10285, paras. 222, 232).

98. The Working Group has carefully considered recent legislative measures such as the reduction of the state of siege to the level of internal security, decree-law No. 1009 and supreme decree No. 187, which have been pointed out by the representatives of the Government of Chile as evidence of progress towards normalization. The Working Group greatly doubts whether any such return to normality is, in fact, taking place. In the first place, the overwhelming evidence received by the Working Group is that the new safeguards decree are simply not applied or are applied only superficially. Secondly, it does not appear that until now the change in the level of the state of siege has resulted in restraining to any meaningful extent the activities of the DINA and other security agencies or in curbing the incidence of arrests and detentions or the severity of torture. In effect, the Working Group cannot avoid the conclusion that there is a deliberate manipulation of the law in Chile in order to give a fictitious

8/ General Assembly resolution 3448 (XXX), para. 2 (a). Commission on Human Rights resolution 3 (XXXII), para. 4 (e). Article 4 of the International Covenant on Civil and Political Rights reads as follows:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

"2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

"3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

air of legality and the appearance of a progressive return to normality, whereas in fact violations of human rights continue in all severity. The Working Group is also bound to pose the question which has been raised by numerous persons as to how long this process of normalization should last. The Working Group at the present stage of its investigations does not have sufficient evidence to affirm that there is a serious danger affecting the existence of the Chilean nation and therefore is convinced that nothing justifies the continuation of the state of siege today, three years after the coup. There has been no credible evidence of any attempted or planned uprising or of appreciable acts of violence or the finding of substantial amounts of weapons. Mere subversive propaganda is, in the opinion of the Working Group, not sufficient to uphold the continuation of the state of siege.

99. The Working Group reaffirms its conviction based on a consistent pattern of respectable evidence that the state of siege has an effect on everything that goes on in Chile, and that an important step in the restoration of human rights in Chile would be the lifting of the state of siege. One tangible benefit of the ending of the state of siege would be that the judiciary would lose the excuse at present advanced and would be compelled to exercise its normal power of supervision over arrest, detention and the administration of justice of all Chileans.

III. CONSTITUTIONAL DEVELOPMENTS

100. In its progress report, which was submitted to the General Assembly at its thirtieth session, the Working Group described the Chilean constitutional and legislative provisions relevant to its study (A/10285, chap. III). The main features of the constitutional situation as created by the Government Junta are still the same. The democratic parliamentary system is replaced by a military government under a state of siege; the provisions relating to human rights and fundamental freedoms are to a large extent suspended; the judiciary is partly replaced by military courts. In the report which it subsequently submitted to the thirty-second session of the Commission on Human Rights in 1976, the Working Group reported on two new institutions which the Government Junta had established or intended to establish: the Commission on Constitutional Reform and the Council of State. The Working Group also noted the announced intention of the Government to promulgate "constitutional acts" with the purpose of protecting in an institutional framework the political, economic and social reality of the country while the definitive constitution was elaborated.

101. The only developments that have taken place since the events mentioned in paragraph 100 have been the announcement of the membership of the Council of State, the opening of its formal first organizational session, and the establishment of four legislative committees responsible for the drafting of decree-laws. It therefore appears that constitutional reform in Chile is proceeding at a very slow pace. The Commission on Constitutional Reform, which was established in 1973 to draft a new political constitution has, three years later, in 1976, still not published the results of its work. The Council of State, which was established on 31 December 1975, has, eight months later, held only its first, organizational session.

A. Commission on Constitutional Reform 1/

102. The Commission on Constitutional Reform was established after the Junta assumed power. Its purpose is to elaborate a preliminary draft of a new Political Constitution of the State. The Commission is made up of professors of law, who are stated to represent the different democratic trends of the country. On 27 November 1973 the Commission wrote a memorandum setting out the fundamental principles and objectives that will inspire the new Constitution. This memorandum was widely distributed in and outside the country. Apart from performing these tasks, the Commission has also reported to the Government on numerous issues of a juridical or constitutional nature presented to it by the Government (see E/CN.4/1188, para. 51).

1/ See La Situación Actual de los Derechos Humanos en Chile, vol. II (Santiago, October 1975), pp. 62-64.

103. The Commission has expressed the opinion that the new Constitution should deal in a special way with human rights, taking into account such international documents as the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, and the Declaration of the Rights of the Child. However, it made no reference to the International Covenant on Civil and Political Rights, which has been ratified by Chile and which entered into force on 23 March 1976 (ibid., para. 52).

104. According to the Commission, the Constitution now under preparation would guarantee freedom of expression and education and property rights, extend the right of amparo, and establish a new democratic régime. It would also declare the Marxist political parties to be illicit associations and bury for ever "sectarianism, political trash and demagogism". The principles of the separation and the independence of the three powers of the State - the executive, the legislative and the judicial - would also be respected in the future Constitution. No time-limit for the completion of this work by the Commission has so far been made known. In this connexion, it may be useful to refer to the statements made before the Group by the representative of the Chilean Government (see below, para. 113).

105. Concern has been expressed before the Working Group regarding certain tendencies in the constitutional field in Chile which appear to be fraught with danger for human rights. Observers who had occasion to speak with the present Chilean leaders, including the head of the Commission on Constitutional Reform, have indicated that in their view what is in fact taking place in Chile is an attempt to institutionalize the military Junta and its manner of functioning. Attention has particularly been drawn to the concept of "national security" on which the Government bases itself and which is said to be the key factor in the drawing up of the new constitution. As regards human rights it is felt that this concept is based upon the premise that the State possesses all rights and determines at its discretion what margin of freedom can be left to the individual. Reliable witnesses of high legal reputation referred to "a new kind of totalitarian ideology". The emphasis is upon restrictions rather than freedoms. Such a concept, it has been said, results in the perpetuation of a state of emergency enabling the application of measures directed against those who hold opinions opposed to the basic policies of the Government. In this context the rights of the individual were said to be of secondary consequence.

B. Council of State

106. The Council of State was established by decree-law No. 1319 of 31 December 1975 as a supreme consultative body to the President of the Republic in matters of government and civil administration, and its creation appears to be the first formal constitutional act that has been approved by the Government Junta (ibid., para. 54).

107. According to article 4, the President of the Republic may ask for the opinion of the Council of State on constitutional reform, on drafts of decrees-laws, when entering into a treaty or international convention of great importance for the country, on conventions, contracts or negotiations which by their nature may engage the credit or interests of the State, or on any other matter of high importance for the nation. Article 2 of this constitutional act determines the composition of the Council of State, which is to be composed of persons of great capacity, of well-known moral reputation and experience and who, at the same time, are representatives of the highest functions of the nation and the different sectors of the organized community. Former Presidents of the Republic are members in their own right (ibid., para. 55).

108. According to reports in the international press, not denied, Mr. Eduardo Frei, former constitutional President of Chile, has formally refused to be a member of the Council of State. According to these reports, former President Frei based his decision on the fact that membership of the Council would be meaningful only if that organ was part of a Constitution approved by the votes of the people. However, nothing indicates, former President Frei adds, that the Chilean people will be consulted concerning the new Constitution that will be proclaimed in the coming months. In addition, former President Frei remarked that the new organ would have no power and would be incapable of taking any initiative; moreover, the Government would not be required to follow its recommendations. Finally, the former President also noted that the members could be removed by the Government at will (ibid., para. 56).

109. On 1 June 1976, the Government appointed the members of the Council of State. They included two ex-Presidents of Chile: Jorge Alessandri, who will be President of the Council, and Gabriel Gonzalez Videla, who will be Vice-President. Other members include: Enrique Urrutia Manzano, former President of the Supreme Court; Enrique Bahamondes, former Comptroller-General of the Republic; General Oscar Iturieta Molina (Army, retired); Admiral Jacobo Neuman (retired); General Diego Barros Ortiz (Air Force, retired); General Vicente Huerta Celis (Carabineros, retired); Juan de Dios Carmona, former Minister of State; Hernán Figueroa Anguita, former diplomat; Juvenal Hernández Jaque, former Rector of the University of Chile; Enrique Ortúzar Escobar, former Professor in the Faculty of Law of the Catholic University; Carlos Cáceres Contreras, former Professor in the Faculty of Economics of the Catholic University of Valparaíso; Julio Philippi Izquierdo, lawyer; Guillermo Medina Gálvez, labour leader; Pedro Ibáñez Ojeda representative of the business sector; Mercedes Ezquerria Brizuela, representative of a women's association, and Arturo Fontaine Talavera, youth representative. 2/

110. The Council of State was formally constituted at a session held on 14 July 1976 in the presence of the President of the Republic, General Pinochet. In his address on the occasion, President Pinochet said that the setting up of the Council of State was to be considered as "a first step towards the establishment of the future legislative organs". 3/

111. The Council held its first working session on 20 July 1976, at which it discussed certain organizational matters, decided on its dates of meetings and exchanged views regarding the staff required for the performance of its tasks. 4/

C. Constitutional acts

112. The Government had made known its intention to promulgate "constitutional acts" which would be "fundamental laws with the purpose of protecting in an institutional framework the political, economic and social reality of the country, while the

2/ See El Mercurio (Santiago), 15 July 1976.

3/ El Mercurio, 15 July 1976.

4/ El Mercurio, 21 July 1976.

definitive Constitution is elaborated". 5/ As reported above, the Council of State was established by the first constitutional act promulgated by the Government Junta. It was then announced that before the end of the first semester of 1976, three other constitutional acts would be promulgated: the first to deal with the fundamental basis of the new institutions, the second with nationality and sovereignty, and the third, with rights and constitutional guarantees and emergency régimes. To date, none of these three constitutional acts has been promulgated.

113. In a statement made to the Working Group on 10 August 1976, Ambassador Sergio Diaz, representative of the Chilean Government, indicated that the President of Chile hoped to promulgate on 11 September 1976 two constitutional acts, one dealing with emergencies and the other with human rights. Drafts of these two new acts had already been submitted to the President by the Commission on Constitutional Reform. Their contents were not made known to the Working Group.

D. The legislative committees (Comisiones Legislativas)

114. On 21 April 1976, the Government Junta published decree-law No. 1220 regulating decree-law No. 991. With this decree the mechanism by which the Government Junta will establish its legal norms is completed. The agreement of four members of the Junta will be required to establish a legal norm. The drafting of decree-laws, which was at first the responsibility of a succession of juridical advisory committees of the Junta and subsequently of the Advisory Committee of the Military Junta, has now been handed over to legislative committees.

115. Decree-law No. 1220 establishes four legislative committees:

- (1) for Finance, the Economy, Mining and External Relations;
- (2) for the Interior, Labour and Social Security, Education, Public Health and Justice;
- (3) for Agriculture, Land, and Settlement, Public Works, Housing and Town Planning and Transport;
- (4) a Special Committee for National Defence.

Committees 1 and 4 are presided over by Admiral Merino; Committee 2 by General Leigh, and Committee 3 by General Mendoza, all members of the Government Junta. Each committee has a number of members appointed to it. The co-ordination of the legislative process has been entrusted to a new technical body, the Secretaria de Legislación (Secretariat of Legislation).

5/ El Mercurio, 2 January 1976, p.1.

IV. LIBERTY AND SECURITY OF PERSON

A. International standards relative to liberty and security of person

116. The right to liberty and security of person has been proclaimed a fundamental human right, and standards for its protection have been laid down by international human rights instruments. The Universal Declaration of Human Rights 1/ provides -

"Everyone has the right to life, liberty and security of person." (article 3):

"No one shall be subjected to arbitrary arrest, detention or exile." (article 9).

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (article 10).

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence." (article 11).

117. The International Covenant on Civil and Political Rights 2/ which today is a binding international treaty in respect of 38 States, including Chile, deals in articles 9 and 10 with liberty and security of person. 3/ Article 9 states, in part,

"1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

"2. Everyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

118. In article 10 this Covenant provides, in paragraph 1, that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

119. The American Declaration of the Rights and Duties of Man 4/ proclaims the right of liberty and security of person in article I and the right to protection from arbitrary arrest and detention in article XXV.

1/ Adopted by the United Nations General Assembly on 10 December 1948.

2/ See Human Rights; A Compilation of International Instruments of the United Nations (United Nations publication, Sales No. E.73.XIV.2).

3/ The question of limitations on this right during states of siege is dealt with above in chapter II.

4/ Approved by the Ninth International Conference of American States, Bogotá, 1948.

B. Chilean constitutional and legal provisions relative to liberty and security of person

120. As previously reported, the Constitution of Chile of 18 September 1925 contains provisions empowering the President to declare a state of siege and during the state of siege to detain persons and transfer them from one part of the country to another. Since the assumption of power by the Government Junta and the declaration of the state of siege on 11 September 1973 these matters have been the subject of various decrees. The Government Junta, through decrees signed by the Minister of the Interior, the President of the Government Junta and Regional or Provincial Intendents (Military Governors) have been authorized to exercise powers of detention and transfer during the state of siege. The Dirección de Inteligencia Nacional (DINA) also has these powers. These questions have been dealt with in the two previous reports of the Group. 5/

121. Regulations governing arrest and detention during a state of siege in connexion with offences against State security have also been laid down by various decrees. For example, the period of 48 hours for reporting an arrest to the proper judge has been extended to five days; notice of detention must be given to immediate family members within 48 hours; detention may not exceed five days, within which period the person must be released or placed at the disposal of the competent court or the Ministry of the Interior. These decrees, in particular decree-laws No. 1008 and No. 1009 of 5 May 1975, have been analysed in the Group's previous reports. 6/

122. The Chilean Government has recently promulgated new legislation intended to deal with certain problems arising out of detention under the state of siege. These are supreme decrees No. 187 of 28 January 1976 and No. 146 of 10 February 1976. The representative of the Government of Chile stated before the Commission on Human Rights at its thirty-second session that these decrees were intended to provide greater guarantees for personal liberty. The Commission on Human Rights and the Economic and Social Council in their resolutions governing the mandate of the Group requested the Group to consider the questions dealt with by these decrees. Supreme decrees No. 187 and No. 146, together with decree-laws No. 1008 and No. 1009, form part of the legal framework for detention under the state of siege in Chile. However, the above-mentioned decrees do not affect the existence or the degree of the state of siege nor do they indicate any criteria governing the conditions under which a person may be detained. It is only after the decision to detain an individual has been made that the above-mentioned decrees are applicable; they are intended to restrain arbitrariness by State authorities. To avoid any misunderstandings it must be stated that these decrees place no restrictions on the authority to arrest as it existed prior to their enactment. Supreme decree No. 187 of 28 January 1976 refers, in its preamble to the need to make appropriate provisions to guarantee the rights of persons detained under the state of siege; supreme decree No. 146 designates the places where these persons are to be held. The principal provisions of these decrees are described in the following paragraphs.

5/ Progress report of the Ad Hoc Working Group of 7 October 1975 (A/10285, annex), paras. 75, 76, 79, 82-91 and 101-102. Report of the Ad Hoc Working Group to the Commission on Human Rights of 4 February 1976 (E/CN.4/1188), paras. 24, 57.

6/ A/10285, annex, paras. 95-97. E/CN.4/1188, paras. 63-66.

123. Medical examinations. Article 1 of supreme decree No. 187 provides that every person detained by the organs of State security and in the situations referred to in article 1 of decree-law No. 1009 ^{7/} shall be examined by a physician and surgeon before entering and before leaving the offices, establishments or places of detention under their authority and that the Department of Forensic Medicine and the National Health Service shall jointly assign a doctor to these offices, establishments or places, who shall be responsible for carrying out these examinations. The doctor shall in each case prepare a written report on the condition of the person examined and send it immediately to the Ministry of Justice.

124. Article 2 states that if it appears from these certificates that the detained person has been subjected to ill-treatment or undue coercion, the Ministry of Justice shall report that fact to the competent administrative, institutional or judicial authority.

125. Written detention orders. Article 3 provides that detention under the state of siege referred to in article 1 of decree-law No. 1009 may only be carried out on a written order from the head of the competent specialized security organ. This order shall contain the following particulars:

- (a) Name of the person detained;
- (b) Name of the person making the arrest;
- (c) Place to which the person detained is to be taken;
- (d) Date, time and place of arrest;
- (e) Name and signature of the person who ordered the action and the post he holds; and
- (f) Stamp or seal authenticating the order.

Furthermore, article 3 requires, as is prescribed in decree-law No. 1009, that a copy of the detention order shall be given to the closest relative of the detained person designated by him and residing in the place in which the detention takes place within 48 hours.

126. Written search orders. Article 4 of supreme decree No. 187 provides that if, for the execution of a detention order referred to in the foregoing paragraph or as a consequence thereof, it becomes necessary to carry out a search of a dwelling or of any building or enclosed place, whether public or private, a written order authorizing the responsible official to carry out the search must be issued by the head of the competent specialized security organ. The order must first be produced to the owner or occupant of the house or to the person in charge of the building or enclosed place, as the case may be, to whom a copy must be given when the action has been carried out.

^{7/} Article 1, paragraph 1, of decree-law No. 1009 reads "During the existence of a state of siege, the specialized agencies responsible for ensuring the normal discharge of national activities and the maintenance of constituted institutionality shall, when proceeding - in exercise of the powers vested in them - to detain pending investigation persons reasonably presumed to be guilty of endangering State security, be obliged to give notice of such detention, within a period of 48 hours, to the immediate members of the family of the person detained."

127. Places of detention: register of arrivals and departures. According to article 6, the President of the Republic shall designate the places and establishments of detention referred to in the decree, at which a duly paginated register shall be kept recording the arrival and departure of the persons detained, with particulars of the date and time and of the detention order. 8/

128. Inspection of places of detention. The President of the Supreme Court and the Minister of Justice are empowered by article 7 to carry out inspections without prior notice of any place where detainees are held in connexion with the state of siege, to ascertain whether the statutory provisions in force concerning the rights of the persons detained are being strictly observed and to report any irregularities they may find to the competent authorities by means of a confidential communication. Independently of this, they may also order the immediate medical examination of any detained person who during the inspection claims to have been ill-treated or subjected to undue coercion during his stay in the place inspected. For places outside the Metropolitan Region, article 8 provides that the Minister of Justice, in agreement with the President of the Supreme Court, shall appoint an official to carry out all or part of these functions and procedures. 9/

129. Judicial inquiry into reports of irregularities. Under article 9, a judicial inquiry based on charges of irregularities made by those empowered to visit the places of detention shall be initiated by the competent authority within 48 hours, in which particular care shall be taken to investigate possible infringement of articles 150, 253 and 255 of the Penal Code and articles 328 and 330 of the Code of Military Justice. 10/

130. Designation of places of detention. Supreme decree No. 146 of 10 February 1976, published in the Diario Oficial of 25 February 1976, provides that the places and establishments to which persons in the situations referred to in article 1 of decree-law No. 1009 shall be taken and in which they shall stay shall be three:

- Puchuncaví, in the commune of the same name, province of Valparaíso;
- Tres Alamos, in the town of Santiago, Metropolitan Region; and
- Cuatro Alamos, in the town of Santiago, Metropolitan Region.

8/ This was done in supreme decree No. 146 of 10 February 1976; see below para. 130.

9/ Article 10 provides for assistance to be given in carrying out these investigations and makes refusal of assistance or obstruction by an official a very serious dereliction of duty.

10/ Article 150 of the Penal Code refers to undue extension of the holding of a person incommunicado, causing torture, bodily injury or death, and detaining persons in places other than those established by law for detention. Article 253 of the Penal Code refers to the failure of public civil servants or military officials to give adequate assistance in the administration of justice when legally requested to do so. Article 255 of the Penal Code refers to abuses of persons caused by individuals performing an official duty or obligation.

Articles 328 and 330 of the Code of Military Justice refer to failure of military personnel to give adequate assistance in the administration of justice when legally required to do so, and committing abuses or using undue violence in the performance of their functions. If these acts are committed against detained persons the penalties are increased.

Article 2 of this supreme decree states that, without prejudice to the foregoing, such persons may be temporarily detained in Chilean police stations and in premises of the Department of Investigation for as long as it is strictly necessary for sending them to the places referred to in the preceding article.

131. The Government of Chile submitted a memorandum to the Commission on Human Rights concerning supreme decree No. 187 (E/CN.4/1197, p.13). As regards the medical examinations required on entering and on leaving the places of detention, this memorandum states that

"the examinations will be made by medical practitioners of the Department of Forensic Medicine in conjunction with medical practitioners of the National Health Service. This also affords a guarantee, since the Department is an old-established and widely known technical and forensic body with great prestige in the country and has the status of an ancillary body attached to the Chilean Administration of Justice. The assistance from the National Health Service is due solely to the limited staff of the Department of Forensic Medicine at the present time, since the doctors in question will be assigned to each of the establishments, offices and places of detention, where they will be required to spend some hours every day, as it is their duty to keep a constant check on the detainees and to examine them."

This memorandum also made the following points:

"As a further guarantee for the person concerned, provision has also been made for a copy of the order to be given to any person he may designate so that the identity of the authority which issued the warrant and the name of the official who carried out the orders will remain on record as an indication of their respective responsibilities."

"It follows from this that failure to comply with the above requirements will mean that the detention is arbitrary and that habeas corpus (amparo) is then applicable, and this, in the last instance, requires a ruling from the Supreme Court."

132. The Government of Chile has stated that supreme decree No. 187 was promulgated "as an effective means of affording suitable protection for the right of detained persons, supplementing the rules contained in legislative decree No. 1009 of 1975" (see E/CN.4/1197, para. 8). Pursuant to its mandate to study "any developments, legislative or otherwise, which may occur to re-establish respect for human rights and fundamental freedoms" (Commission on Human Rights resolution 3 (XXXII) para. 6), the Group has paid particular attention to the effects and effectiveness of supreme decrees No. 187 and No. 146.

C. Arrest and detention in Chile

133. A substantial proportion of the evidence received by the Working Group - both documentary and in the form of oral testimony - relates to arrest and detention in Chile. It has to be pointed out immediately that information gathered by the Group from a broad range of sources is at great variance with that received from the Government of Chile. The information received by the Group has been carefully scrutinized in order to ensure that only reliably attested facts are presented. In this report the Group has concentrated its attention on cases of arrest and detention of recent date, generally those occurring after 1 January 1976.

1. Recent cases of arrest and detention: statistics

134. By culling information from various sources the Working Group has been able to make a statistical assessment of the situation in the area of Santiago. From one very reliable source, the following statistics on arrests of persons in connexion with national security from the period 1 January to 31 May 1976 have been computed:

January	61
February	36
March	32
April	45
May	85
TOTAL	<u>259</u>

135. Taking as an example the 61 persons who were arrested in January 1976; the Group learnt from the same reliable source that immediately after their arrests the whereabouts of only two of them were known to members of their families; 59 persons had "disappeared", having without doubt been detained by the authorities, who did not conform to the required procedures - specifically, the requirement that families be informed of detention within five days was not fulfilled. It was not until the end of February that it was officially acknowledged that 26 of these 59 persons had indeed been arrested and detained, that one was being prosecuted, one had died, and 18 had been released. The whereabouts of 13 were still unknown. The average period of disappearance of these 59 persons was 14 days, during which time the family and friends searched for them desperately, sought information as to their whereabouts, and brought fruitless legal proceedings in an attempt to locate them.

136. Similarly, of the 85 reported cases for the month of May 1976, the whereabouts of 80 persons were unknown at the time of arrest. At the end of the month 31 remained unlocated, while arrests had been acknowledged in 35 cases and 13 individuals had been released.

137. Of the 259 persons whose arrests were reported from one source for the period 1 January 1976 to 31 May 1976, 54 (or about 20 per cent) remained unlocated or had "disappeared" as at the end of May 1976.

138. Despite decree-law No.1009 limiting detention to five days, in the reported cases the average period of disappearance of persons arrested and whose custody was later acknowledged by Chilean authorities was: in January 14 days; in February 12 days; in March 13 days; and in April-May 11 days. Of the 259 persons arrested during this four-and-a-half-month period, only 35 of those whose whereabouts were eventually acknowledged by the authorities had been held five days or less before release, or before their whereabouts were disclosed. Of these same 259 persons only 29 had been taken into custody pursuant to a detention order.

139. These figures are necessarily limited since they do not include the situation outside of Santiago and refer only to cases which have come to the attention of the source of this information. After having examined the factual data underlying the figures in conjunction with information from other reliable sources, the Group believes that they reflect the situation prevailing throughout Chile. It will be noted from the figures given above that the number of arrests diminished in February and March of this year, increased markedly in April, and rose sharply to 85 persons in May. The graph line of detentions increased with the approach of the Sixth General Assembly of the Organization of American States, scheduled to meet in Santiago from 1 to 18 June 1976, and one source reports some 200 arrests coincident with the opening of that meeting.

140. This increase in the number of cases of arrest and detention during May has been characterized by a number of dependable sources as indicating the worst wave of repression since September 1973.

141. In addition to the information concerning the massive arrests in anticipation of the meeting of the General Assembly of the Organization of American States, the Group has been informed of other cases in which a large number of persons have been arrested. For example, reports indicate that just before a recent visit of President Pinochet to Talca, some 25 persons were arrested and remain unlocated. On 12 May 1976 the Bishop of Talca gave a list of these individuals to the Chilean President.

142. Information from several reliable sources concerning the region of Santiago, and Chile as a whole, leads to the conclusion that substantial numbers of persons continue to be arrested and detained in connexion with national security matters since the beginning of 1976.

2. Number of persons deprived of their liberty in connexion
with national security matters

143. Information from various official sources indicates that more than two and a half years after the assumption of power by the present government, in excess of 4,000 persons are still deprived of their liberty in connexion with matters of national security. During the period January to May 1976 approximately 700 persons were being detained on any given date by virtue of the state of siege provisions in the detention centres recognized by supreme decree No. 146. About 295 were being held in Tres Alamos, 20 in Cuatro Alamos, 300 at Puchuncavi and 94 in the women's section of Tres Alamos. In addition, some 2,400 were

serving sentences imposed after trial and some 900 were being held pending trial. 11/ These figures correspond with those arrived at by other organizations following the situation. 12/

144. To the total of 4,000 must be added the 1,227 persons whose prison sentences were commuted into exile between December 1974 and July 1975 and those persons officially expelled or who have been denied the right to return to Chile (see paras. 415-422). Thus, official sources point to more than 5,000 persons whose liberty has been restricted in connexion with national security matters.

145. In judging the impact of measures of national security in Chile, account must be taken of the number of persons reported by reliable sources to have been arrested and detained but whose detention, in spite of many indications to the contrary, has been denied by the Government. The most conservative estimate of persons in this situation is 1,000, with some sources reporting as many as 2,000 detained but unacknowledged persons. The question of persons missing and disappeared will be dealt with in section D of this chapter.

3. Procedure of arrest and detention in Chile

146. Evidence received by the Group from numerous reliable sources indicates that arrest and detention in Chile, with special reference to occurrences since 1 January 1976, are carried out according to the following pattern.

147. Arrests are usually made in the street, at home, or at times, at the place of employment. Arrests at home generally take place late at night or in the early morning. In most cases, persons effecting the arrests generally do not identify themselves - although individuals are sometimes recognized - and they do not produce a warrant for arrest or search, as is required by supreme decree No. 187. When an arrest occurs in the home, it is sometimes accompanied by threats to the family and often by a search of the premises. It has been reported that a member of the family is often coerced into signing a piece of paper which he is given no opportunity to read, and of which he does not receive a copy. No information is given as to why the person is being arrested nor where he is to be taken. The formalities of arrest which require that an arrest warrant be issued and that the family of the detainee be notified of the official place of detention within 48 hours, are utterly disregarded.

11/ See in this respect: statement of the Director of the SENDET of 6 February 1976; statement of the President of the Supreme Court of 10 March 1976; statement of the Minister of Justice of 15 May 1976; Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile, chap. III. In a communication dated 25 August 1976 the Government of Chile informed the Group that on 30 July 1976, 422 persons were detained under the state of siege, 351 persons were being held awaiting trial by military courts and 708 persons were serving sentences imposed by military courts.

12/ The Inter-American Commission on Human Rights, in its Second Report on the Situation of Human Rights in Chile, concluded that 4,478 persons were deprived of their liberty or had been expelled from Chile as of October 1975.

(a) Compliance with decree-law No. 1009 and supreme decree No. 187

148. The Group has received information indicating that, of the cases of arrest and detention in connexion with matters of national security coming to the attention of one very reliable source between 1 January and 31 May 1976, the legal provisions regulating arrest and detention were observed, or not observed, in the following number of cases:

Article 1 of decree-law No. 1009:

"Detention by the agencies referred to in the preceding paragraph 13/ shall not continue for more than five days ...".

January 1976:

Less than 5 days detention:	14
More than 5 days detention:	38

February 1976:

Less than 5 days detention:	6
More than 5 days detention:	20

March 1976:

Less than 5 days detention:	2
More than 5 days detention:	12

April - May 1976:

Less than 5 days detention:	13
More than 5 days detention	59

Article 3 of supreme decree No. 187:

"Detention under the state of siege referred to in article 1 of Decree-Law 1009 of 1975 may only be carried out on a written order from the head of the competent specialized security organ."

January 1976:

With detention order:	1
Without detention order:	45

13/ "The specialized agencies responsible for ensuring the normal discharge of national activities and the maintenance of constituted institutionality".

February 1976:

With detention order:	2
Without detention order:	14

March 1976:

With detention order:	3
Without detention order:	19

April - May 1976:

With detention order:	25
Without detention order:	100

149. It should be noted however that, with rare exceptions, the detention orders presented in the above cases did not meet the requirements of article 3 of supreme decree No. 187 since they lacked one or more of the required elements; for example, many were not signed by the chief of the competent body. Moreover, in many cases where written notice of detention was presented to a close relative within the 48 hour period as required by decree-law No. 1009 and supreme decree No. 187, no copy of this was left after the relative signed it, in total disregard of the said decree-law.

(b) Description of arrests and detentions 14/

150. The arrested person is generally taken to a place of detention where he may remain for a period of days, weeks or months. From reliable evidence received by the Group, generally the first place of detention is not one designated by the authorities as a detention centre for political prisoners.

151. It is at these unauthorized detention centres that rigorous interrogation, accompanied by mental and physical abuse, torture and other cruel and degrading treatment is reported to take place.

152. In addition to the notorious Villa Grimaldi - which according to the evidence before the Group and despite official statements to the contrary, continues to function as an unauthorized place of lengthy detention - the Group has received reliable written reports and testimony of credible witnesses attesting to the existence of a considerable number of other "unauthorized" places of detention both in Santiago and in the provinces.

153. The pattern appears to be that those who are able to withstand the rigours of the initial place of detention are then transferred to a recognized centre such as Cuatro Alamos, although on occasion they may merely be released, for example on a street corner. At the stage of transfer to a recognized centre, an arrest warrant may be issued by the Ministry of the Interior. The detainee is, however, generally held incommunicado.

^{14/} See also Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile, chaps. II and III.

154. Cuatro Alamos appears to be used as a kind of place of physical rehabilitation after the initial torture centre, so that the detainee's overt signs of physical abuse may subside before he is exposed to public scrutiny. The stay at Cuatro Alamos may be for a period of weeks and although the family may at this stage learn of the detainee's whereabouts, he cannot be visited because he is being held incommunicado. Thereafter he may be transferred to Tres Alamos where, although conditions, as reported by various independent observers, are far from ideal, the detainee is permitted visitors, and his diet can be supplemented by food provided by his family. From Tres Alamos he may be removed to Puchuncaví.

155. The pattern is not invariable; reliable information indicates that arrested persons known to be in official custody may disappear, and unconvincing evidence of their release may be exhibited by the authorities. Other persons whose arrest may never have been officially admitted are believed to be held in custody for weeks, months or even years.

156. As indicated above, the notice to the family required by decree-law No. 1009 is rarely given and the five-day limit on the length of time a person may be held before being released or placed at the disposal of the appropriate authority is generally ignored. The security agencies, such as the DINA, appear to act in complete disregard of legislative and constitutional provisions, without the slightest restraint, and to continue to do so with impunity. The family and friends of the detained person thus become secondary victims of the process. Failure to notify the family within 48 hours of the whereabouts of the detainee disrupts family life, is a cause of anguish and results in time and money being spent to obtain information and legal redress.

157. This procedure leads to the arrest and detention of a person without any semblance of legality even within the context of the applicable legislation enacted by the present Government of Chile. Since the arrest is made without a warrant and the person is taken to an unofficial place of detention it is impossible to obtain official information with regard to a detainee; he is simply "missing" and any enquiry to the Ministry of the Interior will elicit the response that the records do not indicate that the person is in detention. Efforts of the prisoner's family, friends or colleagues to obtain information on his whereabouts, his physical condition or the reasons for his detention are fruitless since the activities of the arresting officers are totally shielded by official ignorance of their acts.

158. During this unlimited period of detention the fate of the prisoner may be decided. The extensive information gathered by the Group suggests that it is at this stage that a substantial number of persons "disappear". Inasmuch as there is no official recognition that the person is in custody, he is deprived of any security. The Working Group has received detailed evidence with respect to many persons who have "disappeared"; this subject is dealt with below in section D of this chapter.

4. Recent cases of arrest and detention reported to the Group

159. The following accounts of cases of arrest and detention which have taken place recently in Chile are based on well-documented information submitted by reliable sources and it is the considered opinion of the Group that they illustrate the current practice in Chile and reflect a systematic pattern rather than lapses that are due to oversight.

(a) Detention of persons connected with the Professional Union of Taxi Drivers of Quinta Normal

160. On 5 and 6 February 1976 the following arrests took place in Santiago of persons connected with the Professional Union of Taxi Drivers of Quinta Normal.

161. On Thursday, 5 February 1976, at 5.45 p.m., Julio Enrique Nuñez Ferrada was detained in his home by DINA agents. He was alone with his three-year-old son and was allowed, accompanied by one of the agents, to take his son to a neighbour. After detaining Mr. Nuñez Ferrada the DINA agents went to the headquarters of the Union where they detained Mr. Marco Aurelio Espinosa Quintero, Mr. Ramiro Antonio Diaz Heredia and his 14-year-old son Marco Antonio Diaz Plaza. These detained persons were taken to an unknown location, which has since been identified by several sources as "el Regimiento Tacna". At that location they were interrogated under physical duress, including electric shocks. The son of Mr. Diaz Heredia was able to hear the screams of his father and the other detained persons.

162. On Friday, 6 February 1976, at 11 a.m., Mr. Carlos Abelino Vidal Muñoz was detained at his home and his room was searched. He was taken to the same location as those arrested on the previous day ("el Regimiento Tacna") and questioned under physical pressure.

163. On Friday, 6 February 1976, at 9 p.m., Marco Antonio Díaz Plaza, the 14-year-old son of Mr. Ramiro Antonio Díaz Heredia, was released on a street corner.

164. On Saturday, 7 February 1976, Mr. Carlos Abelino Vidal Muñoz, arrested at his home on 6 February, was separated from the group and taken to another unknown location which appeared to be a luxurious home with swimming pool and garden. On Thursday, 12 February, and Monday, 16 February 1976, Mr. Vidal Muñoz was taken in a DINA truck to his home where he spoke with his wife. On 16 February he was given a superficial medical examination and on 17 February at 1.30 p.m. he was released two blocks from his home.

165. In these cases no detention or search orders were produced and the families were not notified within the required 48 hours. The provision of decree-law No. 1009 which states that detention shall not continue for more than five days was not complied with.

166. Writs of amparo were presented to the Court of Appeals in Santiago in each of these cases. They were all rejected. In the cases of Mr. Nuñez Ferrada, Mr. Espinoza Quintero and Mr. Diaz Heredia, the plea was rejected after information was received from the Minister of the Interior that they were being held under. "Decreto Exento No. 1903" dated 9 February 1976, - four days after their detention. In the case of Mr. Vidal Muñoz, rejection followed receipt of information from the Minister of Interior that he was not being held, even though the writ of amparo was accompanied by his wife's sworn statement that she had spoken with him in a DINA truck at their home on 12 February 1976.

167. In the writ of amparo to the Court of Appeals of Santiago in favour of Mr. Ramiro Antonio Diaz Heredia, allegations were made of the violations of the law committed during his arrest and detention (decree-law No. 1009 and supreme decree No. 187) and the Court of Appeals was asked (i) to request from the Minister of Justice a copy of the report of the entry medical examination of

Mr. Diaz Heredia - which should automatically have been sent to the Minister of Justice under article 1 of supreme decree No. 187; (ii) to request from the DINA a copy of the order of detention referred to in article 3 of supreme decree No. 187; (iii) to request from the Cuatro Alamos detention centre information concerning the inscription of Mr. Diaz Heredia in the registry book as required by article 6 of supreme decree No. 187; and, (iv) to request from the Minister of the Interior information concerning a detention order for Mr. Diaz Heredia.

168. The Court of Appeals granted only the fourth request and did not take any decision on the others. Upon receipt of information from the Minister of the Interior that Mr. Diaz Heredia was being held under a decree dated four days after his arrest, the Court decided:

"Whereas it appears from the information given by the Minister of the Interior in exhibit 8 that Ramiro Diaz Heredia is being held under 'Decreto Exento No. 1903' of the Ministry of the Interior issued by virtue of the authority conferred by Decree-Law No. 228 in relation to article 72, paragraph 17, of the Political Constitution of the State and in accordance with the provisions of article 306 of the Code of Penal Procedure, the application for amparo lodged in favour of Ramiro Diaz Heredia in exhibit 2 is hereby rejected". "As for the pleas made in items 1, 2 and 3 of the first additional petition of the document contained in exhibit 2, the Court rules that they are unfounded, without prejudice to the right granted to the petition by article 7 of Supreme Decree No. 187 of 28 January 1976, published in the Diario Oficial of 30 January 1976."

169. This decision rejecting amparo was appealed and, in addition, a "recurso de queja" was introduced against the judges of the Court of Appeals for failure to require the application of the various laws governing detention. The results of the appeal and the "recurso de queja" are as yet not known to the Group.

(b) Detention at Alejandro Fierro 5113 and Calle Conferencia 1537

Alejandro Fierro 5113

170. On 30 April 1976 at approximately 11 a.m. four armed men in civilian clothes entered the house at 5113 Alejandro Fierro in Santiago. One of them showed an identity card from the DINA and stated they would be staying in the house until the next day and that everyone was under arrest and could not leave. From that moment on everyone entering the house was detained. On 6 May 1976, the date of release, at least ten persons, including five children, had been detained by DINA in that house.

171. The only person detained at 5113 Alejandro Fierro who was able to leave before 6 May 1976 was Bishop Enrique Alvear Urrutia who had entered the house at approximately 1 p.m. on 1 May 1976 for the purpose of bringing medication to a person detained there. In the Bishop's words:

"When I made to leave, a man told me: 'You are under detention', and then, in reply to my question, identified himself by showing his DINA card.

"He soon discovered that I was a bishop. He then telephoned for instructions. An official answered and asked me the name of the person who had given me the medication. I refused to tell him.

"About two hours later, an officer arrived. He told me that he would not identify himself or tell me to what unit those who were occupying the house belonged. I replied that I already knew very well that he was a member of DINA.

"He asked me for particulars of myself. When he tried to put other questions, I declined to answer any further.

"When I asked to see the detention order he said: 'You are not detained, merely retained.' Then he said: 'Since you don't want to co-operate in the fight against Communism, which is against Chile and the Church, you can go!'"

172. For the persons detained in 5113 Alejandro Fierro no decree ordering detention was produced nor was notice of detention given to any close relative within the required 48 hours. The five day provision of decree-law No. 1009 was not complied with and they were detained in a place other than that authorized by supreme decree 146.

Calle Conferencia 1537

173. During the morning of 30 April 1976 agents of DINA occupied a house at Calle Conferencia 1537 detaining those present and arresting persons coming to the house. Members of the same family lived and worked in the house on Calle Conferencia 1537 and the house on Alejandro Fierro 5113. With the exception of the minors, persons detained in Calle Conferencia 1537 were taken to an unknown location for interrogation and they suffered physical abuse before being returned to the house. The house was thoroughly searched.

174. Six persons, including two minors, were detained until 6 May 1976 in Calle Conferencia 1537. As with the detentions at Alejandro Fierro 5113 the legal provisions governing detention were not observed at all.

175. The following three persons were arrested on 4 and 5 May 1976 while entering the house at Calle Conferencia 1537 and, unlike those listed above, have not been released; Mr. Onofre Jorge Muñoz Poutays; Mr. Jaime Patricio Donato Avendaño; Mr. Mario Jaime Zamorano Donoso. No order for arrest was shown, no notification of detention was delivered to the families within the required 48 hours, and the five-day provisions of decree-law No. 1009 were not observed. Mr. Onofre Jorge Muñoz Poutays and Mr. Mario Jaime Zamorano Donoso were reported shot while being arrested and taken to the public assistance hospital (Posta Central de la Asistencia Publica), where Mr. Jaime Zamorano Donoso was registered, by his initials only, as a diabetic.

176. Writs of amparo were presented on behalf of each of these three individuals but they were rejected based on the Minister of the Interior's repeated statements that they were not held. The Court of Appeals rejected amparo for Mr. Zamorano Donoso on 5 June 1976 and for Mr. Onofre Jorge Muñoz Poutays on 16 June 1976. The Supreme Court rejected amparo in these two cases on 8 June 1976 and 21 June 1976 respectively.

177. In a letter dated 3 June 1976 addressed to the Permanent Representative of Chile to the United Nations Office at Geneva, the Chairman of the Ad Hoc Working Group, at the request of the Group, stated that the Group would appreciate

receiving information concerning a number of persons, including Mr. Jorge Muñoz and Mr. Mario Zamorano (see annex IX). On 25 August 1976 the Government of Chile replied to the Group stating, in relation to several persons among whom were Mr. Jorge Muñoz and Mr. Mario Zamorano, that "there is nothing on the record to show that they have been, or are being, detained in Chile. This does not mean that they may not have left the country illegally, under a false identity, as has happened on many occasions, or that they are not involved in underground activities inside Chile" (see annex XIV). On 30 August 1976 the Government of Chile informed the Group that Mario Zamorano Donoso and Onofre Jorge Muñoz Poutays "left the country on 13 May 1976 by a flight departing from Pudahuel Airport for Argentina" (see annex XVII).

178. The Group notes that it has substantial evidence from several reliable sources showing that these two persons were actually arrested by agents of the DINA and that the Government merely states that the records do not show their detention; in a subsequent communication the Government stated that they had left the country. The Group also notes that a number of cases have come to its attention in which Chilean authorities stated that records did not show detention, only to admit, at a later date, detention of the individual concerned. 15/

179. In connexion with the cases of detention at Alejandro Fierro 5113 and Calle Conferencia 1537 a complaint was presented on 24 June 1976 to the Court of Appeals of Turno alleging the commission of various crimes, including illegal detention, removal (substraccion) of minors, violation of domicile, illegal search, detention in an unauthorized place, and torture. The results of the complaint are not yet known.

(c) Arrest and detention of Hernán Montealegre Klenner

180. Evidence received by the Group indicates that Mr. Hernán Montealegre Klenner, a well-known lawyer with a recognized moral and professional reputation who was representing, on behalf of the Vicaría de la Solidaridad, persons arrested or detained in connexion with national security, was arrested in his home by agents of DINA on 12 May 1976 between 5 and 5.15 a.m. and that a search was conducted of his house. At that time no order of detention or search warrant was presented. The agents did leave with Mr. Montealegre's wife a paper signed by one of them informing her that her husband would be detained at Cuatro Alamos. This paper, however, did not contain the elements required by supreme decree No. 187, article 3, for an arrest warrant.

181. Between 9.15 a.m. and 11 a.m. on the same day the office of Mr. Montealegre was searched and many documents relating to his work as a defence lawyer for the Vicaría were taken. No search warrant was produced. During the search one agent of DINA reportedly said that Mr. Montealegre was detained for being an effective lawyer of the Vicaría.

182. At the time of his detention Mr. Montealegre was representing, on behalf of the Vicaría, 37 persons who were scheduled to be tried on 27 May 1976 by a council of war in the town of Valdivia. In the search of his home documents relating to this trial were allegedly taken.

15/ For example, see para. 224 (Claudio Eugenio Blanco), and para. 225 (Manuel Guerrero).

183. Writs of amparo were presented on 13 May by Mr. Montealegre's wife and on 14 May by Christian Precht Banados, Episcopal Vicar. On 14 May, 35 lawyers presented a writ of amparo and protection to the Colegio de Abogados. These writs alleged that various decrees were violated during Mr. Montealegre's arrest and detention.

184. On 25 May 1976 the Minister of Interior informed the Colegio de Abogados that Mr. Montealegre was detained under the state of siege, by detention decree No. 2051 of 12 May 1976, that he was detained only by reason of subversive activities and that his defence of the 37 accused persons was unknown to the authorities. The Minister also stated that in the search no document of a professional character had been taken, and that only documents dealing with the Communist Party were taken.

185. On 29 May 1976, in the afternoon, Mr. Montealegre was transferred to Tres Alamos where he was visited by his family. He had been held incommunicado for 17 days. Under article 1 of decree-law No. 1009, Mr. Montealegre should have been released or placed at the disposal of the competent court or the Minister of the Interior on or before 17 May 1976. Mr. Montealegre said that while he was held incommunicado he was questioned only once, for a period of two hours, and that the questions concerned his work in the Comité Pro Paz and the Vicaría.

186. In a letter dated 3 June 1976 addressed to the Permanent Representative of Chile to the United Nations Office at Geneva, the Chairman of the Ad Hoc Working Group, on behalf of the Group, stated that the Group would appreciate receiving information concerning Mr. Montealegre. On 25 August 1976 the Government of Chile informed the Group that Mr. Hernán Montealegre Klenner was being detained "for subversive activities, in the Tres Alamos camp, under the powers which the Political Constitution of the State - in force since 1925 - grants for the Government during a state of siege" (see annex XIV). Mr. Montealegre continues to be held.

(d) Detention of Mr. and Mrs.

187. The following sworn statement has been received by the Group from a reliable source. Names and addresses have been omitted in compliance with the Group's undertaking to respect confidentiality.

"In Santiago, on 30 June 1976, I, public notary of this Department, received the following duly sworn statement from Mr. _____, a Chilean domiciled at _____, Conchalí, holder of identity card No. _____, issued by the Santiago Office:

"On Saturday, 22 May 1976 I was informed by neighbours of mine that civilians identifying themselves as agents of the Directorate of National Intelligence (DINA) had been asking questions about me in the neighbourhood, showing special interest in my activities and place of work. On the following day, these same persons returned to the neighbourhood, and this time asked the neighbours for information about my brother-in-law, Mr. Antonio _____, the husband of my sister, Mrs. Elizabeth _____; on Monday, 24 May, on going out to do some shopping in the area of my house, I noticed that I was being watched by persons in civilian clothes unknown to me. Later, in the afternoon of the same day, I went to the city centre to attend to some matters of business; and at about 3 p.m., on alighting

from the mini-bus at the corner of Alameda and Amunátegui Streets, I was arrested by civilians who hustled me into a metal-grey Fiat 125. At no time was I informed under what warrant I was being arrested. Once inside the car, I was blindfolded and taken to a place in the Peñalolén sector; I am sure of this because the adhesive tape used to apply the blindfolding was not properly attached over one of my eyes, and I was thus able to observe the route which the car followed. We arrived at a house which I was able to identify as the so-called Villa Grimaldi, a place of detention used by DINA. Shortly after entering the Villa Grimaldi, I was taken to a different room and subjected to an interrogation which centred around my sister Elizabeth and my brother-in-law Antonio. I was asked persistent questions concerning their activities. It was evident that my interrogators were quite well informed about the current activities of my sister and brother-in-law, as well as their activities prior to 11 September 1973. In the course of interrogation, I was told that I would be released only when my sister and brother-in-law had been detained; this obviously meant that they were being looked for with a view to arresting them. During the questioning, I was asked about a person described to me as 'a fair-haired, plumpish man who carries a brief-case' who frequently visited our house, and I was also asked why the man in question paid such visits. The person concerned is Mr. Juan _____, whom I have known for a number of years, since he was a classmate of my brother-in-law Antonio at the university, and the two of them have recently been preparing a paper for the State Technical University. For this reason, Juan _____ sometimes slept over at the apartment of my sister and brother-in-law. When the interrogation was over, I was driven away from the Villa Grimaldi in the same car which had been used at the time of my arrest, and I was told that I was being taken 'to see whether your sister is the person we're looking for'. On reaching the city centre, my blindfold was removed and the car was parked in Lord Cochrane Street, opposite my sister's place of work. There we waited for her to come out so that she could be identified. At about 6.30 p.m., my brother-in-law Antonio drove up in the citroneta van which he used for transport and which belonged to the firm for which he worked; my sister came out and got into the citroneta, and they drove off. When my brother-in-law arrived and was seen by the DINA agents in the car with me, they said: 'This is the _____ 16/ we've been looking for for some time', comparing him to the identity card-sized photograph of him in their possession, which they had shown me earlier on during the interrogation. On seeing my sister, the DINA agents also commented loudly: 'There comes the _____ 16/ that we've been looking for'. When my brother-in-law's van drove off, the Fiat 125 car in which they were holding me moved off in pursuit, the aim being to arrest the occupants of the van. However, a few blocks further on, we lost sight of the van, whereupon the DINA agents expressed considerable annoyance at having been given the slip, since their aim was to arrest my sister and brother-in-law. Subsequently, I was once more taken to the Villa Grimaldi where I remained until, at approximately 7 p.m. on Wednesday, 26 May, I heard the noise of the engine of a citroneta van driving into the yard. I was able to identify this vehicle without difficulty as the van which my brother-in-law Antonio used for transport, since when the engine stops, the fan belt continues to make a characteristic noise. At that moment I heard a cry, in a woman's voice which I recognized as being unquestionably that of my sister Elizabeth. I thus knew that she

16/ Left blank in the original.

was arriving at the Villa Grimaldi and had finally been arrested by the persons who had been pursuing her with that object in mind for some days. Some time later, I again heard the noise of the engine of the citroneta van; and this enabled me to confirm my earlier impression that it was the van which was used by my brother-in-law Antonio and belonged to the company for which he worked. About a couple of hours later, a guard came to my cell and told me I could leave but was not to say anything about what had happened; if I did, I would be there not for three days but for much longer. I was blindfolded once more, and taken to a van, whose occupants repeated the guard's threats. Finally, they dropped me off near the Cerro San Cristóbal, and from there I returned home. I must, at this point, recall what was said during my interrogation - i.e., that I would be set free only when they had arrested my sister and my brother-in-law - and this tallies entirely with the fact that I heard the citroneta and my sister's voice at the Villa Grimaldi. The next day, I went to the apartment of my sister and her husband, found that they were not there and, looking through the window, saw that there was a great disorder in the apartment, with things lying on the floor and everything turned upside down - obvious signs that the apartment had been searched. That same Friday, I also went to the places where my brother-in-law and my sister worked, and found that they had not appeared for work since Thursday; the last day on which they had appeared was Wednesday, the 26th. At the construction company for which my brother-in-law worked, and which owned the citroneta that he was using and which I heard at the Villa Grimaldi, they confirmed that they had no news of the vehicle."

188. According to reliable sources, the two persons referred to in this account are still missing .

(e) Case of Patricio Amador Alvarez López

189. Patricio Amador Alvarez Lopez, 17 years of age, unmarried, a student at Liceo Nocturno No. 4, was arrested on 23 March 1976, at 10.30 p.m., on the street in front of his home in the Calle Eduardo Castillo Velasco, at the corner of Ramón Cruz. At the time, the boy was talking with a group of friends, when a van drew up beside them. The van was carrying persons in civilian clothing, who arrested and took away four young people from the group chatting on the street, including young Patricio Amador Alvarez. The persons making the arrests did not identify themselves.

190. The boy's father, Pedro Alvarez Solis, had previously been arrested three times, in September 1973, July 1974 and October 1974. Each time he was arrested he was subjected to cruel torture, which caused him to lose an eye and compelled him to obtain lengthy and costly medical treatment. As he was receiving constant threats from DINA, and as his health was such that he could not endure detention again, he went to Italy in March 1975 and died in April 1975 from the effects of the treatment inflicted on him.

191. Also, the family of the young Patricio Amador Alvarez had frequently been visited by persons in civilian clothing who had not identified themselves but had indicated that they belonged to the Investigation Department or to security agencies.

192. On 29 April, the body of Patricio Amador Alvarez was identified by his relatives at the Forensic Medicine Institute in Santiago. The boy's dead body had been received at the mortuary on 24 March 1976, at 3.20 a.m., having been taken there by policemen from the 13th Police District. The admission card bears the number 605. The death certificate gives the cause of death as "a wound from a bullet piercing the chest and emerging on the other side"; it gives the time of death as 00.40 hours on 24 March.

193. On 6 April 1976, the Ministry of the Interior informed the Santiago Court of Appeals, in connexion with application No. 255-76 for amparo in favour of Patricio Alvarez López, that the boy had been arrested by order of the Ministry of the Interior. The application for amparo was declared inadmissible on 9 April this year.

(f) Case of Carmelo Soria Espinoza

194. On 24 August 1976 the Chairman of the Ad Hoc Working Group addressed a letter to the Permanent Representative of Chile with respect to the death of Mr. Carmelo Soria, an official of the Latin American Demographic Centre of the United Nations Economic Commission for Latin America. According to information received by the Group, Mr. Soria, an international civil servant working and living in Santiago, disappeared on 14 July 1976 and was found dead the following day. From information received by the Group, Mr. Soria had been employed in the Editorial del Estado Guimantu, which officially functioned as an important publishing house, during the prior régime. After 11 September 1973 he resumed his duties at the Economic Commission for Latin America, where he had previously been employed.

195. The Group is informed that the Secretary-General has instituted inquiries into this case. The Working Group has not yet been officially informed about the findings of the investigation. According to information before the Group, during the period just prior to his death, Mr. Soria and his family had been kept under constant surveillance, presumably by members of the DINA. On the day following his disappearance Mr. Soria's body and his automobile were discovered in circumstances that would suggest that the occurrence had not been the result of either an accident or suicide. It may be mentioned here that, from the evidence before the Working Group, this was not the road that he normally took to go home. Further, the body of Mr. Soria was found about 200 metres from the car. The Working Group was advised by the Ambassador of Chile on 27 August 1976 that the official inquiry into the Soria death had resulted in the finding that it had been accidental. He further advised that at the insistence of the family and at the request of the United Nations a Board of Inquiry is making further investigations. The Permanent Delegation of Chile to the International Organizations at Geneva on 1 September 1976 transmitted to the Group copies of the report of the "Tercer Juzgado del Crimen de Mayor Cuantía" of Santiago and the report of the "Dirección de Orden y Seguridad" of the Carabineros on the death of Mr. Soria. Since the beginning of 1975, according to the communication, 18 vehicles have been found in the same canal where Mr. Soria's car was found.

5. Places of detention in Chile

(a) Official and unofficial places of detention

196. As indicated above (para. 130), supreme decree No. 146 designated, in conformity with the requirements of supreme decree No. 187, certain locations as places of detention for persons held under the state of siege. According to the Chilean Government, these are "the sole places of detention to which persons who have been arrested by the security forces, and to whom the provisions of the state of siege apply, may be taken" (E/CN.4/1197, p.13). According to article 1 of supreme decree No. 146 these places are:

"Puchuncaví, in the commune of the same name, province of Valparaíso, Region V; Tres Alamos, in the town of Santiago, Metropolitan Region, and Cuatro Alamos, in the town of Santiago, Metropolitan Region."

197. Article 2 of the same decree provides:

"without prejudice to the foregoing, such persons may be temporarily detained in Chilean police stations and in premises of the Department of Investigation for as long as is strictly necessary for sending them to the places referred to in the preceding article".

198. Concerning the camp of Cuatro Alamos, referred to in the Group's previous reports; 17/ supreme decree No. 187 appears to be the first official recognition of its existence.

199. In connexion with allegations of the existence of other places of detention, not specified in supreme decree No. 146, the President of the Supreme Court and the Minister of Justice, in a joint communiqué issued on 19 March 1976 after visits by them to certain detention camps, stated:

"When the detainees in Cuatro Alamos were interrogated, some of them said that there was a place of detention which had been mentioned specifically as 'Villa Grimaldi' and that there was another place called 'Santa Lucia'. The undersigned, the President of the Supreme Court and the Minister of Justice, therefore visited these places separately and on different days and at different hours.

"As a result of the visits we made, we were able to determine that the place called 'Villa Grimaldi' is a place where detainees are merely interrogated after they have been arrested. There were no signs of any sort of ill-treatment. At the time of the visit by the Minister of Justice, there was only one detainee who was being interrogated. The Minister attended his interrogation and was able to see that it was carried out in normal conditions and without physical pressure of any kind. Villa Grimaldi is a place of transit and, once the detainee has been interrogated, he is sent to Tres Alamos or to Cuatro Alamos, as appropriate. For reasons of security, persons detained in Villa Grimaldi are not allowed to communicate with persons outside during the short time they remain there.

17/ Progress report of the Ad Hoc Working Group, annex to document A/10285, para. 188. Report of the Ad Hoc Working Group to the Commission on Human Rights, E/CN.4/1188, para. 81.

"The place referred to as 'Santa Lucia' is a clinic used by the staff of the National Department of Investigation and their families and no detainees are being held there." [Original text in Spanish.]

200. This is the first public mention of "Villa Grimaldi", which has been repeatedly referred to as one of the principal "torture centres" in Chile. Evidence brought to the attention of the Group had, from the very beginning, identified in detail the use of Villa Grimaldi as a place where persons were interrogated, tortured, and detained for long periods (see paras. 352-369). 18/

201. Evidence received by the Group in the past months indicates that "Villa Grimaldi" continues to be used as an interrogation centre where torture is used. Persons are usually taken there upon arrest and if and when they are transferred to Cuatro Alamos and Tres Alamos they are subject to being taken back to "Villa Grimaldi" for further interrogation and torture.

202. In this connexion, the following has come to the attention of the Group from reliable sources; identifying details have been removed in compliance with the Group's undertaking to respect confidentiality:

"'Grimaldi' is also a place to which people return. In this connexion, we refer to Mr. _____, who was arrested on _____ January of this year (1976). After his stay at Grimaldi, he was placed in general detention on 3 February, but he later returned to Grimaldi. ... We must also refer to the case of Ms. _____, a journalist who was arrested on _____ February 1975. She was missing until _____ May 1975, when she was placed in general detention. Nevertheless, in July 1975, she was twice taken in by DINA for further interrogation. On 31 October, when women were being transferred from the Pirque Camp to 'Tres Alamos', Ms. _____ was again taken by DINA and kept in solitary confinement for a period of 25 days in Villa Grimaldi and Cuatro Alamos. This last time, she was taken together with Ms. _____, who was kept in solitary confinement for a somewhat shorter time than Ms. _____."

203. The Group has continued to receive from various reliable sources - individuals, organizations and reports - information on other places of detention, some of them not officially acknowledged. On _____ February 1976, Mr. _____ [name withheld] was arrested at about 10.30 a.m. in the house of Mrs. _____ [name withheld] by agents of DINA. A detention order was presented to Mrs. _____ [name withheld] in which the place of detention was specified as "the domicile of _____ [name withheld]", the place of arrest. Mr. _____ [name withheld] was taken away and at present his location is not known. As indicated above, many persons, including a Catholic Bishop, were detained in houses situated at Alejandro Fierro 5113 and Calle Conferencia 1537.

204. In addition, the Group has learned of detention orders which specify as the place of detention "El Cuartel Silva Palma" in Valparaíso.

18/ E/CN.4/1188, para.80, and A/10285, para. 189.

205. The Group has learned from many sources, including authenticated copies of sworn statements, that persons are detained in the following places: 19/

- (1) Colonia Dignidad (near Linares, 400 km south of Santiago)
- (2) Monte (Cerro) Maraville
- (3) Colina Fach
- (4) Escuela de Caballeria de Quillotta (an island in Northern Chile)
- (5) El Regimiento Tacna in Santiago
- (6) Calle Londres, No. 38 in Santiago
- (7) "Discoteque" - house on Iran Street, Santiago
- (8) Santa Lucia Clinic, Santiago
- (9) House on Santa Rosa Street, near the free fair in Santiago
- (10) "El Clarín", office of former newspaper, Santiago
- (11) Basement of former National Congress Building, Santiago
- (12) "El Cuartel Silva Palma", Valparaíso.

(b) Visits to places of detention by the President of the Supreme Court and the Minister of Justice

206. As mentioned above, supreme decree No. 187 authorized the President of the Supreme Court and the Minister of Justice to visit, without prior notice, the places where persons held in connexion with the state of siege are detained. A communication by the President of the Supreme Court and the Minister of Justice concerning their visits to certain camps was published on 20 March 1976 and reads, in part as follows:

"Pursuant to supreme decree No. 187, the undersigned, the President of the Supreme Court and the Minister of Justice, consider that public opinion should be informed of the following:

"1. The above-mentioned legal decree, containing regulations pursuant to articles 1 and 2 of Legislative Decree No. 1009, requires the above-mentioned authorities to make periodical visits to the places of detention of persons subject to restrictions as a result of the state of siege, for the purpose of ensuring that individual rights are being respected.

"2. Accordingly, we have carried out, without advance notice, various inspections of the camps known as Tres Alamos and Cuatro Alamos.

19/ Names of additional places of detention may be found in paras. 370 and 371.

3. The inspection of another place outside Santiago, located in Region V, at Puchuncaví, is pending and will be carried out as soon as other tasks which are part of our functions have been completed.

4. Public opinion has been informed of the fact that we have already visited other places and of the fact that the comments we have seen fit to make have been communicated to the President of the Republic and the Minister of the Interior.

5. In view of the fact that the above-mentioned authorities have already been informed of our findings, we now wish to inform public opinion of the following findings with regard to the treatment of detainees under the State of Siege:

"(a) Tres Alamos is a public place of detention, where about 380 persons are being held. It has been specially equipped for detention purposes. The treatment of the detainees is normal, given the limitations of any place of detention. They have periodical contacts with their families and those who wish to do so receive clothing and food. They have appointed representatives to notify the authorities of their needs. They have radios, televisions, a library and other forms of entertainment.

"(b) When we made unexpected visits to the Cuatro Alamos detention camp, there were only 27 persons there who were allowed to communicate with each other every day, but whose communication with the outside was limited for reasons of security. The lavatories and other facilities were in good condition. When we interrogated the detainees individually and collectively, we received no complaints relating to ill-treatment by the staff of this camp. Having inspected the camp with particular care, we found no signs of physical ill-treatment nor any possibility that it might be carried out. There were only three persons who had problems requiring medical attention and arrangements were made for doctors from the National Health Service and the Local Medical Service to provide the professional care required under supreme decree No. 187, in addition to the treatment already being given to those who were ill.

6. Another of our concerns was to determine whether provision was being made, in accordance with the requirement of supreme decree No. 187, for a copy of the order of detention, indicating who issued it, who the arresting official was and the place to which the person in question was to be taken, to be given to the closest relative of the detainee. In this connexion, we were able to verify that, except during the very short time between the promulgation of supreme decree No. 187 (23 January 1976) and early February 1976, these requirements were being met, as we were able to verify from the second copy of such orders, which bears the signature of the person to whom the first copy was given.

7. Lastly, the President of the Supreme Court and the Minister of Justice state that they intend to continue to make the inspection visits required under supreme decree No. 187, without giving advance notice and taking into account complaints made which are relevant to the specific purpose of these visits.

207. Under article 7 of supreme decree No. 187, any irregularities observed by the President of the Supreme Court and the Minister of Justice during visits to the detention centres are to be reported to the competent authorities by means of confidential communications. This requirement of confidentiality may explain why the public pronouncements of the President of the Supreme Court and the Minister of Justice do not reflect negative aspects of life in the centres and the condition of detainees.

208. In contrast with the views of the President of the Supreme Court and the Minister of Justice concerning the detention camps, the following may be quoted from a report by a person who visited the camp of Tres Alamos very recently: 20/

"Approximately 94 per cent of the detainees in the camp are ill and receiving virtually no medical care.

"Their illnesses are the result of the conditions in which the detainees live or the inhuman treatment to which they have been subjected. One of the most distressing examples is that of [name withheld], who underwent the worst tortures and whose physical and mental health is now completely destroyed.

"Numbers of detainees live together in the same room; some have to sleep on the floor because of the lack of space; they are crowded together and thus spend the whole day outside in cold weather or in oppressive heat.

"Visits by the detainees' families also take place outside on benches, in all weathers. The detainees receive food which barely keeps them alive. If they do keep alive, it is due to sacrifices made by their families, who are themselves totally impoverished.

"In some cases, the families have had to leave their distant provinces to be near the place where their friend, son, daughter, sister or mother is being detained.

"The mental health of the detainees is just as alarming.

"They wonder about their future and are powerless to do anything about their arbitrary detention. They are under destructive psychological stress because they know that, at any time and without any reason, they may be placed in solitary confinement again.

"Solitary confinement occurs in known, but unofficial, places and, sometimes, in official places such as the Cuatro Alamos camp. Detainees told me that it was a place where they had been subjected both to physical ill-treatment and to psychological ill-treatment and that their worst fear was that they might disappear forever."

20/ Report submitted to the Group by Mme. Colette Auger, avocat à la Cour d'appel de Paris.

209. In relation to accusations of torture and ill-treatment, the President of the Supreme Court had been informed of the names of severely injured persons, in particular, Mr. Patricio Bustos Streeter, Mr. José Moya Raurich, Mr. Oscar de la Fuente Muñoz and Mr. Claudio Eugenio Blanco Toledo, and requested to order an independent medical examination and publish the results. This has not been done. This is of importance since information received by the Group indicates that the medical examinations required by supreme decree No. 187 are often not made at all, or if performed, are merely summary in nature; in many cases the examination is done by a person who is not a fully qualified doctor. The information reveals that the required medical examinations are not carried out when detainees are transferred between the different detention centres in Santiago.

210. A revealing incident is alleged to have occurred during one visit of the President of the Supreme Court to Tres Alamos. According to information from a reliable source:

"On the 8th, nine detainees were informed that they would be transferred, but they were not given any indication of their destination and were not told the reason for the transfer. When the time had come for the transfer, the same official, Sergeant Catalán, countermanded the order, basing the new decision on a so-call 'review of charges'. The reason for the change in the order was probably that, at that very time, the President of the Supreme Court was visiting another pavilion in the Tres Alamos camp. Mr. José Maria Eyzaguirre found out this and asked the Commandant of Cuatro Alamos why the transfer was going to take place. The Commandant answered that it was merely 'a move from one pavilion to another because of problems of overcrowding'."

6. Detention of persons indicted ("procesados") or convicted in connexion with State security

211. As the Group has already indicated, some 2,400 persons are presently serving sentences imposed in connexion with national security and some 900 more are awaiting trial on such matters in Chile (see paras. 143, 144). These persons are generally held in the normal penitentiaries and gaols of the country, as opposed to the special places of detention provided for detainees under the state of siege who have been neither charged nor convicted.

212. Information received by the Group from several reliable sources indicates that individuals held in these penitentiaries and gaols are still subject to the arbitrary authority of the intelligence services, especially the DINA. Reports indicate that prisoners, without any legal formalities, may be interrogated and subjected to physical abuse by these intelligence services within the prisons themselves, in addition to being subject to removal from the prisons by security agents for transfer to other locations for interrogation and in many instances torture. Prisoners are also reported to be subject to abuse from the prison staff, and their families are often abused on the occasion of visits to the prisons. Reports also indicate that health care and living conditions are very poor.

213. The Group has been informed that until recently persons awaiting trial or serving sentences in connexion with matters of national security were kept in separate sections of the prisons or gaols which reflected their status as

"political prisoners". However, shortly after a speech by the Minister of Justice to the effect that convicted persons or those awaiting trial were not political prisoners, a process was initiated on the day before the opening of the Sixth General Assembly of the Organization of American States in Santiago, of removing political prisoners from their special sections and of placing them among common criminals. As a result of this, prisoners in both the public prison and the penitentiary of Santiago began a hunger strike with the objective of having their status as political prisoners recognized, in particular through the guarantee of the following:

- (a) Humane treatment of political prisoners and their families;
- (b) Permission to engage in cultural and artistic activities;
- (c) Decent prison conditions, including sufficient electric light, to enable them to pursue these activities;
- (d) Basic conditions of hygiene and adequate medical and dental care;
- (e) Permission to obtain books and to write and receive letters;
- (f) Protection from being removed from the prisons by the security agencies.

214. Information received by the Group indicates that the hunger strikes were severely repressed and that many prisoners were sent to some 12 provincial prisons far from Santiago. The families of these prisoners were not notified and some 30 prisoners are as yet unlocated.

7. Length of detention without trial

215. From current evidence received by the Group it appears that large numbers of persons continue to be detained pursuant to State security provisions without formal charges having been brought against them. International concern has primarily been focused on prominent figures active in the previous régime who have remained in this legal limbo.

216. It may be recalled in this connexion that already at the thirtieth session of the Commission on Human Rights in 1974 the Chairman of the Commission had been authorized to send a telegram to the Government of Chile requesting the release of Senator Luis Corvalán and the others detained with him.^{21/} At the thirty-second session of the Commission on Human Rights in 1976, the Commission decided to again authorize its Chairman to communicate with the Government of Chile with respect to these persons. On that occasion the Commission urged the Government of Chile to desist from holding the contemplated military trials of these persons who had been in detention for over two years and to release the persons named without further delay.^{22/} Nevertheless, for over two and a half years seven Unidad Popular leaders (Senator Luis Corvalán, Senator Jorge Montes, Mayor Tito Palestro,

^{21/} See A/10285, paras. 152-155, and E/CN.4/1188, para. 86, for the situation of the persons mentioned in the telegram sent by the Commission on Human Rights on 1 March 1974.

^{22/} The text of the telegram sent by the Chairman of the Commission on Human Rights and of the reply of the Minister for Foreign Affairs of Chile is reproduced in annex III to this report.

General Secretary Fernando Flores, Minister of Economy José Cademartori, Minister of the Interior Daniel Vergara and Alfredo Joignant, former head of the Criminal Enquiry Division) remained in detention at Tres Alamos. They had no contacts with other prisoners nor did they perform any work in the camp. They were able to communicate only with each other, listen to the radio and read previously censored books and newspapers. From the time of their arrest in 1973 they had never been informed of the charges on which they were being held. Some had been subjected to brutal treatment early in their detention but generally their interrogation had been summary in nature. Despite the widespread rumours that these persons would be charged with high treason, subversive activities or other similar crimes, the prisoners had received no written documentation with respect to an investigation nor any legal proceedings. During their internment they had been visited by the President of the Supreme Court to whom they complained of their treatment and detention.

217. A similar situation existed with respect to three other Unidad Popular leaders held in Valparaiso - Pedro Felipe Ramirez, Andres Sepúlveda and Sergio Vusković. The release of these three persons was publicly announced by the Under Secretary of the Interior on 12 September 1975 but was followed by their immediate rearrest and their continued detention. According to information received, the decision to rearrest them had, in reality been made before their release - leading to the conclusion that the "release" was a mere gesture to mislead public opinion. According to information received concerning an interview in March 1976 with the Naval Judge Advocate, Captain Enrique Campusano, at Valparaiso, it was explained that the proceedings against these persons were still in their "first phase". It was stated five months ago that charges would be lodged in a "short time", but it was also stated that initially, prosecution would be instituted against some but not all of the detainees. The question of whether the appropriate forum is a peace-time or war-time military tribunal has been the subject of much speculation and controversy. The long delay in detention, however, rendered relatively moot the issue of the form of the tribunal who would pass judgment upon them, for while these speculations continued the persons concerned in fact served sentences for unknown crimes with which they had never been charged or convicted.

218. It was not until the highly-publicized liberation of political prisoners in May and June of 1976, coincident with the opening of the General Assembly of the OAS in Santiago, that Andrés Sepúlveda, Pedro Felipe Ramirez, Sergio Vusković and some other long-term detainees were released. 23/

219. The arrest on 12 May 1976 and the continuing detention of defence lawyer Hernán Montealegre Klenner, described in this report in paragraphs 180-186 is a recent illustration of the pattern of continuing detention without presentation of charges. Despite the statement of the Minister of the Interior shortly after Mr. Montealegre's arrest that the lawyer had been detained for reason of subversive activities, no interrogation of the detainee with respect to such alleged activities has been made, no information has been forthcoming of an investigation in progress, and at no time have any charges been lodged against Mr. Montealegre. He merely remains in detention.

23/ After their release, Mr. Ramirez and Mr. Vusković appeared before the Group and gave testimony.

220. A similar fate has been shared by untold numbers of other persons. According to information received by the Group - necessarily modest, but considered reliable with respect to those concerned - as of 15 May 1976 some 49 men and 31 women had remained in detention in Tres Alamos for over one year; some 68 persons had been detained for a similar period of time at Puchucavi. The situation is necessarily fluid; arrests, releases, rearrests continue. The Group, however, drawing upon the bulk of evidence before it, is persuaded that large numbers of persons are being held for indeterminate periods of time without having been charged with the crimes that allegedly justify their detention.

8. Enforcement of legal norms governing arrest and detention

221. The Constitution of Chile of 18 September, 1925, as amended, provides for the "recurso de amparo" which, as described in the Constitution, is a potent instrument for the protection of the individual. Previous reports by the Group have treated this question. 24/ The Constitution states, in article 16, that anyone arrested, charged or imprisoned contrary to the articles of the Constitution governing the subject:

"may apply, for himself, or by anyone in his name, to the judicial authority designated by law, petitioning that the legal requirements be observed. This judicial authority shall order the individual to be brought before him and his order shall be exactly obeyed by all those in charge of the prisons and places of detention. Informed of the facts he shall declare his immediate release, or cause the legal defects to be corrected, or put the individual at the disposition of the proper judge, proceeding throughout in a brief and summary manner, correcting the defects personally, or referring them for correction to whomever it may concern."

222. As the Group has reported, the Minister of Foreign Affairs of Chile has stated that the remedy of amparo, during the state of siege, did not apply to crime subject to military jurisdiction nor to the exercise of the Presidential powers of arrest and detention under article 72, paragraph 17, of the Constitution. Subsequently, however, after the promulgation of supreme decree No. 187 regulating detentions under the state of siege (see paras. 122-129), the Chilean Government has stated that failure to comply with the requirements of that decree "will mean that the detention is arbitrary and that habeas corpus (amparo) is then applicable, and this, in the last instance, requires a ruling from the Supreme Court". 25/

223. Unfortunately, both the oral and written evidence received by the Group, including copies of court documents, indicates that in reality the remedy of amparo is inoperative in Chile in connexion with matters of national security. 26/ The

24/ Progress report of the Ad Hoc Working Group (A/10285, annex), paras. 76 and 99. Report of the Ad Hoc Working Group to the Commission on Human Rights (E/CN.4/1188), para. 64.

25/ Explanatory memorandum relating to supreme decree No. 187 containing regulations for the protection of persons detained as a result of the state of siege. (E/CN.4/1197, p. 13 et seq.)

26/ See also chapter VI.

many cases given above as examples of arrest and detention in Chile (paras. 159-193) demonstrate also the refusal of the courts to respond positively to requests for amparo. Applications for amparo often follow the pattern illustrated in the examples below.

224. Claudio Eugenio Blanco. Information, including copies of relevant documents, has been received by the Group indicating that on 19 January 1976 Mr. Claudio Eugenio Blanco was arrested and that the Ministry of the Interior, in response to a request by the Court of Appeals based on a petition for amparo, informed the Court on 28 January 1976 that Mr. Claudio Eugenio Blanco was not detained. The Court of Appeals thus rejected the request for amparo. In a letter on 10 February 1976 to the Minister of the Interior, Mrs. Blanco informed the Minister that she had reliable information that her husband was being held in Cuatro Alamos. On 13 February 1976, in response to the letter of 10 February 1976, the Ministry of the Interior sent a standard form letter stating that the request for less strict measures of detention for Mr. Blanco could not be granted, thus admitting implicitly Mr. Blanco's detention. In response to a new request by the Court of Appeals, occasioned by a new petition for amparo, the Ministry of the Interior on 5 March 1976 admitted detaining Mr. Blanco in Cuatro Alamos under "Decreto Exento 1866" of 17 January 1976.

225. Manuel Guerrero. According to oral evidence presented to the Group from several reliable sources, Manuel Guerrero, a professor aged 27, was walking in the street in Santiago with his wife, who was seven months pregnant, on the evening of 14 June 1976. A car pulled up beside the couple, and several men stepped out and told Mr. Guerrero that he was under arrest and ordered him to enter the car. Mr. Guerrero protested and demanded to see the warrant, and when the men seized him he resisted. Thereupon one of the men shot him, threw him into the car and, leaving the wife on the sidewalk, drove away. The next morning Mrs. Guerrero sought legal assistance and a recurso de amparo was filed. The Court received the statement of the Minister of the Interior that no order of arrest had been issued for Mr. Guerrero and that he was not in detention, and thus rejected the request for amparo. Immediately thereafter a woman friend of Mrs. Guerrero advised her that while visiting her husband at Tres Alamos she had learned that Mr. Guerrero was detained there and was in poor physical condition in the hospital ward. Whereupon Mrs. Guerrero went to Tres Alamos and demanded entrance. The guard told her that she could not come in but she threatened that if he did not let her enter she would bring her friends and kill him. She gained entrance and saw not only her husband but the camp doctor, who told her that he was operating on her husband the next day to remove the bullet. After her visit Mrs. Guerrero again sought legal counsel and another appeal was made to the Supreme Court. Mrs. Guerrero managed to see the President of the Supreme Court, who in her presence telephoned to Tres Alamos and received confirmation of her husband's detention there and the injury he had suffered. A judge re-examined the recurso de amparo, which had previously been denied, and determined that the appropriate legal procedure was to request a

second report from the Ministry of the Interior. The Court received this supplementary report from the Ministry of the Interior, which at that point admitted the detention of Mr. Guerrero, stating that he was held pursuant to the state of siege. On these grounds the Court again rejected the request for amparo.

226. Evidence received by the Group indicates that many similar cases take place each month in Chile and that the courts, in the face of self-evident and even admitted violations of applicable legal norms, in particular decree law No. 1009 and supreme decree No. 187, abdicate their responsibility to the point of not even requesting that the detained person be brought before them, as the Constitution requires, which would enable the judge to determine if he is alive and what his condition is. It will be remembered that in the case of Mr. Ramiro Antonio Diaz Heredia (see above, paras. 167-169), the Court of Appeals of Santiago refused to even request (i) a copy of the entrance medical examination of the detained person, (ii) a copy of the detention order from the DINA or (iii) information on the registration of the detainee at the detention centre.

227. The Group has been informed that since 11 September 1973 no person in Chile has actually gained freedom - even for the shortest period of time - through a decision of the Supreme Court pursuant to a request for amparo. The only role the courts and the remedy of amparo appear to play today in Chile in connexion with detention under the state of siege is to register publicly the Ministry of the Interior's admission or denial of detention.

9. Release of detained persons

228. The Government of Chile has stated that in pursuance of its policy of releasing persons held in preventive custody in the exercise of the powers granted by the law of the state of siege, it had released 160 detainees under decree No. 1807 of 18 December 1975 and 50 detainees under decree No. 1827 of 28 December 1975. 27/

229. During the period 8 May to 8 June 1976, just before the meeting of the Sixth General Assembly of the Organization of American States in Santiago, the Government of Chile released some 360 political detainees. However, the Group has compared the number of persons released with the number of new detentions which took place during the same period and has concluded that, while numerous individuals were released from detention under the state of siege, an almost equal number of persons were deprived of their liberty by the specialized organs of state security in Chile.

27/ E/CN.4/1197, para. 1.

D. Missing persons

230. The problem of persons who have disappeared has received attention both within Chile and in international organizations. According to estimates from various sources approximately 1,000 persons are deemed to have disappeared in Chile during the past three years.

1. Persons reported dead: the "list of 119"

231. Special concern has been given to numerous persons reported dead by the press, whose detention has been officially denied by the Chilean authorities but concerning whom reliable evidence indicates both arrest and detention.

232. One focal point for this concern has been a list of 119 persons allegedly killed outside Chile to which reference was made in the first report of the Group.^{28/} It will be recalled that, as reported in the Chilean press, the death of 60 persons was reported by a weekly magazine "LEA" of Buenos Aires and that of 59 others by a newspaper "O Dia" of Brazil, both published in July 1975. The existence of these publications is open to serious question and on 20 August 1975 President Pinochet said he would order a check into the sources of these reports. No information on this check has been received.

233. As previously indicated by the Group, reliable information exists in at least 77 of the 119 cases that the persons were in fact arrested. Since then the Group has received concordant evidence from many reliable sources that a significant number of persons on the "list of 119" were actually held at one time or another, in government camps in Chile.

234. Information received indicates that on 31 July 1975, shortly after the "list of 119" appeared, a letter signed by 97 detainees at the detention camp of Melinka in Puchuncaví was sent to the SENDET and Chilean Government authorities in which it was stated:

"the great majority of whom (the "119"), we are certain, were detained (alive) by Government security agencies between May 1974 and February 1975. They were seen by hundreds of political detainees, at various interrogation centres existing in Chile".

235. The letter requested the competent authorities to clarify the actual situation of those on the list and announced a hunger strike which would last until their petition received a reply.

236. One year later in July 1976, prisoners in this same camp (Melinka) sent a letter to the representatives at the Sixth General Assembly of the Organization of American States with a list of 45 persons reported to have disappeared (some of them on the "list of 119") who had been seen by the authors of the letter in official custody.

237. An example of one of the "119" is Mr. Martín Elgueta Pinto, who was arrested on 15 July 1974 at 7.30 p.m., in Santiago, together with at least four other persons.

^{28/} See A/10285, paras. 149-151. This may indicate an unwritten alliance between the DINA and the intelligence agencies of some other countries.

Sworn statements have been made available to the Group in which persons arrested with Mr. Martín Elgueta Pinto and detained with him attest to his arrest and detention by the Chilean authorities. The mother of Mr. Elgueta Pinto states that an official of the Secretaria Nacional de Detenidos informed her verbally on 26 July 1974 of his detention. In addition, a letter dated 16 September 1974 from Commander Enzo D. Nocera, Chief of the Confidential Department of the Minister of the Interior, to the mother of Mr. Elgueta Pinto reads:

"Mrs. Yolanda Pinto de Elgueta
Portugal 28 Torre 4 Depto. 103

SANTIAGO

"With reference to your letter to the Commander-in Chief of the Chilean Air Force, a member of the Government Junta, dated 26 August last, I wish to inform you that the cases of your sons Raimundo and Martín Elgueta Pinto will be reviewed by the appropriate bodies, pursuant to the rules established by the Supreme Leader of the Nation and in the light of the action taken by the Office of the United Nations High Commissioner in the matter.

"You will be notified in due course of any decision in this regard."

238. Raimundo Elgueta Pinto is reported to have been arrested in May 1974 and to be presently held in the detention camp at Puchuncaví.

239. The Group has been informed that several requests for amparo in favour of Mr. Martín Elgueta Pinto, accompanied by the documents mentioned above, have been made but that each petition was rejected.

240. Furthermore, the Group continues to receive testimony from persons who have recently left Chile to the effect that numerous persons on the "list of 119" were seen by them in different detention places in Chile. Two examples of this are Mr. Edwin Van Jurick Altamirano and his wife, Barbara Oribe Tamblay.

2. Detention of eight persons in Valparaíso

241. Documents and testimony have been received by the Group indicating that during the second half of January 1975 eight persons were arrested and detained by agents of DINA in Valparaíso; their names are:

María Isabel Gutiérrez Martínez
Horacio Neftali Carabantes Olivares
Elias Ricardo Villar Quijón
Abel Alfredo Vilches Figueroa
Carlos Ramón Rioseco Espinoza
Alfredo Gabriel García Vega
Fabian Ibarra Córdova
Sonia Ríos Pacheco

242. Mr. Alfredo Gabriel García Vega was included in the list of missing persons presented to the Supreme Court of Chile on 5 September 1975 (see below, paras. 248-250), and Mrs. Liliana Castillo Rojas de Carabantes, in a sworn statement,

states she was detained with her husband Mr. Horacio Neftali Carabantes Olivares, in "El Regimiento Maipo" and at that time she gave birth to twins. She was released on 28 January 1975.

243. In response to a request for amparo by Liliana Castillo Rojas, the Court of Appeals of Valparaíso was informed on 4 April 1975, by the military authorities of Valparaíso that:

"(a) It is true that the persons mentioned in your document were detained in January 1975 by officials of the National Intelligence Directorate (DINA), who came from Santiago especially for that purpose and for whom this Regiment simply furnished transport, offices and personal protection. (b) The detainees were held under arrest at these Barracks, under the supervision of DINA, members of which took part in the interrogations and the other inquiries relating to these persons, without personnel of the "MAIPO" R.I.LI.2. Regiment taking part in them at any time. (c) It is true that the detainee, Mrs. LILIANA CASTILLO R. gave birth to twin girls at the regimental infirmary, attended by Dr. LUIS SIMONETTI, a gynaecologist from the Naval Hospital serving in the Navy, and by the Unit's male nurse, Corporal First Class RUBEN DELGADO MONTECINOS. (d) It is not true that the birth was artificially induced, for the verbal report by the professional who attended her categorically denies this allegation. (e) The detainee's release was ordered by DINA after the appropriate inquiries and it also decided that the accused NEFTALI CARAVANTES O. should be transferred to a place unknown to this Regimental Commander, who is therefore unable to specify it.

"2. Any further information desired in this connexion should be obtained direct from DINA, the organization which assumes full responsibility for detainees."

244. Mr. Horacio Neftali Caravantes Olivares is still reported by his wife to be missing.

245. The Group has received authenticated copies of separate sworn statements made by 13 persons who state that they were detained by Chilean Government authorities during the early months of 1975 and that during their detention they were together with some or all of the eight persons listed above.

246. Details are given in these statements about detention with these persons at different times and in different locations and of the transfer of prisoners from one location to another. On these matters the statements are in substantial agreement. Several statements refer to detention with Mr. Juan Molina Mogollones, a person on the list of missing persons presented to the Supreme Court on 5 September 1975, (see below, paras. 248-250).

247. On 10 June 1976, in response to a request for information on the eight persons listed above, the Confidential Department of the Ministry of the Interior stated, after listing the eight names,

"In this connexion, I wish to inform you that our Kardex contains no information on the above-mentioned persons, nor have they been arrested by order of this Department; the reports and information supplied by various security

agencies on this situation, in accordance with inquiries ordered earlier, have all been investigated and, therefore, your letter and enclosures are being returned, as they are considered to be for your files."

3. Official investigations

248. The Comité de Cooperación para la Paz on 4 July, 1 August and 5 September 1975 presented to the Chilean Supreme Court lists of persons who had disappeared, containing allegations of facts concerning their disappearance and asking that their disappearance be investigated. The list of 1 August contained the "list of 119" names referred to above, which includes, as has been mentioned, Mr. Martín Elgueta Pinto and Mr. Alfredo Gabriel García Vega. The President of the Supreme Court of Chile, José María Eyzaguirre, referred to this matter in his speech of 1 March 1976 opening the new judicial year.^{29/} Mr. Eyzaguirre said in this respect,

"In requests submitted on 4 July, 1 August and 5 September of last year, the Committee in question [Comité de Cooperación para la Paz] requested the Supreme Court to appoint a special visiting judge of the Court of Appeals of Santiago to investigate the disappearance of persons, 163 in number according to witnesses, who had been arrested and concerning whose whereabouts there was no further knowledge.

"The majority of the Court, after calling for the files relating to the disappearance of persons and after examining them, rejected the petition to appoint a special visiting judge, without prejudice to orders to the 'ministros visitantes' (visiting judges) of each court to investigate the handling of proceedings and to inform this Court of their completion and the outcome. The "ministros visitantes" have issued their reports from which it appears that in many cases the persons whose disappearance was being investigated are at liberty, others have gone abroad, others are in detention under the State of Siege, others are before Military Courts and, lastly, some of them are common criminals against whom proceedings are being taken. Many cases are now proceeding and a large number have been stayed."

249. A study has been made comparing the reports of the "ministros visitantes"^{30/} with the above-mentioned three lists of missing persons presented by the Comité de Cooperación para la Paz, and the report of this study received by the Group states:

"It is quite clear that none of the persons for whom a request was made for investigation of their disappearance and who were included in the various mass petitions by COPACHI are in the situation described by the President of the Supreme Court in his statement of 1 March (at liberty, abroad, detained under the State of Siege, before military tribunals, or with proceedings pending for common crimes)."

^{29/} Published in the Diario Oficial of 6 March 1976.

^{30/} Expediente C-34-75.

250. The Government of Chile, in a report entitled "The present situation of human rights in Chile" presented to the thirtieth session of the General Assembly (A/C.3/639), dealt with presumptive missing persons. In reporting on investigations carried out by the Government, the document states that "of the 768 persons listed, the National Identification Bureau was able to ascertain that 153 of them do not exist legally and that it is a matter of assumed or invented names (see appendix)".

251. In the course of its current inquiry the Working Group received testimony and supporting documentation from several very reliable persons who had recently visited Chile. In comparing these data with the list of non-existent persons in the report of the Government of Chile (A/C.3/639, appendix), the Working Group found that it had in its possession not only reliable detailed biographical information about five of these "non-existent" persons but also photographs of them.^{31/} The five persons and their dates of detention are:

<u>Name</u>	<u>Date of detention</u>
Maureira Muñoz Sergio Adrian	7 October 1973
Muller Silva Jorge Hernán	29 November 1974
Silva Carreño Ramon Luis	16 October 1973
Tormen Mendez Sergio Manuel	20 July 1974
Torres Aravena Ruperto Oriel	13 October 1974

The photographs of these five persons appear in this document as annex XVIII.

252. It appears to the Group, therefore, that these persons do in fact exist; further, the Group entertains serious doubts as to the reported results of the investigations of the Government of Chile with respect to this question.

^{31/} These photographs, together with biographical data, were transmitted to the Group by Mr. George Miller, member of the House of Representatives of the United States. In his letter Mr. Miller stated, in part:

"My personal reactions to the trip were very mixed and complex. Despite the ravages of the recent past, the country remains beautiful and the cities bustling. The people were warm, outgoing and friendly.

"But close beneath the surface, one quickly perceives lurking a sinister reality of life in Chile: an integral part of government policy of fear and intimidation, of torture and thorough violation of the most fundamental of human rights — the right to life itself.

"There is no question in my mind that the evidence clearly demonstrates that suppression of human rights has become commonplace in Chile. I am sending, along with this message, a carton of photographs of hundreds of Chilean citizens who have been arrested, taken away from their families and friends to a fate unknown. These cards, which contain vital information about each person, were given to me just before we departed from Santiago. Still the question remains --- what has become of these people? ...

"I appreciate the opportunity to make these comments and only wish I could have done so in person. Thank you for continuing your own investigations into the situation in Chile. If I may ever be of additional assistance, please do not hesitate to call upon me."

4. Recent cases of missing persons

253. Evidence received by the Group from numerous reliable sources indicates that in Chile the pattern prevailing since September 1973 with respect to persons missing or disappeared continues to be followed, probably with greater intensity in some recent periods. As indicated above the arrest and detention powers of the special services dealing with matters of national security are used with almost complete disregard for theoretical constitutional and legal norms and, because of the abdication of the judiciary (see chap. VI below) these powers are subject to no control by the courts. A person is actually deprived of his liberty with no warrant having been issued - thus no official recognition of arrest - and detained in "unofficial" detention centres where he thus may not be "officially" held. Persons subject to this type of detention reappear after variable periods of time, either released - in many cases just dropped on a street corner - or in official detention camps when detention orders - some dated several days after actual arrest - are produced, thus giving legal recognition to the detention. Many persons, however (some 100 since January 1976, according to information from one reliable source which reflects only part of the situation) have never been released or placed in official detention centres; thus they are "missing" or have "disappeared". A list of some persons reported missing since the beginning of 1976 is given in annex XIX.

254. In the course of its inquiries during 1976 the Group has received oral and written information from reliable sources concerning persons who have recently disappeared in Chile. In a letter dated 3 June 1976 (see annex IX) the Group brought to the attention of the Government of Chile the names of certain persons who had been reported missing, and stated that it would appreciate receiving information concerning them. That letter contained the following names: Victor Díaz, Mario Zamorano, Jorge Muñoz, Hernán Montealegre, José Aguilera, Bernardo Arya, Corolos Carvajal, Malaquias Ciudad, Ariel Valenzuela, Elise Escobar, Maria Cristina Castillo, Vicente Fodich, Jorge Silva, Uldericio Donaire, Fernando Lara, Luis Recabarren and José Weibel. The Government of Chile in a note verbale dated 25 August 1976 (see annex XIV) provided information concerning these individuals. With regard to Victor Díaz, Mario Zamorano, Jorge Muñoz, Bernardo Araya, Dolores Carvajal, Elisa Escobar, Uldaricio Donaire, Fernando Lara, Luis Recabarren and José Weibel, the Government stated that there was nothing on the record to show that they had been or were being detained in Chile. This did not mean, the Government stated, "that they may not have left the country illegally, under a false identity, as has happened on many occasions, or that they are not involved in underground activities inside Chile". In addition, in a note verbale dated 30 August 1976 (see annex XVII) the Group was informed by the Government of Chile that according to information from the Deputy Chief of the International Frontier Control Section, Mario Zamorano Donoso had left Chile on 13 May 1976 (see para. 177). As regards Mr. José Weibel and Mr. Victor Díaz, the Group has received evidence from reliable sources which convinces it that these two individuals were, in fact, detained by agents of the specialized security agencies in Chile, and the Group has thus concluded that the information supplied by the Government of Chile does not reflect the reality of the detention of Mr. José Weibel and Mr. Victor Díaz. The Group is thus led to question the reliability of the information furnished by the Government of Chile in respect of other missing persons.

255. The following accounts of recent disappearances in which evidence indicates the involvement of official government services typify, in the Group's opinion, the existing pattern in Chile. These are only a few examples, selected from among very many received from reliable sources by the Group. In substance they differ from the

accounts of arrest and detention given above (paras. 159-193) only in that in these cases the persons have never reappeared, and mystery continues to surround their whereabouts and even their very existence.

(a) José Arturo Weibel Navarrete

256. According to information received by the Group from several reliable sources, on 29 March 1976 Mr. José Arturo Weibel Navarrete, his wife, Mrs. Maria Teresa Barahona Muñoz, and their two sons were riding in a public bus in Santiago - a bus they habitually took at that time - when at about 7.40 a.m. a woman shouted "My handbag has been stolen", and the bus was stopped immediately by a black car. Several persons left the car and entered the bus; they accused Mr. Weibel Navarrete of robbery and, with the assistance of two other persons who had been riding in the bus, removed Mr. Weibel, placed him in the black car and drove off.

257. Between 10 a.m. and 12 noon that same morning the house of Mr. and Mrs. Weibel was searched by numerous individuals in the absence of Mrs. Weibel. Neighbours reported seeing Mr. Weibel in one of the cars used by the persons searching the house. A request for amparo was made on the same day, and on 3 June 1976 it was rejected by the Court of Appeals.

258. Five months before the disappearance of José Weibel, his brothers Ricardo and Patricio had been detained. Patricio was released; Ricardo remained in detention. Writs of amparo on his behalf were denied. In response to the family's inquiries, the authorities here denied that Ricardo Weibel had ever been detained. The whereabouts of José Weibel and his brother Ricardo are unknown.

(b) Victor Manuel Díaz Lopez

259. According to information received by the Group, Victor Díaz, a prominent official of the Communist Party, believed that he was being sought by officials of the DINA. According to his wife's statements, their home had been searched on five occasions by agents of the DINA, who were looking for him. Díaz had assumed the alias "José Santos Garrido" and had gone into hiding at the home of Jorge Carlos Fuensalida and his wife, Sandra Vila Machiavello.

260. According to testimony received by the Group, on 12 May 1976, at 2.20 a.m. five persons dressed in civilian clothes and carrying machine-guns entered the home of Jorge Carlos Fuensalida. These persons stated that they were officials of the DINA and that they wanted to search the house; they displayed no warrant. They burst into the room occupied by Victor Díaz, having been told by Mr. Fuensalida that a friend, José Santos Garrido, was sleeping there. After interrogating "Garrido" and examining his identity card, the apparent leader of the DINA group ordered "Garrido" to get up and walk. (Díaz has a physical defect and walks with a limp.) As soon as "Garrido" started walking, the DINA leader exclaimed "Cochino viejo, you are a dirty communist and now at least we have found you". Another DINA member told Mrs. Vila, "Lady, you have no idea who you are harbouring in your house. That is the Secretary-General of the Communist Party". Thereafter, numerous officials, including the Director-General of the DINA - about 25 persons - came to the house. Mrs. Vila was not taken into custody but was given a DINA form to sign stating that José Santos Garrido and Jorge Carlos Fuensalido were being detained in Cuatro Alamos. Mr. Fuensalida was released immediately but he too signed papers indicating that the house had been searched and that José Santos Garrido had been arrested.

261. A recurso de amparo brought on behalf of Victor Diaz was denied by the Court of Appeals on 19 June, and by the Supreme Court on the 24 June. On 3 June the Chairman of the Working Group requested the Permanent Representative of Chile to provide information on the whereabouts of certain named persons, including Victor Diaz. The response of the Government of Chile, in a note verbale dated 25 August, stated that there was nothing on record to show that Victor Diaz had been or was being detained in Chile.^{32/} From the evidence presented to it, the Group has concluded that the officials who detained him were aware of his true identity. The failure of the Government of Chile to acknowledge the detention of Victor Diaz can only be viewed with circumspection.

(c) Dr. Carlos Godoy-Lagarrique

262. In regard to information received by the Working Group, the Chairman of the Group on 30 August 1976 addressed a letter to the Permanent Representative of Chile to the United Nations Office at Geneva with respect to the reported detention and disappearance of Dr. Godoy-Lagarrique.

263. The following information - corroborated from various sources - was received by the Group.

264. Dr. Carlos Godoy-Lagarrique, residing at Avenue Doctor Johow 623, Santiago, Chile, was employed as a general physician at the San Bernardo Hospital, 30 kilometres south of Santiago, and at the Santa Rosa-Canino Polyclinic.

265. On 4 August 1976, at approximately 4 p.m., Dr. Godoy-Lagarrique was driving from the hospital to the polyclinic when his green 2CV Citroën was overtaken by an automobile bearing no identifying plates and believed to be driven by members of the secret police. He has not been seen since.

266. Dr. Carlos Godoy-Lagarrique has had left-wing political connexions; he had held a post in the Ministry of Health under the previous régime. From 1974 to the time of his disappearance he was employed at the hospital and at the polyclinic.

267. Dr. Godoy-Lagarrique's house had previously been searched and he had believed that he was under surveillance and was in "a dangerous situation".

268. Three other persons have disappeared at the same time under similar circumstances, among them Dr. Ivan Insunza, whose political leanings were similar to Dr. Godoy-Lagarrique's and who had performed similar functions under the prior régime. Dr. Insunza also disappeared on 4 August.

269. Dr. Carlos Godoy-Lagarrique's family has contacted the local hospital emergency room, the morgue and the police department; they have made inquiries to the Minister of Justice and have attempted to obtain information from the President of the Supreme Court as to the whereabouts of Dr. Godoy-Lagarrique. These efforts have been fruitless.

270. The Government of Chile informed the Group on 6 September 1976 that

^{32/} The letter of the Chairman of the Ad Hoc Working Group and the reply of the Permanent Representative of Chile are reproduced in annexes IX and XIV, respectively.

"...there is no record that Dr. Godoy is or has been in detention".^{33/}

(d) Julieta Ramírez Gallegos, Oscar Emilio Castro, Maria Antonieta Castro
Ramírez and John Roderick Mac-Leod Treuer

271. The Group received reliable information with respect to the arrest and detention of Julieta Ramírez-Gallegos, 68 years of age, her son Oscar Emilio Castro, her daughter, Maria Antonieta Castro, and her son-in-law, John Roderick Mac-Leod Treuer (husband of Maria) and the subsequent disappearance of Mrs. Ramírez and her son and son-in-law.

272. On 24 November 1974 Oscar and Mario Castro were arrested together by a DINA squad led by "Mr. Romo". They were taken to Villa Grimaldi, where they were detained and interrogated until 28 November, at which time they were transferred to Tres Alamos. On 30 November, Julieta Castro and her son-in-law John Mac-Leod were arrested by the DINA and taken to Villa Grimaldi. Maria Castro was transferred back to Villa Grimaldi, where these three members of the family were tortured in each other's presence.

273. Maria Castro was transferred to Quatro Alamos and then to Tres Alamos on about 7 January 1975. She was thereafter released.

274. Writs of amparo brought on behalf of the remaining three members of the family were denied. Inquiries to the authorities were made, to no avail.^{34/} No official recognition of the detention of these persons has been made. They have disappeared.

275. The belief was expressed to the Group that Mrs. Ramirez and Mr. Mac-Leod may not have survived the rigours of their detention, but that Oscar Emilio Castro may still be alive in custody.

(e) The Vergas family

276. The Group received evidence with respect to the multiple tragedies of the Vergas family. Dagoberto Pérez Vergas, 28 years of age, married, had disappeared. On 16 October 1975, the family learned from official sources that Mr. Vergas had been found dead at Eugenia de Malloco on 15 October, at the scene of a clash with government forces. The family could not obtain permission to identify or retrieve the body. Carlos Fredy Pérez Vergas and Aldo Gonzálo Pérez Vergas, brothers of the above Mr. Vergas, had both been detained on 23 September 1974. Despite the evidence of witnesses to the arrest of these two persons, a writ of amparo had been denied and these persons remain "missing". A letter to the International Red Cross, signed by the father of a brother and sister of the dead and missing persons, was given wide circulation. On 25 February 1976 these two persons, Iván Renato Pérez Vergas and Mireya de Lourdes Pérez Vergas, were found murdered and their mother and her twelve-year-old child have since disappeared. Their present whereabouts remain unknown.

^{33/} Note verbale of 6 September 1976 from the Permanent Mission of Chile to the United Nations Office at Geneva (see annex XX).

^{34/} Julieta Ramirez appears on the list of detained persons presented to the Court of Appeals of Santiago on 28 May 1975 and to the Supreme Court on 4 July 1975. John Roderick (Juan Rodrigo) Mac-Leod Treuer appears on the list submitted to the Supreme Court on 5 September 1975. See paras. 248-250.

(f) Jaime Eltit

277. The Group heard testimony with respect to Jaime Eltit, who resided in Temuco, province of Cantin, and was 28 years old at the time of his disappearance. On 13 September 1973 Mr. Eltit was detained by the Topna regiment. After detention in the regiment barracks for three days he was transferred to a house at the corner of St. Ignacio and Avenida Nalta, Santiago. His wife spoke to him by telephone several times and as late as 28 September. On 6 October 1973 he was transferred to Temuco, where he was held incommunicado in the barracks of the regiment. However, during this time he was seen once by his lawyer and once by his brother. Upon inquiry to the authorities his relatives were shown an entry in a register bearing his signature to the effect that he had been released on 11 October 1973. However, according to the statement of a fellow prisoner, he was seen at the barracks on the night of 13 October suffering from a broken arm and leg. Mr. Eltit, before his detention, had conducted the legal defence of persons under accusation by the Army. His present whereabouts remain unknown.

(g) Felix de la Jara

278. According to testimony received by the Group, Felix de la Jara, a 26-year-old student, was detained in the street on 27 November 1974. On the same day his parents house was searched by persons identifying themselves as DINA agents. In February 1975 his parents spoke to a detainee at Tres Alamos, who informed them that she and Mr. de la Jara had been arrested together. She told them that he had been taken to a house on Iran Street known as the "Discoteque". In July 1975 the family received reliable evidence from an ex-detainee that Mr. de la Jara had been held with him in Colonia Dignidad, province of Linares. The Group also examined an affidavit from another ex-detainee attesting that he had been incarcerated at Tres Alamos with Mr. de la Jara. Two individual writs of amparo presented by the family had been denied. When the Court was requested to hear the testimony of the detainee who had been arrested with Mr. de la Jara, the Court advised that the witness would be heard if she came to the Court voluntarily. This was, of course, impossible since the witness remains under detention at Tres Alamos. Mr. de la Jara's name was also included in a massive recurso de amparo submitted by the Comité Pro Paz, to which no response was received. His name has since appeared on a list of persons reported to have been killed in Buenos Aires. His present whereabouts remain unknown.

(h) Other cases

279. Eduardo Ariste Vera Rivera, electrician, was arrested on Tuesday, 10 February 1976 at his home, Avenida Las Torres 2340, Conchali. No warrant of arrest was produced. He was first held in the Buín Regimental barracks, but his present whereabouts are not known. No copy of the arrest warrant has been sent to his family.

280. Jaime Manuel Zurita Campos, electrical engineer, was arrested on Friday, 13 February 1976, at about 10.30 a.m., at a house in Providencia, by agents of the DINA. The householder was shown a warrant of arrest for Jaime Zurita, stating that Mr. Zurita was to remain under arrest at that residence, but although he was arrested there, he was taken away and his present whereabouts are not known. Mr. Zurita had been arrested previously on 22 August 1974. After remaining incommunicado for two months he had been transferred to the Tres Alamos camp; he was released on

19 December as a result of the government amnesty of 160 prisoners. His name is on the official lists issued on that occasion.

281. Ulises Jorge Merino Varas, an employee in the Municipality of La Granja, was arrested in the street on Monday, 2 February 1976, at approximately 2.30 p.m. No arrest warrant was shown, and a colleague who was with him did not immediately realize that he was being arrested. The family was not sent a copy of the arrest warrant. A request for amparo was made to the Santiago Court of Appeals, but the Minister of the Interior stated that "he is not being held in custody". The family is waiting to hear from the Director of the DINA. The detainee's whereabouts are not known.

282. Haydee Oberreuter Umazabal, teacher trainee, was arrested on 3 February 1976 at Avenida C. Valdovinos 1460, San Miguel. No arrest warrant was shown, and her place of residence was searched without a warrant. The family was not shown a copy of the warrant of arrest, and their place of residence was also searched without an order to that effect. Her whereabouts are not known.

283. Bernardo Araya Zuleta and Maria Olga Flores-Barraza de Araya are a married couple; the husband is 67 years old and his wife, 61. They live in Calle Barros Luco 1220, Quintero, province of Valparaíso. Mr. Araya is a former Member of Parliament and a prominent union leader who was the first Secretary-General of the Central Unica de Trabajadores (Single Central Chilean trade union). Both were arrested on 2 April 1976 in their home. No order was shown or sent to their family. DINA officials arrested them, as well as Maria Olga's brother, Juan Flores Barraza, 59 years old, and three of the couple's grandchildren, who lived with them: Wladimir Henríquez Araya, 15 years old, Mikoska Henríquez Araya, 9 years old, and Eduardo Araya Dojas, 9 years old. At the same time the home was thoroughly searched although no warrant was shown. All the prisoners were taken to an unknown place. They were kept blindfolded for a long time; two of the children bear witness that their grandfather was tortured; they once could see him "hanging by the hands and moaning". Their grandmother had suffered from nervous shock, after which she was transferred to her husband's cell. It was the last time the children saw her. On 3 April, at 10 p.m., the three children and Juan Flores Barraza were set free, blindfolded, some five blocks away from the house where they had been arrested. A recurso de amparo was presented for the couple in the course of which the authorities stated that they were not detained. The present whereabouts of these persons is unknown.

284. Luis Emilio and Manuel Recabarren González, Manuel Recabarren Rojas, Navia Rosa Mena Alvarado. On 29 April 1976, a married couple, Luis Emilio Recabarren González and Rosa Mena Alvarado, were arrested on the street, together with their small son, who was later found by neighbours abandoned near his home. On the same day, Manuel Recabarren González and his father Manuel Recabarren Rojas were also arrested. To date, their whereabouts are unknown.

285. Eloy Ramírez Valenzuela, 44 years of age, married, two children, General Secretary of the Press Employees Federation, was arrested on 12 May 1976, at 3 a.m., by members of DINA, who carried out a careful search, took away several items, and failed to produce the corresponding orders. To date, his whereabouts are unknown.

286. In addition, the Group has recently received sworn testimony regarding the detention by Chilean authorities, and the subsequent disappearance, of the following

persons: Jorge Fuentes Alarcón, César Flores Baeza, Edgardo Enríquez, Arturo Enrique Hillerns Larrañaga and Bautista van Schouwen.

287. The special case of the disappearance of 16 children has been brought to the attention of the Group (see annex XXI).

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288. Over a considerable period of time the problem of missing persons has been brought to the attention of the Government of Chile both from within the country and by international organizations. Repeatedly, evidence has been presented tending to show that arrest and detention by official organs of the Government of Chile had taken place prior to the person's disappearance. Even when this factual information has been provided to the authorities it has been met with a refusal to undertake an appropriate investigation. The intention to investigate serious and well documented cases involving the disappearance of persons has been expressed by the Chilean authorities, but the Group has been unable to learn of any adequate investigation being undertaken, or of the conclusions of such an investigation. In the meantime, misery and anguish continue to plague the lives of the families of missing persons.

E. Difficulties encountered by lawyers and agencies engaged in defending persons detained in connexion with the state of siege

289. The evidence brought before the Group concerning the representation and defence of political prisoners tends to reveal that in matters relating to national security and detention of persons by the security authorities, the judiciary, under pressure of fear and cautious self-interest, fails to exercise its authority and that defence counsel are prejudiced by political considerations.

290. In an atmosphere of repression the defence of political causes has always been hazardous. Immediately after the coup of 1973 there were numerous defence lawyers; by 1974 their number had diminished to the point where, except for a nucleus of approximately 25 attorneys, none remained in Santiago who would undertake the defence of political prisoners. Of these 25, most were employed directly by the Comité de Cooperación para la Paz, while the others were associated with it to the extent of accepting referrals of cases. Persons in need of representation in connexion with alleged political activities had no place to turn for legal assistance other than the Comité de Cooperación para la Paz. The Group has therefore come to the conclusion that the arrest of 11 members of the Comité and its dissolution in October 1975 were occasioned by the fact that it was the only effective instrumentality for legal recourse.

291. The void created by the dissolution of the Comité de Cooperación para la Paz^{35/} has been substantially filled by the creation of the Vicaria de la Solidaridad. Although the Vicaria is solely a Catholic agency, while its predecessor had been oecumenical in nature, it absorbed most of the staff and functions of the Comité.

292. According to information received by the Group, there has been systematic harassment of attorneys engaging in defence of people detained in connexion with

^{35/} See E/CN.4/1188, para. 207 and annexes VI and VII.

national security. They have been isolated by their colleagues, and other clients have been intimidated into retaining more politically acceptable lawyers. Because of the special status of the Catholic Church in Chilean society, only those defence lawyers who operate under the aegis of the Vicaria retain a certain degree of personal and professional security and are able to carry on their work. Any lawyer not so associated has ceased to function in this field. It would be appropriate to mention here that, therefore, many lawyers are hampered in truly pursuing their profession.

293. But the harassment of even these defence lawyers continues. On 15 November 1975 José Zalaquett, chief counsel for the Vicaria, was arrested, together with another staff attorney. Mr. Zalaquett spent three months in detention without charges having been preferred against him. Several weeks after his release he met with three United States legislators, and 15 days later, on 12 April 1976, he was expelled from Chile.

294. Mr. Hernán Montealegre Klenner assumed the functions of Mr. Zalaquett, and continued on behalf of the Vicaria to represent persons arrested and detained in connexion with national security. On 12 May 1976 Mr. Montealegre was arrested, his office was searched and documents relating to his work for the Vicaria were seized. He remains in detention to date (see paras. 180-186).

295. Eugenio Velasco Letelier and Jaime Castillo Velasco were two of the five prominent lawyers who had presented to the General Assembly of the OAS in June 1976 a letter denouncing Chilean abuses and violations of human rights (see annex XXII). In a resolution adopted by the General Assembly of the OAS on 17 June 1976, the Government of Chile was requested to "... provide appropriate guarantees to persons or institutions that may provide information, testimony, or other types of evidence" to the Inter-American Commission on Human Rights. The delegation of Chile expressed its satisfaction at the adoption of this resolution.

296. Lawyers Velasco and Castillo, who had also publicly criticized the judiciary, and had attempted to enlist the support of the Bar Association in a campaign of judicial reform, continued to represent political prisoners.

297. On the basis of a special decree alleging subversion, but which, according to the Chilean press, contained no details of their alleged crimes for reasons of national security, these two prominent lawyers were seized in their offices, put on a plane for Buenos Aires and thus summarily expelled from Chile on 6 August 1976. A description of the violent manner in which these persons were arrested is found in paras. 429-430. A medical certificate received by the Group concerning the physical condition of Dr. Castillo supports the evidence of the violent treatment which he suffered.

298. The public outcry against the expulsion of lawyers Castillo and Velasco was unprecedented.^{36/} Despite such eloquent public protest, they are compelled to

^{36/} In this connexion see the letter of 18 August 1976 protesting the expulsion of Mr. Castillo and Mr. Velasco sent to the President of the Supreme Court by 300 leading Chilean citizens, including former President Eduardo Frei (annex XXIII). Similarly, see the letter of 18 August 1976 protesting the expulsion of these two lawyers sent to the President of the Supreme Court by 10 prominent Chilean professors of law (annex XXIV).

remain in exile.^{37/} Their expulsion not only diminishes by two the ranks of available defence counsel but must necessarily have a further intimidating effect on lawyers in Chile. It is to be noted that Mr. Castillo, Mr. Zalaquett and Mr. Montealegre are observant Catholics and therefore closely connected with the work of the Vicaria and that Mr. Velasco is not a member of any political group which might be regarded as having a revolutionary character.

299. Similar problems exist in other parts of the country. According to information received by the Group, Mr. Raul Barraza, head of the Judicial Assistance Service of the Colegio de Abogados of Valparaiso, formerly associated with the Comité de Cooperación para la Paz, was visited by agents of the DINA at his offices at the Colegio on 12 May 1976. Mr. Barraza was interrogated as to the details of his activities, specifically his defence of political prisoners. His interrogators advised him that the object of the visit was to compile data for the DINA.

300. Mr. Barraza is an eminent lawyer with many years of practice and without any political affiliations; he is known to be "right wing". He continues to defend political prisoners on behalf of the Colegio, as well as other persons who seek his assistance - all done gratuitously. On 1 June he joined a team that was being organized for similar purposes in the office of the Bishop of Valparaiso.

301. The right of a person in legal jeopardy to have available adequate means to assert his defence is a basic human right. An independent judiciary and competent counsel, able to function without regard to the political implications of their endeavours and certainly without concern for their personal security, are indispensable. In a situation of a state of siege, where admittedly large numbers of persons are arrested and detained in connexion with national security and where moreover the legal system provides for individual recourse, the availability of defence counsel to political prisoners is vital. From the oral and documentary evidence received by the Group, it must conclude that the systematic harassment of persons and agencies who have undertaken to protect and defend accused persons and the intimidation, arrest and expulsion of lawyers who have persisted in these efforts has severely curtailed the right of the accused to an adequate defence.

^{37/} A copy of the petition presented by Mr. Jaime Castillo Velasco to the Court of Appeals with respect to the recurso de amparo presented in connexion with his expulsion appears in annex XXV.

V. TORTURE AND CRUEL, INHUMAN AND DEGRADING TREATMENT

A. The institutionalized practice of torture

1. General considerations

302. The Ad Hoc Working Group in its previous report recalled the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Standard Minimum Rules for the Treatment of Prisoners. The Group also described the principles and measures set out in the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the General Assembly adopted by resolution 3452 (XXX) of 9 December 1975. ^{1/}

303. It will be recalled that in its resolution 3 (XXXII) of 19 February 1976, the Commission on Human Rights, recalling General Assembly resolution 3452 (XXX), expressed "its profound distress at the constant, flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment ... which have taken place and, according to existing evidence, continue to take place in Chile". The Commission reaffirmed its condemnation of all forms of torture and cruel, inhuman or degrading treatment or punishment, and appealed "to the Chilean authorities to take, without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile is a party, and to this end to ensure that ... adequate measures are taken to end the institutionalized practice of torture and other forms of cruel, inhuman or degrading treatment or punishment in full respect of article 7 of the International Covenant on Civil and Political Rights". The Economic and Social Council, by resolution 1993 (LX) of 19 May 1976, called upon all Governments fully to observe and implement the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in its resolution 3452 (XXX).

304. More recently, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its twenty-ninth session, expressed in its resolution 3 B (XXIX) of 31 August 1976, inter alia, its profound distress at the constant, flagrant violations of human rights in Chile, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest and subsequent disappearance, detention and exile; urged once again the Chilean authorities to take, without delay, all necessary measures to restore and safeguard human rights in full compliance with the International Covenant on Civil and Political Rights, to which Chile is a party, to stop torture and cruel, inhuman or degrading treatment, arbitrary arrests and subsequent disappearances, and persecution for political reasons, and to free all persons still detained without a charge brought against them or arrested for

^{1/} A/10285, para. 185, E/CN.4/1188, para. 127.

political reasons; and deemed it also important for the Commission on Human Rights "to pay special attention to the serious abuses committed by the State security agencies of Chile, particularly by the DINA, often in collaboration with similar agencies of other countries".

305. The Government of Chile has always claimed that torture was not officially authorized, that on the contrary it was against Chilean law and that the "isolated" offenders were treated with due severity. It was also stressed that with the issuance of supreme decrees No. 187 of January 1976 and No. 146 of February 1976, the Chilean legal order contained new significant provisions intended to protect the life and personal integrity of prisoners held under the state of siege.

306. Supreme decree No. 187 contains provisions concerning medical examination of persons detained, written orders for arrest and searches, authorized places of detention, and visits of inspection by the President of the Supreme Court and the Minister of Justice to these places. The provisions of supreme decree No. 187 are dealt with in detail in chapter IV, paragraphs 122-130.

307. In particular, article 9 of supreme decree No. 187 provides, concerning reports of irregularities observed during visits to the places of detention, that the competent authorities "shall, within 48 hours, order a judicial inquiry in which the proceedings shall be based on the charge made by the President of the Supreme Court, the Minister of Justice or the official appointed by the latter, with a view to determining responsibility and applying the appropriate penalties". In this connexion, the Government of Chile has drawn the Group's attention to the fact that up to 31 May 1976 the military courts had instituted 153 proceedings involving various abuses of authority; as of that date 41 persons had been sentenced and decisions were pending in 50 cases; and in 62 cases proceedings were stayed. ^{2/} On the other hand, taking into account, firstly, that article 18 of the Chilean Constitution prohibits the use of torture and ill-treatment and that article 1 of decree-law No. 1009 of 5 May 1975 states that they shall be sanctioned in conformity with articles 150 of the Penal Code and 330 of the Code of Military Justice; secondly, that according to the evidence submitted to the Working Group the number of persons who have been either tortured or subjected to cruel, inhuman or degrading treatment would amount to several thousands; thirdly, the great number of denunciations submitted to the Chilean authorities by the persons or families affected by such acts; and fourthly, that the figures provided by the Chilean Government do not indicate the official or non-official or military status of the persons accused, sentenced or absolved, nor the crimes which they committed or of which they were accused, nor the penalties imposed on those who were sentenced, the conclusion would be that the number of cases of torture or cruel, inhuman or degrading treatment leading to the initiation of criminal procedures by the Chilean authorities is extremely small when compared with the number of cases or denunciations. On the basis of the information provided by the Chilean Government, the Group is unable to accept that the provisions mentioned above have had the effectiveness claimed by the Government of Chile.

^{2/} Note verbale dated 25 August 1976 from the Permanent Mission of Chile to the United Nations Office at Geneva addressed to the Chairman of the Ad Hoc Working Group (see annex XV).

308. As stated above (para. 130), supreme decree No. 146, complementing the provisions of decree-law No. 1009 and supreme decree No. 187, designated the places and establishments of detention in which persons arrested under the provisions of the state of siege should be detained.

309. Statements made by the Director of the Vacaria de la Solidaridad of the Archdiocese of Santiago and the Secretary-General of the International Commission of Jurists illustrate some of the preoccupations concerning the matters dealt with above. Shortly after the issuance of supreme decree No. 187, Father Christian Precht Bafiados declared that: "Torture exists at present in Chile. It is lamentable, but it exists." 3/ In February 1976, Mr. Niall MacDermot spoke on this subject before the United Nations Commission on Human Rights; the following is an excerpt from the summary record of the meeting:

"... Article 3 of the decree [supreme decree No. 187], dealing with arrest procedures, provided that no arrests could be made by the security authorities under the state of siege without the written authority of the head of the security organization effecting the arrest. A number of comments could be made. Firstly, the article dealt only with people who were arrested pursuant to the state of siege; many people were arrested and ill-treated by the security authorities under other powers ... The decree offered no protection in such cases. Secondly, the article appeared to be outside the competence of the Minister of Justice. Under the Constitution, the power to authorize arrests under the state of siege was conferred on the President alone. The Junta's decree-laws Nos. 228 of January 1974 and 951 of March 1975 purported to extend the power to the Minister of the Interior and the local governors respectively. The Minister of Justice could not by his decree extend that power to the heads of the security organizations. Thirdly, the new provision was no protection in itself against ill-treatment. There was nothing in it to suggest that the security authorities would not continue to hold suspects incommunicado for long periods, and no sanction was provided if they did so. It was that practice which made possible the torture and ill-treatment of suspects.

"Article 1 of the decree provided that persons arrested by the security authorities must be medically examined before being taken to an interrogation or detention centre and again before being transferred or released. The doctors, who were to be designated by the medical legal services and the national health service, were to render reports to the Minister of Justice. Experience had shown that it was doubtful whether the article would be applied in practice. Firstly, it had long been the law that no suspect could be arrested under the state of siege except by written mandate of arrest signed by the Minister of the Interior, but the decree in question had simply been ignored and illegal arrests had continued. Secondly, an examination by an official doctor on such occasions was unfortunately unconvincing. Thirdly, the examinations would obviously reveal nothing if the security authorities were able to hold the suspects incommunicado until all traces of torture or ill-treatment had disappeared. Lastly, as long as detainees remained in the hands of the security authorities, they were afraid to tell anyone of their tortures for fear of further torture ..." (E/CN.4/SR.1353, paras. 40, 41).

3/ Inter-American Commission on Human Rights, "Second Report on the Situation of Human Rights in Chile" (Organization of American States, 28 June 1976), p. 125.

310. An essential element of the problem is that in June 1976, the Chilean Supreme Court ruled that holding prisoners incommunicado by virtue of the state of siege "is not a matter comprised within the realm accorded to recurso de amparo by the Constitution and the law". This voluntary abdication by the Supreme Court of the full exercise of its attributions eliminates an important barrier to the holding of political prisoners without the possibility of judicial review, in conditions which, according to the evidence provided to the Group, lead in many cases to the practice of torture.

311. Since the submission of its report to the Commission on Human Rights at its thirty-second session, the Ad Hoc Working Group has received some information to the effect that torture and other cruel, inhuman or degrading treatment or punishment has diminished quantitatively in Chile. However, the evidence before the Group indicates that, though the number of political prisoners being subjected to torture may have decreased, the intensity of repression on a selective basis has increased. Thus torture and other cruel, inhuman or degrading treatment or punishment still reach deeply into many levels of Chilean life, and methods of terror subsist, resulting in an increasing number of instances of death and assassination. Furthermore, from the evidence before the Working Group, it is clear that the number of persons who have disappeared has been on the increase since the Group submitted its report to the General Assembly.

2. Methods of torture

312. The evidence before the Group confirms the statements made in its previous reports that when a person is arrested by the DINA, he is immediately put into a vehicle, where he is tied up and blindfolded. During the trip to the interrogation centre, the security agents begin what they call the "softening-up treatment" which allegedly consists of cigarette burns, karate blows or blows with short sticks or gun butts.

313. The Group is informed that at some interrogation centres, the prisoners are sometimes taken to the "parrilla" ("grill"); the prisoner is tied to a metal bed and electric current is applied to his body, usually to the chest, breasts, tongue and sexual organs, during two-hour sessions. A few cases of death have been reported as a result of this method. Only later does the interrogation begin and it can last for several hours.

314. In its previous report the Working Group presented ample evidence regarding torture practices used during interrogation. Only a few witnesses made oral statements to the Group concerning torture practices during the period covered by the present report. Nevertheless, it was clear that the methods described in the previous report are still used; besides ill-treatment in the form of beatings, mainly electric shocks are utilized. The Group is however of the opinion that psychological methods of torture, including the use of drugs, have come into systematic use. It was reported that hard drugs were usually given for several days to force disclosure of information; they were then stopped abruptly to induce withdrawal symptoms. When these symptoms appeared, the prisoners were interrogated. This and similar methods were described before the XXI International Congress of

Psychology, which took place in Paris in July 1976. 4/ In one case it was stated that psychological pressure was exercised, with the help of doctors, creating fear and anxiety, in order to depersonalize the victim. Attempts at hypnosis have also been reported.

315. Furthermore, the Group has received written evidence from most reliable sources covering the first semester of 1976, based in some cases on information from persons currently in detention. This information describes the following methods of torture as being frequently applied during interrogation in the course of the first part of 1976:

(a) The "submarino" ("submarine"). The detainee is bound hand and foot and lowered into a drum of nauseating liquid (urine, sewage water, petroleum), thereby provoking temporary asphyxiation. This method is said to have been applied in Villa Grimaldi utilizing a swimming pool attached to this centre;

(b) The "paloma" ("pigeon"), which consists in tying the prisoner's hands behind him, then hanging him up by them; his feet are often also tied. Then the prisoner is beaten or given electric shocks. This method is also used with the prisoner suspended in a tub or in the pool at Villa Grimaldi, and electric current is applied to the water;

(c) Driving vehicles over the hands and feet of prisoners, causing multiple fractures, or over other parts of the body, causing death;

(d) Programmed beating in one part of the body to cause insanity: constant beating of the head, armpits, bare feet, groin;

(e) Sexual outrages, including rape and the use of animals specially trained for sexual depravation;

(f) Pau de Arará. This consists of tying the hands and feet together and hanging the prisoner from a stick with his calves tightly bound to it. The prisoner is turned and electric shocks and blowtorch flame are applied to genitals, mouth, head, etc., and blows to all parts of the body;

(g) Applying alcohol and electric shocks to torture or gunshot wounds;

(h) Breaking bones of the fingers, feet, arms and legs with blows or "levers";

(i) Acid burns on the eyes, testicles, vagina or other parts of the body;

(j) Forced ingestion of vomit;

(k) Electric shocks in a chair. This method is allegedly commonly used because it is quick and easily applied. Prisoners' homes and places of work are often used. Some detainees who were arrested in January 1976 were reportedly tortured in this way on the premises of the Santiago taxi drivers' union;

4/ Le Nouvel Observateur, No. 612, (août 1976), pp. 29-31.

(l) Special booths which are smaller than a telephone booth and barely large enough to hold a seated person. The prisoner, in chains, is left in the booth for an indefinite period of time and taken out for interrogation or further torture;

(m) Cold-blooded extraction of teeth;

(n) Pulling the nails from fingers and toes, and burning the most sensitive organs of the body with cigarettes or directly with fire;

(o) Simulated hanging or firing squads;

(p) Psychological pressure, such as arresting and torturing the prisoner's immediate relatives, in particular his wife and children. The children are sometimes later placed in Carabinero orphanages.

316. A further indication of the kind of conditions political prisoners live under is the reported existence of a system of corporal punishment to which they are subjected as a usual practice in some detention camps, notably Puchuncaví. In the recent information conveyed to the Group, it would appear that there is a form of punishment known as the picadero, which involves exceptional maltreatment of the prisoners, individually or collectively, until they reach exhaustion point, all the while being threatened by the loaded rifles of the soldiers. They may be punched and kicked or thrown into tanks of water after they have been dragged naked from their cells in the middle of the night. Other "minor" punishments include forced labour inside and outside the detention camps, and the plantón, where the prisoner is made to stand in the sun for hours until he drops from weakness.

317. The attention of the Group was drawn also to the militarization to which political prisoners have been allegedly subjected. This has become yet another element of psychological pressure and has led in many cases to mental disorders. For example, one of the military practices is the reportedly regular holding of zafarranchos, a form of manoeuvres consisting of a simulated defence of the camp against an imaginary attack from outside. The mock battles begin with shooting, at which the prisoners are obliged to keep absolutely still, wherever they are, for a long time, knowing that at the slightest movement the machine-guns will open fire; the lights are turned off and the soldiers run about with their loaded rifles aimed at the prisoners.

318. Furthermore, detainees are subjected to threats by the camp guards, the most frequent threats being that they will be sent to the interrogation centres of the Naval Intelligence Service or of the Dirección de Inteligencia Nacional (DINA), that other members of their family will be arrested, or that the internal discipline in the camp will be tightened up. In some places of detention military exercises involving shooting from the watchtowers or from no-man's-land with blank cartridges and the habit of some camp commanders of shooting down dogs as they run between the prisoners' barracks add to the general climate of fear and mental pressure. The situation is made worse by the presence of officers known to have been torturers in other places who do week-long periods as camp commander.

319. The attention of the Group has also been drawn to another element of pressure: the conditions that surround the visits of members of the prisoners' families to the camp. After several hours of travel, visitors have to wait outside in all kinds of weather for lengthy periods of time before seeing the prisoners. Before they are

let in, they sometimes allegedly suffer rough and insulting treatment by the guards. The fear that members of their families may be subjected to ill-treatment adds to the psychological stress which is difficult for the prisoners to bear.

320. Families are exposed to other adversities; for instance, they cannot collect the debts or benefits owed to the persons who have been detained. In some cases, especially in rural areas, the family is threatened with the loss of its home because the head of the household is absent owing to circumstances beyond his control and housing has been part of his salary. These poverty-stricken families suffer the scourge of misery, resulting in malnutrition and infantile mortality. Moreover, having been collectively stigmatized as "dangers to national security", they are prevented from working even if they succeed in finding employment. The Group has been informed that the DINA systematically contacts employers and informs them if an applicant is politically approved or not. Such families are therefore often reduced to economic ruin, and the psychological effects are even sadder: many people slowly lose all emotional stability because of the terrible uncertainty surrounding their loved ones.

321. The attention of the Group has been repeatedly drawn to the prevailing climate of mental torture imposed upon those who live under a constant threat of arrest, such as leaders and workers in church, teacher or student organizations, political parties, or trade unions. Even more demoralizing is the condition of those persons who, having been detained and subsequently freed, live under the threat of rearrest.

3. Places and establishments of detention

322. The Group listed in its previous report (E/CN.4/1188, para. 129) places and establishments of interrogation and detention. As mentioned in chapter IV above, the following three have been designated by the President of Chile (by supreme decree No. 146) as being the places and establishments of detention to which persons detained under the state of siege shall be taken and in which they shall stay: Puchuncaví, in the commune of the same name, province of Valparaíso, Region V; Tres Alamos, in the town of Santiago; and Cuatro Alamos, in the town of Santiago. The President of Chile also decreed that Chilean police stations and premises of the Department of Investigation may also serve as places for temporary detention of such persons, for as long as is strictly necessary before sending them to Puchuncaví, Tres Alamos and Cuatro Alamos.

323. The evidence before the Group attests to the following treatment of political prisoners in the three establishments of detention designated by the President of Chile.

Puchuncaví

324. Puchuncaví camp is located on the edge of the town of Puchuncaví, in Valparaíso province, and is under the control of the Navy. Repressive practices are allegedly used in it to strengthen the militarization of the prisoners, who have to clean the bathrooms and toilets of the guard barracks and the buildings of the Marine Infantry. They have to sing military anthems several times a day. There have reportedly been frequent and severe massive reprisals, "clearing for action", and "clubbing" in which detainees have been forced under armed threat to fight among themselves.

325. As an example of the practices in this camp, the Group was told of one instance of "clearing for action". A "state of alert" was declared for the guards who, in complete darkness, under the leadership of their commander and wearing hoods, went through the prisoners' cells destroying their belongings and facilities, taking prisoners out and beating them with rifle butts and other instruments. Many prisoners were tortured with lighted cigarettes and thrown into water tanks or pushed against barbed wire fences, apparently in order to be able to fire on them under the ley de fuga (law of escape). They were also forced to fight among themselves and to bark and grovel on the ground like dogs. All this took place during generalized shooting and grenade and mortar explosions.

326. Other practices have been suspension of visiting rights, restriction to cells during the day, and interrogation before officials who have come expressly for that purpose.

327. In May 1976, an unofficial survey was made of 200 political prisoners at Puchuncaví, about 4 per cent of whom were minors. The survey showed that 177 of the people questioned, or 88.5 per cent, had been tortured physically and that 168, or 84 per cent, had undergone "psychological treatment". Of the 200 surveyed, 153 had been arrested by the DINA.

Tres Alamos

328. Tres Alamos is located on Uno Street No. 5359. The Secretaria Ejecutiva Nacional de Detenidos (SENDET) is directly responsible for this camp, and has placed the Carabineros in charge of its supervision. One of the buildings in Tres Alamos camp - building No. 3 - is known as Cuatro Alamos (see below, paras. 335-336) and is under the supervision of the DINA.

329. The Group has been informed that persons visiting prisoners who have visiting rights are subject to constant acts of repression by carabineros and members of the DINA on visiting days. It is reportedly quite common to see arrests made of visitors waiting on line. Also, visitors can be made to wait standing for hours in the open in the rain or heat or cold and searched or frisked by threatening guards. Visitors are also arbitrarily denied visits when the guards are "not in the mood", and guards sometimes take for themselves the food which visitors bring to complement the scarce rations provided in the camp.

330. Evidence before the Group indicates that the former administration of the Tres Alamos camp under Carabinero Colonel Conrado Pacheco Cardenas, allegedly perpetrated systematically all kinds of vexatious and inhuman treatment on the political prisoners and all kinds of abuses upon family members waiting to visit them. Any pretext could bring about the loss of visiting privileges for up to one month as punishment. This was accompanied by corporal punishment consisting of beating the detainee and holding him incommunicado for 10 days or more with little food and water in a dark, damp, poorly ventilated room in the cellar called "el chucho" by the political prisoners. Common criminals were mixed with the political prisoners as a means of creating conflicts. These criminals also served as informers with regard to everything that took place within the buildings.

331. An example that was cited to the Group of the treatment to which political prisoners have been subjected was the punishment given to 67 prisoners in building No. 1, for holding a spontaneous farewell party for a fellow prisoner who was

leaving to go into exile abroad. The 67 prisoners had their visiting privileges taken away from them for two weeks and were obliged to perform forced labour for one week. For the same reason 10 prisoners were beaten (one of them suffering a fractured jaw) and subsequently held incommunicado, among them a member of the "council of elders" of the building. Colonel Pacheco personally took part, assisted by his subordinates, in beating prisoners with an iron bar covered with rubber, kicking them and applying other physical punishment.

332. The Group was informed that setting up "councils of elders" among the political prisoners was not an easy task in Tres Alamos. The difficult struggle undertaken by the prisoners was answered by Pacheco with beatings and repression at every level of internal organization. After the few occasions on which they were able to converse with him, the representatives of the prisoners were punished, held incommunicado in "el chucho" or interned in Cuatro Alamos to be turned over to the DINA.

333. Many of the prisoners who passed through Tres Alamos camp were physically punished by Colonel Pacheco, who is reportedly at present performing police duties in the southern part of the country. Carabinero Major Domingo Zabaleta assumed command when Pacheco was relieved of his functions in Tres Alamos. This officer was allegedly Pacheco's right-hand man in his repressive activities in this camp.

334. The new administration in Tres Alamos introduced certain improvements in the living conditions of the political prisoners. Nevertheless, the prevailing concept of repression appears to have been maintained.

Cuatro Alamos

335. Cuatro Alamos is a large building consisting of several rooms for persons held incommunicado and cells for detainees, which are very small and are usually equipped to accommodate 5 prisoners, although there are often 9 or 10 prisoners in each. The personnel includes a commander, a doctor and some 12 armed guards. An officer with the rank of Captain named Vergara is in charge of Cuatro Alamos and works with the guards, who have become known for their ferocity in abusing prisoners. The doctor, known to the prisoners as "el Brujo", uses hypnosis, pentothal or other chemical drugs to try to make prisoners talk, or to make them forget the period when they were subjected to torture or held incommunicado.

336. Cuatro Alamos seems to have been originally designed to serve as a centre for holding prisoners incommunicado, and as a transition between the different places of torture and areas where prisoners can speak freely among themselves, that is, as a place where prisoners can recuperate from the torture they have undergone in torture centres. However, when other torture locations are filled with prisoners, Cuatro Alamos also appears to operate as a torture centre. A parrilla is allegedly installed in the guard room and ice-cold showers are also said to be used as punishment.

337. Information received by the Group points to the continued use of other places of detention where torture is practised. A list of those places is given in chapter IV above (see para. 205).

B. The specialized organs of State security

1. General considerations

338. In the opinion of the Working Group, the foregoing report about torture and other cruel, inhuman or degrading treatment or punishment to which political prisoners are subjected is linked with the question of who exercises these kinds of repression which the Group has considered as "the institutionalized practice of torture". The Group has come to the conclusion that the acts of repression are mainly imputable to the specialized organs of State security. The Working Group has received ample written and oral information from credible sources about the organization of State security, and in this section will study this problem in more detail.

339. The Ad Hoc Working Group examined in its previous report the question of the specialized organs of State security (E/CN.4/1188, para. 43). Since the submission of that report the Group has received further information to which special attention will be given below.

340. The intelligence services in Chile which have been known as supporting elements of the different branches of the armed forces and the Carabineros are the following: the Servicio de Inteligencia Militar (Military Intelligence Service) (SIM); the Servicio de Inteligencia Naval (Naval Intelligence Service) (SIN); the Servicio de Inteligencia de la Fuerza Aérea (Intelligence Service of the Air Force) (SIFA); and the Servicio de Inteligencia de Carabineros (Carabinero Intelligence Service) (SICAR). Other special security organs are the Dirección de Inteligencia Nacional (National Intelligence Agency) (DINA) and the Servicio de Inteligencia Regional (Regional Intelligence Agency) (SIRE).

341. According to the information received by the Group, the SIFA has been directed by Air Force Commander Edgardo Ceballos. His usual work methods are said to consist of subjecting detainees to long periods of solitary confinement, during which they are deprived of food and water. He has also used psychological pressure, such as threats of execution by firing squad of the detainee or his closest family members; providing simulated opportunities of escape through voluntary "carelessness" on the part of guards, with attempts to murder detainees who might try to get away; placing detainees incommunicado in small sheds facing a gallows, and forcing detainees to drink supposed poisons. Dr. Bautista van Schouwen Vasey, whose case was analysed by the Group in its previous report (ibid., para. 104), was arrested and allegedly subjected to savage torture by SIFA, which resulted in his being transferred to the Naval Hospital of Valparaíso partially paralyzed, with his spinal column broken.

2. The DINA

342. The DINA is the organization which allegedly has assumed responsibility for selective repression. Its functions, according to the preambular provisions of decree-law No. 521, which established it, consist in giving the Government of Chile "immediate and permanent assistance ... to provide it with the systematic and duly processed information it may need to do justice to its decisions in the field of national security and development". Article 1 describes the DINA as a military organ of a professional and technical character, "whose mandate shall be to gather

at the national level all information originating in various fields of action for the purpose of producing the intelligence required for the formulation of policies, planning and adoption of measures to protect national security and the country's development".

343. Members of the DINA are prohibited from appearing in law courts even if summoned, and the Supreme Court and the court of appeal accept reports from the Minister of the Interior based on statements made by the DINA. The DINA does not report to the judiciary nor does it account to it for its actions, as manifested in official communications from the DINA to the court of appeal which were brought to the attention of the Group.

344. The effectiveness of the DINA's intelligence work is based almost exclusively on methods of torture as a means of obtaining information and on physical annihilation as a means of eliminating embarrassing witnesses or evidence. Each member of the DINA uses, in addition to the methods of torture obviously resulting from special training, his or her own impulses or "imagination" where torture is concerned. The Group has already described in section A above some of the most common methods of torture used, especially by the DINA, in dealing with political prisoners.

345. The vast majority of the staff of the DINA are active members of the various branches of the armed forces or the Carabineros, but civilians may also be incorporated in the service by a supreme decree of the Minister of Finance; these civilians often have criminal records - as in the case of Oswaldo Romo, which was analysed by the Group in its previous report (ibid., paras. 139-140).

346. The attention of the Group has been drawn to a submission to the Supreme Court by relatives of 14 persons (whose names appear in the next paragraph) who were arrested under the powers vested in the President of the Republic during the state of siege. These detainees had been induced to sign a "contract of employment" with the DINA. The detainee signing such a contract became an official of the Ministry of Defence with the function of auxiliary agent for the DINA. Having thus become a member of the armed forces, he would be tried by a military tribunal applying war-time military procedures if any charges were brought against him. Some of them were made to sign another document in which they declared their loyalty to the Government and undertook to perform functions such as denouncing anti-patriotic persons they knew.

347. The list of detainees who signed the contract or the declaration referred to above is as follows: Edwin Patricio Bustos Streeter, arrested on 10 September 1975, detained at Cuatro Alamos; Jose Miguel Moya Raurich, arrested on 25 October 1975, detained at Cuatro Alamos; Oscar Patricio Orellana Figueroa, arrested on 28 November 1975, detained at Cuatro Alamos; Eduardo Francisco Reyes Ortiz, arrested on 26 December 1975, detained at Cuatro Alamos; Carlos Raul Gonzalez Anjari, arrested on 26 December 1975, detained at Cuatro Alamos; Ivan Parvez Alfaro, arrested on 26 December 1975, detained at Cuatro Alamos; Hugo Sinesio Urrestarazu Silva, arrested on 31 December 1975, detained at Cuatro Alamos; Gabriela del Carmen Salazar Rodriguez, wife of Hugo Sinesio Urrestarazu Silva, also detained at Cuatro Alamos; Oscar del Transito de la Fuente Muñoz, arrested on 2 January 1976, detained at Cuatro Alamos; Guillermo Lebrecht Diaz-Pinto, arrested on 5 January 1976, detained at Cuatro Alamos; Claudio Eugenio Blanco Toledo, arrested on

19 January 1976, detained at Cuatro Alamos; Juan Ernesto Segura Aguilar, arrested on 4 December 1975, detained at Tres Alamos; Renato Huerta Mondaca, arrested on 27 December 1975, detained at Tres Alamos; and Tulio Valenzuela Jimenez, arrested on 24 February 1976, detained at Tres Alamos.

348. The DINA carries out most of its work in secret. This allows it to resort to extrajudicial interrogation based on duress and to commit all types of other abuses, such as sacking the homes of its victims, indulging in economic blackmail and other similar acts.

Organization and operations of the DINA

349. The head of the DINA is Colonel Manuel Contreras Sepúlveda, of the Army, who previously commanded a regiment at Tejas Verdes, where there is said to be one of the most ill-famed centres of torture in Chile.

350. There is a major administrative centre, known in the DINA as the "CG", for Cuartel General (general headquarters), located in Marcoleta street (in the former offices of the Chilean Communist Youth). The high command of the DINA is believed to operate from these premises, and the office of Colonel Contreras is also believed to be situated there.

351. It has been reported that the DINA maintains auxiliary offices in some European countries.

352. In Santiago, one of the DINA's main centres of operation is the Villa Grimaldi. This is a mansion located in Jose Arrieta street, near Tobalaba, approximately 1,000 metres towards the Cordillera de los Andes beyond the Canal San Carlos. Seen from outside, it is a plot of 5,000 to 10,000 square metres surrounded by a brick wall (2.5 metres high) topped with barbed wire; the only entry is an iron gate.

353. In his oral testimony before the Ad Hoc Working Group, Mr. Joseph Eldridge, who accompanied three members of the House of Representatives of the United States of America, Mr. Toby Moffat, Mr. Tom Harkin and Mr. George Miller, on their visit to Chile in March 1976, described their attempt to visit Villa Grimaldi. He further stated that they were not allowed by the authorities of Villa Grimaldi to enter it.

354. Villa Grimaldi, or "the palace of laughter", as this centre is known to many persons, houses most of the DINA's organization and a communications centre. The communications centre includes antennae and equipment for high frequency communication, which makes it possible to communicate with people throughout the world, as well as VHF antennae and equipment, which makes possible rapid communication between the centre and the President of the Republic, and with vehicles and operating groups in action. It is the DINA's largest torture centre and at times has allegedly held between 120 and 150 political prisoners.

355. The outstanding features of the detention area of Villa Grimaldi are the following: a prisoners' area, a workroom, accommodation for staff, a parrilla area, guardhouses and bathrooms, tiny cubicles smaller than telephone booths where prisoners are locked up with their hands and feet tied, the tower for special tortures and punishment, and the pool, which is used for torture.

356. Although the physical premises used by the DINA may vary from time to time, the functional structure is generally the same, consisting of several sections. These sections, to which reference is made below, may all operate from the one focal point of the Villa Grimaldi, or some may operate from other points - but, if so, no information on this has as yet been obtained by the Group.

357. Villa Grimaldi, whose code name is said to be "Terranova" centre, is under the authority of a lieutenant-colonel. The officer-in-command of "Terranova" up to February 1975 was Army Lieutenant-Colonel "Rodrigo". As from March 1975 the officer-in-command has been Army Lieutenant-Colonel Marcelo Moren, known as "el Coronto" or "el Oso". He occasionally likes to be called "Don Marcelo".

358. "Terranova" is thought to consist of four sections, but the names of only two of them are known. The code names of the two sections known are Caupolican and Puren. The Caupolican Section consists of four units: Halcon, with two sub-units; Aguila, possibly also with two sub-units; Vampiro; and Tucan. Each section is headed by a major (or a captain of high seniority) and is under the direct orders of a warrant officer, sergeant or corporal. In charge of a section believed to be concerned with records and analysis of information is an Army major known as Major "Ubilla". Most if not all of the officers in command at "Terranova" - and in general the majority of the DINA officers - use first names (real or false).

359. Since May 1975 the senior officer in charge of the Caupolican Section has been Captain Miguel (his real name is Miguel Marchenko). He also acts as officer in charge of Halcon sub-units 1 and 2. Up to mid-1975, the Aguila Unit was under the command of a Lieutenant of Carabineros known as "Roberto" or Lieutenant "Cachete"; his name may be Roberto Lorenz, or at least Lorenz may be his surname. The Tucan Unit was under a Lieutenant of Carabineros known as "Marcos" (it is not certain whether that is really his first name). The Vampiro Unit was led by a very young Army Lieutenant known as "Pablito". The following particulars on the officers mentioned above have been reported to the Group:

(a) Army Lieutenant-Colonel "Rodrigo" has been directly responsible for innumerable atrocities. Compared to others, however, he was regarded as "soft" (he may have "softened" the application of the methods of torture a little; at least, it was during his time that the rules for torture are believed to have been drawn up). As indicated above, he left the "Terranova" command in March 1976. He had and still has very good relations with Captain Miguel Marchenko.

(b) Army Lieutenant-Colonel Marcelo Moren has been engaged in repressive activities since 11 September 1973. Hard and violent, he usually interrogates and tortures detainees personally. Very probably left Chile to interrogate Jorge Fuentes Alarcón (a member of the Central Committee of MIR) who was detained in another country in 1975.

(c) Major "Ubilla" takes no part in operational activities but in some of the interrogations.

(d) Army Captain Miguel Marchenko was a lieutenant in the Military Academy and teacher of ethics up to September 1973. During the coup d'état itself, he took part in the attack on the home of the President of the Republic in Tomás Moro. He was subsequently promoted to captain. He and his operational unit Halcon are responsible for most of the arrests, deaths and torture that have taken place.

Miguel Marchenko is also hard and violent, but always tries to conceal this from detainees. He allegedly pretends to be opposed to torture and unhappy at having to use it, but justifies it as "indispensable" to achieve his ends and applies it mercilessly.

(e) Lieutenant Lorenz, "Roberto" or Lieutenant "Cachete" is extremely ruthless and cruel. He and his unit have allegedly been responsible for the worst thefts and atrocities committed in the DINA. He gives the impression of being very corrupt, and it is almost certain that he shares in the thefts committed when searches are made under his orders. He is thought to be connected with the activities of the DINA in "Colonia Dignidad".

(f) Lieutenant "Pablito" is an Army officer. He tortures with great cruelty and arrests people indiscriminately. Every operation directed by him means dozens of arrests, including whole families. Among many other things, he is allegedly responsible for the murder in Valparaiso of Alejandro Villalobos, a community leader who was apparently walking in the street when he was shot down at point-blank range.

360. The operational units of the Caupolican Section are mainly composed of personnel from the Carabineros (ranging in rank from lance-corporal to warrant officer); a few are from the Army. Their ages vary from 30 to 45 years. Each unit has four to six persons in it (including the warrant officer). It has a vehicle with a radio and each person is armed. (The regulation small-arms are Spanish .38 revolvers, though pistols of various makes and calibres are issued.) One or two "Aka" machine-guns are also carried in each vehicle. A woman forms part of each operational unit. All of these women are very young (18-20 years of age) and allegedly are the product of courses given by the Carabineros and the Navy for female personnel.

361. Halcon Unit-1 allegedly consists of four persons: "Troglo" ("Ogre") who is the chief of the sub-unit, Osvaldo Romo, "Pulgar" ("Thumb") and "Soledad" (a woman). Particulars on these persons that have been reported to the Group are:

(a) "Troglo" is an Army corporal, a native of Chillan and member of its regiment for the past 10 years. He is aggressive and cruel. A torturer, his criminal activities seem to make him directly responsible for the deaths of many detainees and an accomplice in others. His real name is thought to be Marcelo Alvarez M.

(b) Osvaldo Romo: the Group wishes once again to draw 5/ the particular attention of the General Assembly to the acts of this man Romo, the master torturer of Chile. He is an ever-present companion of "Troglo", has considerable influence over the Unit. His work in the DINA also involves serving as a kind of consultant to its chiefs on the "characteristics of the Chilean Left". His name has become synonymous with terror and torture in Chile.

(c) "Pulgar", rank unknown, belongs to the Carabineros. Cruel, full of hatred in his work, not as extreme as the two persons mentioned above but becoming so.

5/ For previous reference to his activities see E/CN.4/1188, paras. 139-140.

(d) "Soledad" belongs to the Navy. She has not been seen torturing or interrogating.

362. Halcon Unit-2 allegedly consists of five persons: "Tulio" who is the chief of the sub-unit, "Niki" or "Cara de Santo" ("Angel Face"), "Muñeca" ("Doll"), another man whose name is unknown, and a young woman called "Teresa". The four men belong to the Carabineros and the woman to the women's branch of the Navy. The following particulars on these persons have been reported to the Group:

(a) "Tulio" is a warrant officer or sergeant in the Carabineros. His real name is probably Arturo Pincheira. Has prior experience in police investigation. Used to work against drug smuggling in Tarapaca. Hard-hearted, during interrogation and torture he is unbending. At other times he treats prisoners decently. His unit is marked by strict discipline and esprit de corps. It has made many arrests and has killed people in clashes but does not seem to be given to the alleged moral degradation, corruption and perversion common to the other units. While this is true of the unit as a whole, the same cannot be said of "Teresa" (see below), who seems to be merciless, cruel and perverted.

(b) "Niki" or "Angel Face" belongs to the Carabineros, rank unknown.

(c) "Muñeca" may be a corporal in the Carabineros.

(d) Fourth man in the unit, name unknown, joined the unit only recently. Prior to the coup d'état was a traffic policeman. He may be a corporal.

(e) "Teresa", or "Chica Tere", belongs to the Navy (she must be of high rank). A torturer who treats women prisoners very badly.

363. Aguila Unit, also known as the Unit "de los Guatones", is allegedly the most merciless, cruel, coarse and corrupt unit in the DINA or at any rate in this Section. All of its members are about 35-45 years of age. Probably they all belong to the Carabineros. Although it is not certain, there are possibly two sub-units. The Unit Chief is "Gino", a sergeant or warrant officer in the Carabineros. The most feared member of the unit is a man known as "Galo"; he allegedly is extremely cruel and treats all prisoners very badly whatever the circumstances. Another member of the Unit is known as "El Pelao del Jockey". There is a female member of the Unit.

364. Little is known about the Vampiro Unit, whose commanding officer is Lieutenant "Pablito". All of its members have a reputation for being extremely cruel.

365. Nothing is known about the Tucan Unit.

366. The "Puren" Section is under a captain and there are reported to be three other officers of the rank of army captain as well. A woman is also said to be working in this Section. Little else is known about this Section. However, it is likely that it is responsible for repression of the Chilean Communist and Christian Democratic Parties. The resources at its disposal are probably similar to those of the Caupolican Section.

367. There allegedly has been a dispute between the "Caupolican" and "Puren" Sections concerning operational methods, particularly torture. "Puren" appears to favour the use of "soft" methods (i.e. psychological pressure, use of drugs, hypnosis, etc.). This dispute is said to have been referred to higher authority, since Puren Section has been concerned about the number of deaths caused by the use of physical torture by Caupolican.

368. Generally speaking, all the members of the operational units would appear to be corrupt in different ways. When making searches, they apply the principle of the spoils of war, taking furniture, appliances, money, clothing, etc. (this is allegedly accepted practice in the DINA, except in the case of money and valuables). The houses owned by detainees are usually taken over by the DINA, which allots them to various agents. In this way it rewards their repressive activities and supplements the salaries of the lower ranking personnel, which are usually small.

369. In addition, there is a contingent (estimated at 25 to 40 persons) for guarding the "Terranova" Centre and the detainees, and for cooking. Lastly, there is an operational unit (with shifts working round the clock). The normal work schedule is 8.30 a.m. to 6 p.m. approximately. The total number of staff is said to be over 100. During a "normal" night a contingent of some 20-25 persons is on duty under an officer commanding the guard.

370. Apart from Villa Grimaldi, there are other places which are presumably DINA premises:

- (a) A house on Londres street, the code name of which appears to be "Yucatan";
- (b) A residence expropriated by the DINA on José Domingo Cañas street, which belonged to the Brazilian sociologist and professor at the University of Chile's Economic Department, Teothonio Do Santos;
- (c) A house on Santa Rosa street, near the free fair in that area;
- (d) An apartment in the San Borja Housing project;
- (e) A house on Sevilla street, in the Vivaceta area;
- (f) A house on Eduardo Castillo Velasco street, in the Muñoz area;
- (g) An apartment on Huerfanos street, belonging to the University of Chile's School of Social Services;
- (h) The basement of the State Bank building;
- (i) The basement of the National Congress building;
- (j) Premises in Tejas Verdes, in San Antonio;
- (k) Regimiento Chacabuco de Talcahuano, in Concepción;
- (l) Premises in El Cajón del Maipo, in Santiago province;
- (m) Cuatro Alamos (see paras. 335-336);

(n) A clandestine clinic with a legal front in Santa Lucia street, in the centre of Santiago, next to the Chilean-British Cultural Institute, to which badly wounded persons and tortured prisoners in serious condition are brought. This "legalized" clinic also treats DINA personnel. The medical staff must consist of at least three persons; the care provided by them is said to be limited to disinfecting some wounds and administering antibiotics, analgesics and tranquillizers.

371. Another DINA centre is known to exist in Colonia Dignidad; the Group made reference to it in its previous report (E/CN.4/1188, para. 129). Colonia Dignidad is located on the road to the Castillo hot springs in Parral, 400 kilometres south of Santiago, in Linares province. An agricultural colony which is reportedly a virtual town, it includes schools and hospitals and has the necessary infrastructure for about 500 people. In Colonia Dignidad prisoners have allegedly been subjected to different "experiments" without any interrogation: to dogs trained to commit sexual aggressions and destroy sexual organs of both sexes; to "tests" on the limits of resistance to different methods of torture (resistance to beating, electricity, hanging, etc.); to experiments designed to drive detainees insane through administration of drugs; to prolonged periods of isolation and other sub-human conditions. It is noteworthy that in this camp prisoners allegedly hear nothing from their captors other than the orders for torture. In Colonia Dignidad there appears to be a torture centre of a particular kind in a specially equipped place underground: there are small, completely soundproof, hermetically sealed cells for prisoners. Leather hoods are placed over the prisoners' heads and stuck to their faces with chemical adhesives. In these cells torturers allegedly carry out interrogation over a closed-circuit radio system, with the detainees naked and tied to their berths while electric shocks are applied.

372. Several witnesses heard by the Group referred to cases where detention, interrogation and torture were carried out by groups of persons whom they were not able to identify. One witness described these persons as being "highly qualified and very intelligent". They were reported to carry out interrogations in an unidentified place, which was not one of the known places of torture, in the DINA manner, applying electric shocks. Fears were expressed that this type of interrogation and torture may have been carried out by groups of persons linked in one way or another with the DINA; it was stated in another context that the DINA had recruited tens of thousands of collaborators, some of whom were members of the organization Patria y Libertad.

VI. THE JUDICIARY

373. In the progress report of the Working Group which was submitted to the General Assembly at its thirtieth session, it was noted that decree-law No.1, published on 18 September 1973, stated that the Government Junta in the exercise of its mission "shall guarantee the full effectiveness of the powers of the judiciary ..." (A/10285, para.82). The Working Group also described the provisions of decree-law No.128 of 12 November 1973, which stated that "the judicial power will exercise its functions in the form and with the independence and competence laid down in the Political Constitution of the State". The Working Group pointed out, however, that the proclamation of the state of siege had adversely affected to a considerable degree the scope of the jurisdiction of ordinary courts (*ibid.*, para.88).

374. In its report to the Commission on Human Rights at its thirty-second session in 1976, the Working Group described the provisions and the impact of decree-laws No.169 and No.170 of 6 December 1973 and decree-law No.527 of 17 June 1974. The Working Group found that a serious and deliberate attack had been launched against the irremovability and independence of the judiciary. Decree-law No.527 included among the special powers vested in the President of the Government Junta that of supervising the conduct of judges and assistant judicial officers of the judicature. Further, if the President considers that one of these officials has been guilty of misconduct he may require the Supreme Court to take disciplinary measures or, if sufficient grounds exist, to prosecute (E/CN.4/1188, para.50). The Chilean Government has contended that "the Chilean Judiciary ... has always enjoyed a high degree of independence, and economic and administrative autonomy" and that "no magistrate has been removed by the Government authorities" (E/CN.4/1207, p.9). This contention does not recognize that the very existence of presidential powers to supervise and to order the prosecution of members of the judiciary is a serious inroad upon their independence and tends to adversely affect the performance of their duties. Moreover, the Group has received evidence that at least 24 judges have been removed from their posts.

375. The Working Group has received evidence to the effect that before and under the previous Government, the judiciary and the Colegio de Abogados displayed a commendable attitude of preserving their independence against any possible encroachment by the Executive and voiced forcefully their opinion in favour of respect for the law, judicial procedures and the role of the judiciary as protector of human rights. During the years 1970-1973, the Court of Appeal and the Supreme Court were particularly zealous in defending the rights of the citizen against the Government, and even took part in public controversies with the President of the Republic. Now, however, when the Constitution is so obviously violated by the Government, things seem to have completely changed. From 11 September 1973 to the present day, it was asserted, the Chilean courts of justice have not protected any Chilean who has been detained under any of the procedures established under the state of siege. The right of amparo is no longer respected and honoured. The Supreme Court, notwithstanding its history and the pertinent provisions of the law has surrendered its right to

hear appeals against the judgements of the military courts.^{1/} The courts of first instance, either through indifference and fear or because of the extra-judicial situations created by the secret security forces, do no more than reluctantly try cases of murder, abduction and other violations committed under the state of siege. Often, the only course which judges and other officers of the law take is that of simply declaring themselves incompetent to sit in judgement. Very few judges have preserved their freedom of judgement as regards matters with any political connotation, and those who have done so have suffered from the hostility of the régime and its supporters - which constitutes a very real denial of justice.

376. The Working Group has received concrete evidence of this pusillanimity of the judiciary in Chile. When an appeal for amparo is made before the courts, information has to be submitted by the Ministry of the Interior regarding the person in respect of whom the application was made. The Ministry of the Interior may take any length of time to submit such information, and this state of affairs is placidly accepted by the courts. Moreover, upon a mere statement by the Ministry of the Interior that a person has been detained under the state of siege, the courts systematically reject applications for habeas corpus without even ascertaining whether the formalities for detention had been observed.

377. The attention of the Group was drawn to cases in which the courts had allegedly allowed themselves to be manipulated. An instance of this type involved the notorious Oswaldo Romo. The Working Group heard that complaints had been made against him before a court and a judge ordered an investigation. The judge received a report from a detective, who said that he was not able to interrogate Mr. Romo, because he needed the authorization of the Chief of Police of Santiago in order to do so. The judge took no further action, thereby surrendering his authority to the police authorities. Thus there is no effective judicial check on the activities of such torturers and agents of the DINA. It is difficult to imagine how under such a state of affairs there can be any check on torture, and inhuman and degrading treatment.

378. Another case reported to the Group involved an application made to the court of appeal concerning a certain person. When the application was made before the court, the Ministry of the Interior informed the court that the person had not been detained, so the appeal was rejected. Subsequently the press disclosed that the person had in fact been detained. An application was made to the Supreme Court, which ordered another report by the Ministry of the Interior. Two months later the Ministry reported that the person had in fact been detained, but had been freed and was subsequently listed as missing. The Supreme Court, when told that the person had been freed, rejected the appeal, because, officially, the person was free. The court did not seek to investigate why or how false information had initially been provided by the Ministry of the Interior. It did not investigate what had become of the person concerned. It used a legal technicality to reject the appeal. This is an illustration of the crippling limitations under which the courts in Chile function.

^{1/} See letter dated 8 June 1976 from five Chilean lawyers addressed to the Ministers of Foreign Affairs attending the Sixth General Assembly of the Organization of American States in Santiago (annex XXII).

379. Judge John Carro, Acting Judge of the Supreme Court of the State of New York, who visited Chile in May 1976, told the Working Group of the case of one judge in Chile who conducted a trial of 20 persons. He acquitted four of them. The next day he was incarcerated. He is apparently still being held without charges for having defied the official line and for having dared to pronounce what he considered was a fair and proper judicial decision.

380. One person who appeared before the courts described to the Group the proceedings against him as a "judicial farce". He was brought to trial twice. During the first trial he had been informed that all the evidence had been lost and that the court could not convict him without proof. The court then set him free. But he was immediately rearrested on the grounds that the Government thought him dangerous. He was released subsequently, and expelled from the country.

381. The Working Group was informed of a case in which, on an application for amparo, the Supreme Court was requested to hear a certain witness who could testify that severe torture had been committed upon the person in respect of whom the amparo application was brought. The Supreme Court stated that the witness in question could appear before it at any moment voluntarily - in spite of the fact that the applicants had informed the Court that the witness in question was being detained by the DINA and could not, therefore, appear before the Court, unless the Court ordered the witness to be brought before it. The Court succumbed to the all pervasive unwritten powers that the DINA enjoys.

382. The judges of the Supreme Court, the highest court in the land, appear to have particular responsibility in the decline of the authority of the judiciary power in Chile. Whereas some judges of the court of appeals have on occasions sought to act independently, they have been curtailed by the Supreme Court.

383. According to information supplied to the Group^{2/} on 9 April 1976, the Court of Appeals of Santiago on a recurso de amparo in favour of Ivan A. Parfex Alfaro and his wife Victoria Villagran Aravena said:

"... as art.72 number 17 of the Constitution does not grant the Chief of State the power to hold prisoners incommunicado, but only that of moving people from one Department to another and to have them arrested in their own homes and in places that are not jails nor are otherwise used for detention or prison of common prisoners, this incommunication has been ordered outside the cases contemplated by the law. ... it is resolved that the incommunication of Ivan Parfex must cease at once, and he may remain under arrest but free to communicate ...".

384. After a delay of 15 days, and after much deliberation and consultations, the authorities complied with this judicial order. This opened up for the first time the possibility that the security authorities could be made to comply with the law, and that prisoners could be held in more humane conditions. Unfortunately the decision did not have any lasting effect.^{3/}

^{2/} "Arrests and detentions and freedom of information in Chile (September 1976)": a supplement to the report of the International Commission of Jurists Mission to Chile, April 1974.

^{3/} Ibid.

385. In June 1976, the Supreme Court decided that holding prisoners incommunicado by virtue of the state of siege "... is not a matter comprised within the realm accorded to recurso de amparo, by the Constitution and the law".^{4/} This new principle was a major step backwards in the protection of human rights. It amounts to an invitation to the Executive to continue to hold arrested persons in conditions which experience has shown lead in many cases to the practice of torture.^{5/} The last decision of the Supreme Court is authoritative today in the courts, denying to the people of Chile any judicial protection against various abuses by the security forces.

386. The attitude of the judges of the Supreme Court in this context was described to the Working Group by persons who have spoken with them. Though they are fearful to some extent, it has been said that they basically agree with the wishes of the Government Junta. They have accused lawyers who have striven to defend human rights in Chile of playing into the hands of the Marxists or Communists.

387. The current President of the Supreme Court, Mr. J. Eyzaguirre, is held in personal esteem by many Chilean lawyers. However, he has been said by persons who have appeared before the Group, including eminent Chilean lawyers, to have, in effect, seriously compromised his independence and the dignity of his office in order to give a measure of respectability to the Government Junta.

388. In an interview in May 1976 with Mr. John Carro, Acting Judge of the Supreme Court of New York, Mr. Eyzaguirre is reported to have admitted that the essence of democracy was an independent judiciary, but that this was not present in Chile, because the Government Junta had taken over a substantial part of the powers of the judiciary. He is also reported to have said the judiciary was functioning in a "live and let live" situation. If the military authorities arrest someone and charge him formally then the courts will proceed. If the person is not charged formally, the judiciary has nothing to proceed on. Mr. Eyzaguirre also admitted to Judge Carro that he was aware that torture had taken place in Chile.

389. Further evidence of the approach of Mr. Eyzaguirre was given by Mme Colette Auger, Advocate of the Court of Appeal of Paris, who had an interview with him in June 1976. Mme Auger pointed out to Mr. Eyzaguirre that the last three articles of decree-law No.521 concerning the DINA had been "published" secretly in five copies and that Chileans did not know their content. This, she pointed out, was in complete violation of the Civil Code. Mr. Eyzaguirre replied that article 7 of the Civil Code required that all laws be "published", and that although done secretly the three articles were nevertheless published for the purposes of the law. This was an obviously slanted interpretation of the term "published".

^{4/} Statement of Mme Colette Auger avocat à la Cour d'appel de Paris.

^{5/} See note 2 above.

390. The attitude of the Minister of Justice, Mr. Miguel Schweitzer, has also been questioned by a number of persons who appeared before the Group. When told by Mme Colette Auger of a trial which had lasted more than 30 months, he replied that this was in accordance with the law inasmuch as there was a law permitting the military authorities to request further time for investigation while a trial was going on; this interpretation by Mr. Schweitzer would imply that a trial before a military court could drag on for years. When asked by a visiting lawyer, Mr. Stuby, about the availability of the remedy of amparo, Mr. Schweitzer replied that anyone could institute an application for amparo.

391. As regards the military courts, the Chilean Government has claimed that with the reduction of the state of siege to the level of internal security, peace-time military courts began to operate, and that war-time military courts were competent only for certain categories of offences. The Working Group has already noted in chapter II that the categories of offences over which war-time military courts have jurisdiction are so framed as to make war-time military courts, in effect, the rule rather than the exception. In any case, however, the evidence received by the Working Group discloses that the standards of justice of military courts, both war-time and peace-time, fall far short of normal judicial standards. Often, accused persons are not allowed defence counsel, and even when legal assistance is afforded, lawyers are frequently appointed only 24 hours before the hearing or are given a mere 24 hours to prepare their defence. In some cases, trials have been prolonged in the military courts for over two years. The Working Group heard evidence that two military prosecuting attorneys in Puerto Montt participate in torturing detainees.^{6/} One person informed the Working Group that he had been tried twice before the military courts. During the course of his first trial he was kept in solitary confinement for two months and he was tortured on eight occasions during this period. He had been given a lawyer only 24 hours before his trial but could confer with him only for half an hour before the hearings began. He was sentenced to 48 years in prison. During his second trial he was not even allowed to have counsel. Nevertheless, he was again found guilty and sentenced once more!

392. Another person told the Group that he had been tried three times before the councils of war. He was first accused of being an intellectual and of being opposed to the Government. When his lawyer demonstrated that there was no legal basis for the accusation, new accusations were made against him that he had transported arms and explosives. The prosecution was unable to show any evidence and so the council of war ended up by condemning him for having met with a group of workers. He was convicted and sentenced.

393. The Colegio de Abogados has also, it has been repeatedly asserted by reputable lawyers, failed in its duties. Some of its members have managed to preserve their seats on the Council of the Colegio by taking advantage of the fact that the Government does not allow the holding of elections. Their role consists in supporting the Government, even in problems outside their sphere of competence.

^{6/} Testimony given to the Group by Mr. J.V. Niello.

Their defence of colleagues who have been persecuted is invariably half-hearted, and on some occasions they have even justified the measures which the Government has taken. All this is based on political interest rather than on professional criteria and ethics.

394. In the report which it submitted to the sixth regular session of the General Assembly of the Organization of American States in 1976, the Inter-American Commission on Human Rights indicated that in October 1975 it had requested from the Colegio de Abogados of Chile information as to whether in their view the declaration of a state of siege in Chile had totally excluded the possibility of resorting to, or of obtaining results from, a recurso de amparo or habeas corpus on behalf of a person detained by order of the President of the Republic under the powers granted in article 72, paragraph 17, of the Constitution. The Commission also requested information as to whether the judiciary was empowered, during a state of siege, upon receipt of a request for amparo or habeas corpus, to declare the illegality of the detention and consequently to order that the detained person be placed at liberty or to make use of some other measures of supervision over the rights of detained persons.

395. The Council of the Colegio de Abogados of Chile sent a reply dated 30 December 1975, the text of which, the Commission noted, coincided "practically textually with various paragraphs of the memorandum published in October 1975 by the Government of Chile entitled 'The present situation of human rights in Chile' (vol. I, second part, chapter II, pp.23-27)". This reply noted that the Supreme Court of Justice of Chile, on 21 August 1974, had declared that it did not have jurisdiction to make pronouncements on complaints against the councils of war. It added, however, that the judicial power maintained its jurisdiction over the civilian population. The College of Advocates accepted that "the recurso de amparo or habeas corpus 7/ has been inoperative with respect to persons who have been detained under the authority of the powers conferred by the law on the President of the Republic", 8/ but nevertheless felt able to say that "respect ... exists in our country for human rights and the maintenance of the principle of due process in Chile, expressed principally by the total independence of the judicial power which has been reaffirmed and even increased by the supreme Government".

396. In a situation in which guarantees of human rights have been curtailed under a state of emergency and widespread violations of human rights are occurring, it may, to say the least, be expected of lawyers that they should play a vigilant role in seeking to defend the rights of the individual against arbitrariness or abuse on the part of the Executive. On the contrary, in Chile it appears that the Colegio de Abogados has voluntarily surrendered this role.

397. Several cases brought to the attention of the Group illustrate this attitude of the Colegio de Abogados. A lawyer was charged and tried before a council of war for a statement he had made to the Colegio calling for the respect of human rights. The prosecuting counsel asked the Colegio de Abogados for the tape of

7/ OAS doc. OEA/Ser.L/V/II.37, doc.19, Corr.1, p.138.

8/ Ibid., p.139.

the meeting at which the statement in question was made. The Council and the majority of the Colegio de Abogados rejected this request. However, two officers of the Colegio de Abogados, one of whom is a high government official, who had access to the safe of the Colegio clandestinely handed over the tape to the prosecuting counsel.

398. In the case of the detention of Mr. Hernán Montealegre, and the expulsion of Mr. Velasco and Mr. Castillo, the Colegio de Abogados not only declined to act for their protection. Instead, they issued statements clearly outside the competence of a professional association of lawyers that Mr. Montealegre, Mr. Velasco and Mr. Castillo were not accused because of their professional activities, but for political and subversive activities.

399. It is clear that for some time now the Government has been taking measures to prevent the defence of political prisoners. Whereas in the period just after the coup many lawyers took up the defence of political prisoners, now, as a result of intimidation by the Government, they have rapidly declined to the point where today they are practically non-existent. Members of the DINA and the police often intimidate ordinary Chileans in need of legal assistance by telling them that if they choose certain lawyers, who defend political prisoners, it might be bad for them. Persecution has been particularly harsh against lawyers of the former Comité de Cooperación para la Paz and the Vicaria de la Solidaridad. There has been a progressive and systematic elimination of those lawyers who have been courageous in seeking to have the human rights of Chileans upheld. Mr. José Zalaquett, who worked for two and a half years in Chile as legal counsel of Comité de Cooperación para la Paz, was kept in detention from 15 November 1975 to 30 January 1976 and was expelled from the country on 10 April 1976. On 6 August 1976 Jaime Castillo Velasco and Eugenio Velasco Letelier, two of the lawyers who had signed an open letter on 8 June 1976 drawing attention to the situation of human rights in Chile, were expelled, because, the Government claimed, "both of them were a danger for the internal security of the State" (see paras.424-432). The Government stated that "neither public opinion nor institutions must be taken by surprise by justifications which try to minimize the seriousness of the accusations against these persons".^{9/}

400. On 12 May 1976 Mr. Hernán Montealegre was arrested shortly before he was about to defend 27 persons in Valdivia. Whilst preparing his defence, he was arrested and placed in detention in Cuatro Alamos, where he was kept incommunicado for 90 days.

401. A lawyer who, along with others, signed a memorandum to the Government Junta asking that certain steps be taken by the Government to respect human rights was called to see President Pinochet. The documents were thrown back at him, and he was told that the appeal contained in the document constituted disrespect for the office of the President. Again, a lawyer who wrote to the Minister of the Interior calling for respect for human rights was taken before the Minister and then brought before a council of war on the accusation that his letter to the Minister was a subversive act.

^{9/} El Mercurio, 6 August 1976.

402. One of the lawyers of Luis Corvalán has stated that up to now neither Corvalán nor his lawyers have been told what the charges were against Corvalán. They have had no basis, therefore, upon which to prepare his defence. They have had to prepare on the basis of what they speculated might be the charges against him. Furthermore, they have been systematically hampered in seeing Mr. Corvalán, and have not been able to have proper consultations with him. For each occasion when a visit was desired, it was necessary to go through lengthy formalities. Even attempts made at so much cost of time and work did not give positive results.

403. The persecution of lawyers of the former Comité de Cooperación para la Paz and the present Vicaría de la Solidaridad has had a dissuasive effect upon other lawyers. An observer who visited Chile and spoke with the President of the Supreme Court, the head of the Colegio de Abogados and other lawyers, found that very few lawyers will handle the cases of persons prosecuted under the state of siege. They are afraid that if they represent someone, they themselves might be arrested. The Working Group heard of one case in which a well-known lawyer was asked to take up the case of a person whom he had known closely for a long time. He admitted, when approached, that he was afraid, and declined to take up the case.

404. The Universal Declaration of Human Rights stresses the paramount importance of the principle of legality as regards the possible imposition of limitations on human rights.^{10/} Article 29, paragraph 2, of the Universal Declaration of Human Rights states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law ...". Article 4, paragraph 1, of the International Covenant on Civil and Political Rights places a crucial role upon the judiciary, in supervising whether measures derogating from guarantees of human rights are "strictly required by the exigencies of the situation".

405. The evidence received by the Working Group reveals that whereas in ordinary matters the judiciary in Chile is functioning customarily, as regards such matters as measures taken under the state of siege, the activities of the DINA, or pleas for amparo, the judiciary has abdicated its legitimate role. The people of Chile continue to live, therefore, without judicial rights, which are inherent, being available to them at all. The refusal of the judiciary to entertain the recourse of amparo carries serious implications which have been well brought out by the Inter-American Commission on Human Rights:

"In good constitutional doctrine no form of arbitrary detention (irregular, abusive, contrary to law) is excluded from the control of legal regularity that is presupposed by the principle of habeas corpus. And it is unnecessary to demonstrate that this vice of arbitrariness can be presented in the case of deprivation carried out by a low-ranking policeman as much as it would if this act were performed by the President of the Republic who has delegated to the policeman (regularly or not) this exceptional power. ... the judge should be able, ... to require that the body of the detained person be brought into his presence ('habeas corpus'), which would

^{10/} E/CN.4/Sub.2/L.627, Preliminary study prepared by Mrs. Erica-Irene Daes on "The individual's duties to the community and the limitations on human rights and freedoms under article 29 of the Universal Declaration of Human Rights", para.88

enable him to ascertain whether he is alive or not, whether he had his physical integrity or not, whether he shows signs of bad treatment or torture; it would permit him to know where he is and whether or not he has someone to give him legal advice; he would be able to decide whether the order for his detention had come from a competent authority or not and whether it fulfils the indispensable form requirements; he would be able to find out whether the detained person is in an adequate place, or whether he is mixed with common criminals in an ordinary jail, etc. etc. This is the enormous, the transcendental significance of the recourse to 'habeas corpus' in these exceptional cases, a recourse which has lamentably not been recognized by the Supreme Court of Chile".11/

406. The bleak picture that emerges is one of a semblance of normalcy in the functioning of the judiciary, whilst in reality, insofar as cases that are before it under the state of siege connected with actions taken by the DINA are concerned, it deliberately, consistently and systematically ignores serious violations of human rights being perpetrated in Chile.

11/ OEA/Ser.L/V/II.37, doc.19, Corr.1, pp.110-111.

VII. EXILE

407. In examining the problems relating to the situation of exiled persons, special attention will be given to (a) the question of refugees and diplomatic asylum; (b) the question of expulsion and deprivation of nationality.

A. The question of refugees and diplomatic asylum

Refugees

408. After the events of September 1973 in Chile, tens of thousands of Chileans sought asylum either in other countries of the continent or overseas. At present, the activity of the Office of the United Nations High Commissioner for Refugees (UNHCR) in Chile is concentrated on assisting family members of foreign refugees (2,500) who have been resettled outside Chile or of Chileans who have sought refuge in other countries to be reunited with them. This work is being performed with the technical assistance of the Intergovernmental Committee for European Migration (ICEM) and with the co-operation of the Governments of countries of resettlement.

409. As of 30 June 1976, a total of 12,785 refugees from Chile had been resettled under the auspices of UNHCR. The countries of actual departure were Argentina (about 3,800), Peru (more than 2,300) or Chile (6,670). Of the latter, over 4,000 left Chile to join refugee heads of the family abroad. According to the most recent figures, published by ICEM on 4 August 1976, 3,043 persons were resettled in several countries between 1 January 1976 and 31 July 1976 under the ICEM Special Programme for Resettlement from Chile; the countries that accepted the highest number of persons were the United States of America (600), France (428), Sweden (366), the United Kingdom (260) and the Netherlands (234). This brought the cumulative total of resettlement under this programme for the period from 6 October 1973 to 31 July 1976 to 17,159. The countries which have accepted the highest number of persons for resettlement were Sweden (2,077), France (1,524), the United Kingdom (1,513), Romania (1,393) and the Federal Republic of Germany (1,110). Among the Latin American countries, Mexico has accepted 861, Argentina 763 and Cuba 450.

410. According to the information issued by UNHCR, some 14,000 refugees have been registered in Argentina by the Comisión Co-ordinadora de Acción Social (an oecumenical grouping of voluntary agencies set up under arrangements between the Government of Argentina, UNHCR, and the organizations concerned) since late 1973. Somewhat less than 4,000 have been resettled in other countries through the efforts of UNHCR and the voluntary agencies, with the co-operation of Governments of countries of resettlement and with the technical assistance of ICEM. A small number - less than 2,000 - have received permanent residence and work permits in Argentina, whereas some 6,000 subsist only through daily allowances or other forms of care and maintenance provided by the agencies of the Comisión Co-ordinadora. The funds are being provided essentially by UNHCR and, to some extent, by international voluntary agencies. Another few thousand subsist without systematic international assistance.

411. The widespread acts of violence which, as related in the press, have occurred in a particular country neighbouring Chile in recent times have affected not only nationals of that particular country but also foreigners, including exiles and

refugees, residing in that country. As far as exiles and other refugees are concerned, a number of abductions, arrests, disappearances and even murders have become a source of grave international concern in respect of their safety and security. In accordance with its responsibility for the international protection of refugees, UNHCR has in every single case taken the necessary steps with the competent authorities.

412. The Working Group was reliably informed that a raid had taken place by unidentified persons on 9 June 1976 in the offices of the Comisión Católica de Inmigración in Buenos Aires. On this occasion the archives of the Comisión Católica de Inmigración concerning refugees, particularly Chilean refugees under the mandate of UNHCR were stolen. Two days later, on 11 June 1976, 24 refugees (most of them Chileans) under the mandate of UNHCR were abducted from a hotel used by UNHCR by an unidentified armed group of 50 persons. These refugees were detained, interrogated and tortured for 24 hours before being released. On 22 June 1976, UNHCR made a solemn appeal to several Governments to open their doors to more than 1,000 refugees now in Argentina. The work done by the Office of the United Nations High Commissioner for Refugees in this field for Chilean refugees deserves to be recorded with appreciation.

Diplomatic asylum

413. As regards the application of international instruments relating to diplomatic asylum, the Ad Hoc Working Group noted in its report to the Commission on Human Rights that, according to the information available to it, nearly all persons who had sought and obtained diplomatic asylum in embassies after the coup had been able to leave the country under safe conducts (E/CN.4/1188, para. 111). It has been reported by ICEM to the Working Group that on 31 July 1976 six persons were still enjoying the protection of asylum in embassies. It may be mentioned that the number of persons enjoying asylum varies from month to month.

414. Information was received by the Working Group concerning four persons whose cases were mentioned in its report to the Commission on Human Rights (E/CN.4/1188, annex V), i.e. Mr. Andrés Pascal Allende, head of the Movimiento Izquierdo Revolucionario (MIR), and his friend Miss Marie Anne Beausire, and Mr. Nelson Guttierrez and his friend Miss Maria Elena Bachman. All of them were granted safe conducts in February 1976 and left the country, two for Costa Rica and two for Sweden. The Government of Chile requested their extradition but this was denied by both Governments concerned.

B. The question of expulsion and deprivation of nationality

Expulsion

415. As noted in the progress report (A/10285, paras. 100 and 171), expulsion from Chile is regulated by decree-laws No. 81 and No. 604. Under decree-law No. 81 of 11 October 1973, the penalty of "extrañamiento" (expulsion from the territory of the Republic) can be imposed on persons who disobey a summons made publicly by the Government to appear before the authorities for reasons of security of the State. If the accused is abroad, his passport may be cancelled. Decree-law No. 604 of 9 August 1974 forbids the entry into the territory of Chile

of nationals or foreigners who spread or encourage doctrines which tend to destroy or alter through violence the social order of the country or its system of government. This state of affairs could be interpreted as running contrary to the written provisions of the Universal Declaration and the International Covenants on Human Rights.

416. As noted in the report to the Commission on Human Rights (E/CN.4/1188, para. 119), both decree-laws provide that Chileans to whom entrance to the country is forbidden may ask the Minister of the Interior, through the appropriate consulate, for authorization to return to the country. For reasons of security of the State, however, the Minister may refuse this authorization.

417. The Working Group has received no indication that the Minister of the Interior has authorized any expelled people to return to Chile. On the contrary, an even greater number of Chileans are denied the right to return to their own country. In particular, as already mentioned in the progress report (A/10285, para. 181) and in the report to the Commission (E/CN.4/1188, para. 120), more Chileans have received a passport bearing the mention "Válido sólo para salir del país" (Valid only to leave the country).

418. There are hundreds of Chileans who have been arbitrarily expelled, with restricted passports bearing the stamp "valid only to leave the country". This poses a serious problem to thousands of Chileans who are outside their country and who may be said to have been forced into the category of stateless persons. The Working Group is of the opinion that the Government of Chile must take immediate measures to rectify this situation.

419. Under the laws now in force in Chile, Chilean nationality is lost by decree. The relevant decision is taken by the competent authority in the following cases: (1) naturalization in a foreign country; (2) annulment of naturalization certificate; (3) for having in wartime rendered services to the enemies of Chile or their allies; (4) for seriously attempting from the exterior a crime against the essential interests of the State during a situation of exception contemplated in article 72, paragraph 17, of the Political Constitution. Any person deprived of his nationality on these grounds is allowed 90 days in which to bring his case before the Supreme Court, which may, if it deems fit, revoke the decree depriving of nationality. The Chilean Government claims that only two people have, in fact, lost their nationality, but the inquiries made by the group indicate that several thousand Chileans have lost most of the rights inherent in nationality in as much as they have no official document enabling them to establish their claim to it. The Chilean Government has no intention of providing the thousands of Chileans in question with the necessary documents to attest to their nationality.

420. On 30 August 1976, at a meeting with representatives of the Government of Chile, the members of the Working Group drew their attention to certain difficulties experienced by Chileans who had been expelled and whose passports were stamped "valid only to leave the country". Many Chileans experienced difficulties when travelling with such passports. Further, they were not able to renew them when they expired and therefore found themselves without a valid passport. In such cases, they had to apply for a travel document from UNHCR.

421. The representative of the Government of Chile stated that the intention of the Chilean Government in stamping passports "valid only to leave the country" was merely to prevent persons expelled from returning to Chile. He also stated that his Government had not been aware of the difficulties encountered in using and renewing these passports. He undertook to put these difficulties before the Chilean Government with a view to ameliorating the situation as soon as possible. The members of the Working Group regard this, in the circumstances of the situation, as an encouraging sign and express the hope that the Chilean Government will report early on the measures taken to relieve these difficulties. The situation calls for effective and immediate measures on the part of the Government of Chile.

422. In the progress report, reference was made to the decision of the Chilean Government to authorize persons detained for political reasons to apply for expulsion and to leave the country, provided entry visas from a State accepting such immigrants could be obtained for them (A/10285, paras. 172-176). Between 6 December 1974 and 31 July 1976, 1,227 persons have been released from prison and moved from Chile by ICEM, together with 1,892 dependants. As of 31 July 1976, ICEM was preparing the departure from Chile of 818 prisoners and 1,539 dependants. At the same date, there were still 299 prisoners with 747 family members declared eligible for release by the Government for whom no country had yet granted entry permits. It is hoped that their cases will soon be resolved satisfactorily.

Some specific cases of expulsion

423. It has been reported to the Working Group that some of the persons mentioned in the telegram dated 19 February 1976 sent to the Government of Chile by the Chairman of the Commission on Human Rights were released from prison in May 1976 and subsequently expelled from the country. They are Mr. Pedro Felipe Ramírez, former Minister for Mining, Mr. Sergio Vuscović Rojo, Mayor of Valparaíso, Mr. Andrés Sepúlveda Carmona, Member of Parliament, and Mr. Aníbal Palma, former Minister of Education. The Group has recently been informed that Mr. Fernando Flores Labra was also freed and has travelled to the United States. Others mentioned in the said telegram continue to be in detention. The Government of Chile in this connexion addressed a reply to the Chairman of the Commission on Human Rights, explaining its position (see annex III).

424. The Working Group received information on the procedures followed in the expulsion of two eminent Chilean lawyers: Mr. Eugenio Velasco Letelier, Professor Emeritus at the University of Chile, Titular Member of the Academy of Social Sciences of the Institute of Chile, former Dean of the Faculty of Juridical and Social Sciences of the University of Chile, former director of the Law School, former Professor of the Law School and former Ambassador of Chile; and Mr. Jaime Castillo Velasco, Professor at the University of Chile, former Minister of Justice and former representative of Chile to the United Nations Commission on Human Rights.

425. On 8 June 1976, these lawyers had, together with three other lawyers, all residing in Chile and practising law there, submitted a public letter to the Ministers for Foreign Affairs of various Latin American countries on the occasion

of the Sixth General Assembly of the Organization of American States in Santiago (see annex XXII). The letter contained their personal account of the present situation of human rights in Chile. They stated that, as Chilean citizens, they could give specific, objective and fully trustworthy evidence because they knew the law, appeared in court, were in contact with the administrative or political authorities, collaborated in the social and legal welfare work of the churches and, above all, were in daily touch with a large number of specific human rights situations.

426. The letter denounced the situation of human rights in Chile, the continuation of the state of siege, the arbitrary arrests, the omnipotence of the secret police (DINA) and the renunciation by the judiciary and the College of Lawyers of their duties and powers.

427. The Chilean representatives to the General Assembly of the Organization of American States criticized the position of the authors of the letter, but pointed out that its presentation demonstrated that there was freedom of expression in Chile.

428. Less than one month after the presentation of the letter, two of its authors were expelled from the country. On 5 August 1976 the Government decided that Mr. Jaime Castillo Velasco and Mr. Eugenio Velasco Letelier must leave the country at once, because they constituted a danger for the internal security of the State. According to the Government, they had on numerous occasions performed actions and provoked situations which seriously threatened the internal peace and order. The Government claimed that since September 1975 it had had full evidence about the participation of these two citizens in subversive activities.

429. Mr. Eugenio Velasco Letelier was detained when entering his law office just across the street from the Supreme Court building. He had left the Supreme Court at 5 p.m. after having spoken with a member of the Supreme Court and walked across to his office. He entered the elevator and was followed by several persons, one of whom spoke to him. He was suddenly grabbed by these persons, taken out of the elevator and out of the building. He saw many people, including lawyers, in the street and shouted, "I am being kidnapped by the DINA". The men of the DINA struck him forcibly. They forced him into a car which was parked just opposite the Supreme Court. They raced away towards the airport, ignoring red lights on the way.

430. Mr. Jaime Castillo Velasco was in his office working when, suddenly, a gang of seven or eight men burst in and forcibly dragged him outside. They took away his spectacles, without which he could not see. He was handcuffed and thrown onto the ground where he was kicked in the chest. He was put into a police van and a blanket was thrown over his head causing him difficulty in breathing. He was taken to the airport, where he met Mr. Eugenio Velasco Letelier. They were both put on a plane that very evening and sent to Buenos Aires. They had practically no money, no clothes and no personal belongings.

431. The instruments by which Mr. Eugenio Velasco Letelier and Mr. Jaime Castillo Velasco were expelled merely stated that they were dangerous to the security of the State. No reasons were given as to the basis for this judgment. In petitions which were filed with the Court of Appeal after the lawyers had already been

expelled from the country, it was argued that if they had committed subversive acts they should have been charged with specific offences and tried instead of being suddenly and peremptorily expelled. A legislative decree granting authority to expel Chileans from their country by means of arbitrary acts of the Government, with no attempt to substantiate accusations or observe the legal process, it was pleaded, violated the Chilean constitution. 1/

432. It has been reported to the Working Group that a writ of habeas corpus was presented in favour of the two lawyers before the Court of Appeal; it was also requested that their expulsion from the country should be postponed pending the decision of the Court. This request was granted by the Court. However, when the Under-Secretary of the Ministry of Interior was informed of this decision, he indicated that the measure of expulsion had already been carried out.

Deprivation of nationality

433. As noted in the progress report, (A/10285, paras. 100 and 182), decree-law No. 175 of 3 December 1973 added a new clause to article 6 of the Constitution, which provides for a further ground for withdrawal of Chilean nationality: "(4) for seriously attempting from the exterior a crime against the essential interests of the State during a situation of exception contemplated in article 72, paragraph 17, of the Political Constitution".

434. Article 2 of the same decree-law, as amended by legislative decree No. 1,301 of 23 December 1975, provides that for the loss of nationality envisaged in article 6, paragraph 4, of the Political Constitution of the State to take effect, a Supreme Decree giving the grounds and signed by all the Ministers of State shall be required; for this purpose, consideration shall be given to a written report from the Ministry of Foreign Affairs based on official reports from Chilean diplomatic missions or consulates abroad or from any other reliable sources that may be deemed appropriate. The same article provides that the person concerned may lodge an appeal in the Supreme Court, which shall give the matter preferential attention and settle it on the basis of equity. It also provides that the Court shall lay down rules for ensuring the expeditious hearing of the appeal. 2/

435. In a decision taken on 26 January 1976, the Supreme Court laid down rules for appeals which, under existing provisions, may be lodged by persons affected by the supreme decree providing for the deprivation of nationality pursuant to the provisions of the Political Constitution of the State. As already noted in the report to the Commission on Human Rights (E/CN.4/1188, para. 126), the Ad Hoc Working Group has no information on the application given to this new provision or on any such appeals to the Supreme Court.

1/ The petition presented to the Court of Appeal by Mr. Jaime Castillo Velasco is reproduced in annex XXV.

2/ See material furnished by the Permanent Representative of Chile to the United Nations Office at Geneva by letter dated 3 February 1976 and distributed as document E/CN.4/1197, para. 9 and last annex.

VIII. FREEDOM OF ASSOCIATION

436. The Working Group in its two previous reports has already furnished adequate information on the subject of the rights of workers and on the activities of trade unions since the military coup of 11 September 1973. In this chapter it is proposed merely to point out some recent developments in this field and to note whether there has been any improvement since the Working Group submitted its last report. A comprehensive set of legislation dealing with various questions relating to labour and trade union rights, including a new Labour Code (see E/CN.4/1188, paras. 191, 192), which had been expected to be promulgated earlier this year, has not yet been completed.

Trade unions

437. In its previous report, the Group noted that trade union rights in Chile were severely curtailed in several respects and that in particular such fundamental rights as those relating to elections of officers of trade unions, collective bargaining and strikes were denied (*ibid.*, para. 192). The most recent information available to the Group indicates that this situation remains essentially unchanged and that decree-law No. 198 of 10 December 1973, under which a number of trade union rights were suspended, is still in force. In May 1976, the Committee on Freedom of Association of the International Labour Organization, which had examined a report of the Chilean Government dated 21 April 1976 dealing with developments in the field of trade union rights, noted that "restrictions, including a ban on elections ..., collective bargaining and strikes" continued to dominate the exercise of trade union rights. ^{1/}

438. In its 159th report, the ILO Committee noted that the Chilean Government had earlier given assurances (to its Fact-Finding and Conciliation Commission in 1974) that it recognized these and others workers' rights and that their suspension was temporary. ^{2/} More recent statements by Chilean authorities in this regard cast some doubt as to whether the Government still considers the suspension of some of these rights as "temporary", or whether they are sought to be kept as statutory denials. For example, the Chilean press has recently reported that the Government intends to eliminate the right to strike from the Labour Code currently under preparation. Other sources have alleged that the Chilean Government also plans to eliminate collective bargaining, replacing it, as well as the right to strike, with a system of third party arbitration. In this connexion these sources cite the "Labour Day speech" of Labour Minister Fernandez in which, *inter alia*, he rejected the concept that trade unions should serve "as tools of economic pressure groups". This would seem to indicate that inroads made in the field of trade unions will continue to be in effective application. The facade may wear the mask of softening, but the intention is clearly to keep trade union rights in bondage.

439. The continued curtailment by the Government of Chile of trade union rights has come to be increasingly criticized in recent months within Chile itself. It was reported to the Group that on 20 April 1976 four trade union federations representing

^{1/} See ILO document GB 200/9/26, para. 14.

^{2/} *Ibid.*

104 trade unions wrote to the Minister of Labour emphasizing that it was "absolutely necessary" that trade union rights and freedoms be re-established in Chile. ^{3/} Moreover, a group of 10 trade union leaders wrote directly to President Pinochet this year, severely criticizing the Government's policy towards trade unions and workers. The attention of the Group was drawn to the fact that in his 1st May homily Cardinal Silva Enriques emphasized the right of workers to participate, to associate and to make their voices freely heard, but that his call for the exercise of these rights was not reported in the Chilean press.

440. The ILO Governing Body at its 200th session, acting upon the recommendation of the Committee on Freedom of Association, decided, inter alia, "to urge the Government [of Chile] to adopt without delay trade union legislation conforming to the principles of freedom of association and to end the restrictions on trade union activities which are currently in force", ^{4/} and to "request the Government [of Chile] to continue to supply information on the development of the situation, especially as regards the matters on which it has not yet furnished information, and to transmit by 1 October 1976 a report in this regard". ^{5/} The Working Group hopes that the constant concern shown by the ILO in the field of trade union rights will bring results, and that the expected report of the Government of Chile will demonstrate a trend in the direction of complete restoration of the rights of workers and of trade unions.

441. In addition to legal restrictions imposed on the exercise of trade union rights, information available to the Group indicates that there are also practical restrictions of a disciplinary nature, characteristic of the authoritarian character of the Chilean régime, as also arrests of trade union leaders, which inhibit the exercise of generally recognized rights of workers. Thus, for example, it has been reported by a reliable source that a group of trade unionists were recently arrested simply because they had tried to claim compensation for overtime work. It has been further reported in this connexion that peasant union leaders are kept under strict surveillance by DINA agents in the course of their visits to union members in the countryside. ^{6/} A number of witnesses stated that trade union leaders and workers for church organizations have been among the main targets of arrest recently, one estimate being that 30 per cent of all recent detentions have involved such groups.

442. If such elementary and inalienable demands of workers bring the crushing weight of government reprisals on the heads of trade unionists, the situation in the field of freedom of association of workers could be said to have deteriorated rather than improved since the Working Group submitted its last report.

^{3/} Newsletter No. 8, Chile Committee for Human Rights, London, 10 June 1976.

^{4/} Ibid., para. 60(b); GB 200/205, para. 22.

^{5/} Ibid., para. 60(j); GB 200/205, para. 22.

^{6/} Newsletter No. 8, Chile Committee for Human Rights, London, 10 June 1976.

IX. INTELLECTUAL FREEDOMS

443. The present situation in Chile as regards intellectual freedoms as provided for in article 19 of the International Covenant on Civil and Political Rights, to which the General Assembly has specifically referred, remains a matter of deep concern for the international community. The Group has taken note that the Executive Board of UNESCO, at its 99th session, having examined the report of the Committee on Conventions and Recommendations in Education and the report of the Director-General, approved on 11 May 1976 resolution 99 EX/DR.8. In that resolution, the Executive Board expressed profound disquiet at the continuing infringements, according to the information received, on human rights in the fields of education, science, culture and information in Chile, renewed its appeal to the Chilean authorities to take all necessary measures to restore and safeguard the fundamental human rights, including those of members of the teaching profession, as well as to ensure the normal functioning of all universities, schools and scientific and cultural institutions. It decided also that the Committee on Conventions and Recommendations in Education should meet again before the 100th session of the Executive Board and requested the Director-General to submit to the Executive Board at its 100th session a report on further measures taken in pursuance of resolution 11.3 adopted by the General Conference at its eighteenth session (see A/10295, para. 24).

A. Legislative, governmental and judicial measures affecting intellectual freedoms

444. On 31 December 1975, the Chairman of the Constitutional Reform Commission announced the underlying principles of the Constitutional Act concerning Human Rights. As stated in the memorandum of the Chilean Government on gradual restoration of some of the rights and safeguards temporarily restricted, 1/ the Act lays particular stress on freedom of expression. It is claimed that under the Act everyone will have the right to express his opinion without prior censorship and at the same time will have the right to be informed truthfully and objectively. No discrimination will be allowed in connexion with the functioning and financing of the media of social communication and the press will be guaranteed against expropriation. The respect and protection of the privacy and dignity of the person will be guaranteed and assured. The right to education and the freedom of instruction will be proclaimed. Basic education (schooling for eight years) will be free and compulsory. As already mentioned in chapter IV above, the proposed Act has not yet been promulgated.

445. Meanwhile, at the end of April 1976, the Military Junta decided to elevate the General Secretariat of the Government to the rank of a Ministry. It is through the Social Communication Department and the Civil Services Department of this body that the mass communication programmes of the Junta and its programmes for the unification of a political supporting base are implemented. The progressive strengthening of the General Secretariat is said to form part of the programme aiming at building a new model of government within a new institutional framework.

1/ E/CN.4/1197, Material supplied by the Permanent Representative of Chile to the United Nations Office at Geneva, February 1976, p.3.

446. At the present time, according to the information made available to the Group, vital decisions affecting the press and other media are still left to the discretion of the authorities. Although certain legal and procedural provisions exist for the consideration of appeals against decisions concerning the treatment of subjects connected with "national security", there has been apparently no or very little recourse to them, probably, as reported, because of lack of confidence in the final results. Decree-law No. 1009, for instance, relating to judicial protection of the rights of those detained for offences against internal security, established in its article 16 that those affected by suspension of publications and confiscation of editions could file claims against these decisions before the Court of Appeals, which would proffer rapid and summary decision within 24 hours after the claim had been filed and after hearing the parties. There was no information as to the use made of that procedure.

447. Prior censorship, to which the media were strictly subjected immediately after the coup, has not disappeared completely in spite of a certain relaxation. One of the latest examples can be found in the bando (military order) No. 98 issued by the Chief of the Santiago Emergency Zone on 20 June 1976 upon conclusion of the General Assembly of the Organization of American States. The bando prohibits the publication by any media of news, commentaries, replies or criticisms related to the presentation made by five Chilean jurists on the occasion of the Sixth General Assembly of the OAS in Santiago.

448. Evidence before the Group indicates that cultural expression in most of its forms is still controlled by public authorities. The Group noted in this connexion that under decree No. 19 of 14 January 1976 of the Ministry of Public Education, all cultural initiatives, whether private or public, have to be submitted for prior study and review to the Advisory Commission of the Ministry of Education and to the Cultural Adviser of the Junta.

B. Present situation as regards intellectual freedoms

Education at university and other levels

449. Material before the Group suggests that the education system remains under the tight control and supervision of the military Government, at all levels. It has been reported that teachers are kept under constant surveillance and that they have to submit their weekly teaching programme for prior political clearance by school authorities. Academic freedom is controlled to ensure that discussions of a philosophical or ideological nature may not serve as a pretext for so-called Marxist infiltrations and subversive propaganda. These last expressions, as is well known, are used in a very broad and imprecise sense and in fact refer to activities of persons whom the present régime considers as opposed to it and its conception of the Chilean State. 2/

450. As the autonomy of academic educational institutions continues to be under military surveillance, there is little hope of intellectual freedom being re-established.

2/ Report of the Committee on Freedom of the Press and Information of the Inter-American Press Association, 1975.

451. In a public speech brought to the attention of the Group, President Pinochet announced on 29 March 1976 that "unrestricted and absolute ideological pluralism must be regarded as abolished once and for all. The libertarian system must accept a reasonable degree of pluralism reflecting the natural differences between human beings in their assessment of reality. Consequently the coexistence of ideas can and must be admitted, but to go on to demand unlimited pluralism, in other words to accept the promulgation of any doctrine or idea whatever, is tantamount to destroying the essential unity of the nation as such and opening wide the doors to totalitarian infiltration". After warning "some people who are trying to create an atmosphere of despair in university circles", President Pinochet further stated that "the validity of legitimate university autonomy directed towards achieving its proper objectives is reaffirmed, but at the same time it is emphasized that they must be consistent with the welfare of society as a whole". The latitude accorded to universities "is however necessarily limited at present by the emergency situation facing the country. It is inevitable that the politico-social emergency through which our country is passing should have repercussions upon the university world".

452. This restrictive approach to ideological pluralism in national universities, which cannot but affect intellectual freedom, has been a further discouragement for those intellectuals who had been awaiting the development of the restructuring process being carried out since the beginning of this year in the main universities. Such restructuring process has meant, up to the present, the dismissal of over two hundred faculty members, and although it is unclear whether some of the dismissals were primarily motivated by political or by economic considerations, it appears that the majority of those excluded were known to hold independent opinions or opinions in opposition to the official line. Those who belong to what may be termed the "non-conformist" category in the field of education are constantly facing the danger of being weeded out of their profession.

453. The Group notes in this connexion that ruling 33060 issued by the Office of the General Comptroller of the Republic interprets decree-laws No. 139 of 1973 and No. 1321 of 1976 to provide that rectors of universities and the Technical University may dismiss at their discretion university personnel when necessary in the "higher interest" of the universities or to ensure their normal functioning, or when the need to do so arises because of "restructuring".

454. The precarious situation, generally speaking, of the teaching staff of universities is exemplified in a document dated 2 April 1976 emanating from the Academic Council of the Department of Biology of the School of Sciences of the University of Chile, which has been received by the Working Group.

455. According to other testimony received, 18 professors from the Law School were laid off in 1975, and up to the end of January 1976, 250 professors had been dismissed from the University of Concepción.

456. In the School of Public Health of the University of Chile, 23 out of a total of 42 members of the academic staff directly responsible for post-graduate teaching and research were dismissed after September 1973. Some of them are still detained or exiled. The units responsible for undergraduate teaching were also greatly reduced in strength. The School had been responsible for training professions to run the system of health care for the country and had played an active part in increasing the number of public health personnel on the university staff.

457. Complete departments have been eliminated in the University of Chile, among others the Social Sciences Department of the Faculty of Law, as a consequence of a drastic cut in the University budget. Some established scholarly groups of high prestige have been broken up, as in the case of the Department of Psychiatry at the Northern Campus and the Department of Librarianship at the Eastern Campus. On 3 May 1976 it was announced that there would be cuts in the budget of the University of Chile, a progressive reduction of salaries, a 15 per cent cut in purchases and a 20 per cent cut in investments. At the elementary and secondary levels, the salaries of teachers have been reduced by about 40 per cent. If this fact is to be viewed in the light of the present rate of inflation, the socio-economic consequences of salary cuts on the teaching staff can well be imagined.

458. University enrolment appears to have decreased considerably, mainly as a consequence of the reductions in government support to higher education. Material before the Group indicates that there was 30 per cent less enrolment this year at the Technical University and that the steady increase in matriculation fees makes higher education very much "a privilege of the few". ^{3/} In 1976, only 99,531 students registered, against 142,000 in 1975 - in other words, 40 per cent less. According to the forecasts made by UNESCO for 1976, Chile should have had an overall population of 240,000 students; now Chile has one of the lowest university enrolments in Latin America.

459. According to the evidence received by the Working Group, the Presidents of the universities generally belong to the military and even in cases where the deans are civilians, they are appointed by the military authorities. The leaders of student organizations are also appointed by the military authorities. The Vice-Rector of the University of Chile, Claudio Illanes, announced on 12 May 1976 the establishment of a Higher Student Council (Consejo Superior Estudiante), whose president would represent the University students for all purposes. Members of this Council, which takes over the role of the Students' Federations, outlawed by the Military Government, will not be elected by the students. As Vice-Rector Illanes said: "We believe that a system of direct elections is not appropriate, as it would have serious consequences and might revive old habits that must be eradicated once and for all". This is a complete negation of the generally accepted principle in Latin America that officers of student unions should be elected.

Press and publications

460. According to the information available to the Working Group, the only newspapers and magazines circulating in Chile are those permitted by the Military Junta. Total circulation is said not to exceed 150,000 copies, as compared with some 650,000 copies produced by the Chilean press before the coup.

461. The press, as well as the universities, has been affected by the so-called "cleansing" process undertaken by the Military Junta after the coup in 1973 with the aim of "depoliticizing" the country. The first measure taken by the Junta was to close newspapers belonging to, or politically connected with the previous Government. Subsequently, their property was confiscated and transferred to the Government. In the interior of the country all the press suspected of leftist tendencies was suppressed. This situation still continues.

^{3/} Newsletter No.7, Chile Committee for Human Rights, London.

462. In its previous report, the Group noted that the system of prior and direct censorship was being replaced generally by one requiring from editors the practice of rigorous self-censorship (E/CN.4/1188, para. 181). Further evidence received by the Group would indicate that the press had become somewhat more assertive in its attempts to discuss freely economic and social problems. Foreign accusations and criticism made about the situation in Chile were reflected in various newspapers and periodicals. The subject of human rights was approached in some publications, although in a manner which they may have assumed to be inoffensive on account of the particular sensitivity of the authorities in this matter. For instance, when reports were published in the international press about the fate of 119 persons who had "disappeared" (A/10285, para. 149) the fortnightly magazine Qué Pasa in an editorial entitled "Are these 119 Chileans missing?" asked that an investigation be carried out. An article headed "Torture is renewed in Latin America," was published in the issue of Mensaje of September 1975.

463. Since the beginning of 1976, there has been a resumption of censorship, at least for certain matters. One of the few magazines still in existence, Ercilla, has recently been affected by such measures. The issue No. 2121, for the week of 24-30 March 1976, was seized by order of the Chief of the Emergency Area of Santiago, on the ground that it contained "tendentious articles destined to deform the image of the Government". A report on the situation of the University of Chile motivated the accusation. It was the first time in 42 years of publication that the magazine had suffered such a restrictive measure. 4/ Commenting on the seizure of Ercilla, the newspaper El Mercurio, in its issue for the week 21-27 March 1976, affirms that it did not believe "that the purposes of the national security can be reached with measures of this kind, measures that will make it hard to sustain later, in our country or abroad, that freedom of the press exists in Chile".

464. Another instance of the limitations imposed on the free expression of opinion in the press can be found in the circumstances surrounding the publication, in June 1976, of the report of the Organization of the American States on the situation of human rights in Chile. The newspaper El Mercurio published it in extenso together with the comments of the representatives of the Chilean Government. On 17 June 1976, the magazine Qué Pasa could publish its own comments on the OAS report, inasmuch as they were in support of the Government's position that the report constituted a "lack of patriotism and is damaging to Chile". On the other hand, in accordance with bando No. 98 referred to in paragraph 5 above, all copies of the 10 June 1976 issue of the newspaper Ultima Hora were seized because it contained an article on the OAS report. On 30 June 1976, the newspaper La Tercera de la Hora was suspended by the headquarters of the Emergency Zone for having violated the terms of the same bando.

465. Many journalists lost their positions as a consequence of the closing down of the newspapers associated with the previous Government and also as a result of the financial difficulties experienced by the media in the context of the general economic situation. According to testimony before the Working Group, about 400 journalists who do not approve the policy of the Government still remain in Chile at present, but they are unemployed.

4/ Ercilla, No. 2122, 31 March-6 April 1976.

466. The Group has received a list of 152 journalists arrested and detained since the coup. At present about 50 are said to be still under detention, most of them without trial. The names of 20 journalists allegedly assassinated have also been made available to the Group. The weight of rigid control has fallen heavily on journalists, as a professional class.

467. Evidence before the Group shows that restrictive measures affecting foreign journalists wanting to report on Chile are still being applied (see E/CN.4/1188, para. 182). The following may be mentioned among the most recent cases which have come to the knowledge of the Working Group:

- (i) Klaus Eckstein, the Latin American correspondent for the West German television station ZDF, was asked to leave Santiago. It was stated by the Chilean authorities that Mr. Eckstein had been denied residence in Chile already in October 1975 (Neue Zürcher Zeitung, 26 May 1976).
- (ii) An entry visa was refused to a Soviet journalist who wished to attend the Sixth General Assembly of the OAS. The co-ordinator of the conference, Mr. Ricardo Claro, stated that, to his knowledge, the Soviet journalist was a KGB agent (La Tercera de la Hora, 28 May 1976).
- (iii) Dr. Dieter Kroner, a Swiss journalist for the Neue Zürcher Zeitung, and other foreign journalists were denied permission by the Chilean authorities to collect information on the situation in Chile. They were, however, allowed to remain in Santiago to report about the OAS meeting (Neue Zürcher Zeitung, 10 June 1976).

Radio and television

468. Radio and television are still under the strict control of the Military Government and because they can reach a larger audience than the newspapers the authorities show less tolerance as regards their activities.

469. According to the evidence before the Working Group, there were 180 radio stations operating in Chile before the coup. Forty of them were closed down as leftist undertakings. All television programmes are under strict and complete control of the Military Junta.

470. The case of Radio Presidente Balmaceda is a clear example of government measures against intellectual freedom. Radio Presidente Balmaceda, which has connexions with the Christian Democratic Party and the Catholic Church, has been closed four times for tendentious, alarmist and anti-patriotic propaganda. The most recent such closing took place in March 1976. On 24 March 1976 the authorities arrested Mr. Belisario Belasco, director of a radio station, who was deported to northern Chile and then placed under detention for 90 days for reasons connected with his profession.

Religious organizations and political groups

471. Although the Military Government claims that its programmes are in conformity with Christian principles and respect the opinions professed by the Catholic Church, disagreement arises when the Catholic Church expresses its wish that democratic rights and freedom should be restored in the country. The Catholic Church experiences difficulties in keeping its members constantly well informed about

its standpoint. Religious organizations related to the Church conduct their activities at the risk of being suppressed at any moment. This is the case of the Vicaria de la Solidaridad, a voluntary agency sponsored by the Catholic Church which carries out humanitarian work among political prisoners and their families.

472. In this connexion reference may be made to the arrest of one of the lawyers of the Vicaria de la Solidaridad, Mr. Hernán Montealegre Klenner, the circumstances of which have been described in paragraphs 180 to 186 above.

473. According to the evidence before the Group, other collaborators of the Catholic Church in its humanitarian work were subjected to restrictions or interrogations by DINA agents during the period April-May 1976. Among them were: Mr. José Zalaquett Daher, former lawyer of the suppressed Comité de Cooperación para la Paz, which now stands dissolved, arrested on 5 April 1976 and expelled from the country a week later; Monseñor Enrique Alvear, Auxiliary Bishop of Santiago, who was detained for three hours on 1 May 1976; and Mr. Mr. José Manuel Aguilera Belmar, official of the Servicio de Educación Popular (SEP) and counsellor of the Movimiento Obrero de Acción Católica (MOAC) who was detained twice by the DINA, the last time on 12 May 1976, and later released after many hours of interrogation.

474. The Lutheran Bishop Helmut Frenz 5/ to whom the Military Government refused re-entry into Chile in October 1975, was subjected to further attacks in the Chilean press in mid May 1976.

475. On 15 August 1976, as reported in the international press, three Chilean Bishops, Carlos Gonzales of Talca, Fernando Ariztia of Copiapo and Enrique Alvear, Santiago auxiliary, were physically attacked by a group of people as they left Pudahuel Airport after their arrival from Ecuador, where they had attended a pastoral conference. Bishop Carlos Camus, spokesman for the Chilean bishops' permanent committee, charged that persons identified as members of the DINA had "directly participated" in the demonstration against the bishops and that a government-owned newspaper and the national television station had "disfigured the truth and provoked a climate of militant hostility against the Church personified in its pastors". President Pinochet denied that intelligence personnel were involved in the demonstration. In an official declaration released on 16 August it was stated that the Government "deplored the incidents" and would continue to adopt measures to prevent their recurrence. According to Bishop Camus, however, the first measure taken by the Government was to forbid the direct broadcast of the bishops' statements over the church-owned radio.

476. Early in May a meeting of 30 prelates from the six countries belonging to the Andean Pact (Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela) took place in Lima. The theme of the meeting was "The Church in the Process of Andean Integration". The Chilean Church was represented by Cardinal Silva Henríquez and Bishops Fresno, Camus and Contreras. The meeting concluded with a statement condemning, inter alia, "totalitarian ideologies because they stifle human freedom".

5/ Bishop Frenz testified before the Working Group on 12 January 1976. His statement is reproduced in annex IV of E/CN.4/1188.

X. THE PRESENT SITUATION OF WOMEN, CHILDREN, YOUTH AND THE FAMILY

477. The information gathered by the Group in the course of its recent inquiries provides reasons for generally confirming its previous findings regarding the present situation of women, children, youth and the family in Chile, 1/ despite the observations of the Chilean Government, which rejected those findings (E/CN.4/1207, pp. 18-20).

478. The Government stated that the International Women's Year was celebrated in Chile by various meetings and activities and that by decree-laws Nos. 871 and 872 it had taken steps to ratify the Inter-American Conventions on the Granting of Political and Civil Rights to Women, signed at Bogota on 2 March 1948.

479. The Chilean Government also announced that under the amnesty decreed by the President of the Republic on the occasion of the end-of-year festivities a considerable number of women were released, and that only 90 women remained in detention.

480. On the other hand, according to information supplied to the Group by confidential sources, 348 women were still detained as of March 1976, 94 in Tres Alamos alone; moreover, 24 per cent of all political prisoners in Chile were women.

481. Statements made by many witnesses before the Group tend to indicate that the situation regarding the unemployment of women, as described in its first report (E/CN.4/1188, para. 159), does not appear to have improved.

482. It also appears from testimony received by the Group from a number of sources that the practice of torturing women, whether as an accompaniment of investigations or merely because they are at the mercy of investigators, policemen or gaolers, as described in its previous report (*ibid.*, paras. 162-167), continues, and that it sometimes leads to grave consequences, due particularly to lack of medical assistance. The Group also continues to receive a large number of denunciations concerning cases of arbitrary deprivation of liberty of women. 2/

483. Further evidence before the Group tends to show that deplorable prison conditions, as described in its previous report (E/CN.4/1188, paras. 166-167), continue in the prisons mentioned in chapter IV, sapping the physical and mental well-being of the persons concerned. No special sanitary facilities are made available to women prisoners.

484. According to information received by the Group there has been a dramatic increase in infant mortality, and a whole generation may be affected with mental and physical disorders due mainly to lack of proper nutrition. In spite of the assertions of the Government of Chile that the living conditions of the population are quite satisfactory, eye-witnesses stated that on the streets of Santiago many

1/ A/10285, paras. 196-211; E/CN.4/1188, paras. 155-175.

2/ Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile, March 1976.

children beg for money. It has also been reported to the Group that many children stand at the doors of schools to see if they can obtain any left-over food, since there is nothing for them at home. Other reports were received by the Group to the effect that during vacation periods children have been seen eating from garbage containers. This statement was corroborated by many witnesses before the Group. This evidence indicates a worsening of the situation in regard to nutrition. From evidence before the Group it appears that the dietary situation of expectant and nursing mothers who are in prison has not improved and that these women are still not provided with additional or special food.

485. The Government refuted as "malicious and irresponsible" the allegations contained in the first report of the Group that children had been sexually abused and tortured. 3/ On the other hand, the Group has received further oral evidence which would tend to bear out that minors continue to be tortured. Mention was also made of the homicide of a minor by the police (allegedly a case of mistaken identity) which took place in the presence of the family. 4/ In addition, a witness before the Group stated that a group of arrested children had been taken to camps.

486. From statements made by numerous witnesses before the Group, it appears that the education of young people is indeed adversely affected by the present situation. Teachers are harassed even in the classrooms by police patrols, and some teachers have been arrested in front of their pupils. It has also been stated before the Group that some teachers have been recruited by the intelligence services of the army (SIM), a situation which engenders distrust and divisions among the teaching staff. Some students are also said to be in the service of SIM and to denounce their teachers.

487. According to testimony, 200 pupils from 8 to 18 years of age were expelled from schools in March 1976, solely because their parents had left-wing opinions or supported the Unidad Popular. At the university level, more than 20,000 students were reported to have been expelled for political reasons.

488. The Group received further confirmation of the constant emotional and psychological stress to which families of detainees continue to be subjected. Decree-law No. 1009 of 5 May 1975 provides that members of the immediate family of persons under arrest should be notified within 48 hours. This decree-law is apparently never observed. Families have to try by their own means to find out the whereabouts of relatives who are known by them to have been arrested. This results in considerable anguish to the families concerned. 5/ Furthermore, the Group has been informed that arrest is still very commonly accompanied by harassment and threats to the members of the family concerned.

3/ See E/CN.4/1188, para. 171; and E/CN.4/1207, p.19.

4/ Inter-American Commission on Human Rights, Second Report on the Situation of Human Rights in Chile, March 1976.

5/ Ibid.

489. The socio-economic difficulties of the families as described in the previous report 6/ have grown worse. The Group has received a plea from a group of women and children living in a United Nations shelter to help them in their terrible plight which ranges from food restrictions to complete lack of medical facilities. The persons concerned are part of a family reunification programme.

490. The breakdown of family relationships is particularly acute in the case of children whose fathers have been missing for long periods and whose mothers have thus been forced to go to work to support them. The family anguish and disruption is aggravated by the fact that the children are told at school that it is only bad people that are sent to gaol. Another factor that contributes to the disruption of family life is the fact that many children eat only in canteens and are thus deprived of the possibility of sharing meals with the other members of the family. The family unit, as the unifying source and force of social life, is under constant threat.

6/ A/10285, para. 208; E/CN.4/1188, para. 175.

XI. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

491. Material available to the Group based, inter alia, on data gathered by other United Nations agencies and on information from the Government of Chile and from information media in that country, indicates that there has been an improvement in certain areas of the Chilean economy, such as the country's balance of payments position and debt servicing capacity. In this connexion it may be mentioned that the World Bank has recently extended special facilities to the Government of Chile and that assistance has been given to the Government of Chile by certain international bodies. On 29 June 1976, the Government announced a series of economic measures designed primarily to reduce inflation, including an approximately 10 per cent revaluation of the peso and certain tax and short-term price stabilization measures. The effects of these measures cannot yet be fully evaluated, as they are too recent.

492. In spite of the above measures adopted by the Government of Chile, from the preponderant weight of the evidence before the Group it would appear that the poorer sections of the population, which comprise the vast majority, women and children continue to experience severe economic hardships and that for them the situation remains essentially as described in the Group's earlier reports. These unfortunate people, who are struggling in the depths of economic misery, still have no hope of seeing an improvement in their standard of living. In this connexion many witnesses asserted that the prolonged period of high unemployment which still continues has reduced a large number of individuals and families to conditions of bare subsistence and that vast sections of the people continue to live below the subsistence level. Although the Government's "minimum employment programme" attempts to deal with this problem in part through the provision of up to three months' temporary employment to the unemployed, some witnesses alleged that at times jobs under that programme became available only after permanent employees with relatively higher pay and seniority rights had been dismissed. This would indicate that a serious and threatening problem is sought to be solved by creating another problem of grave dimensions. These witnesses also stressed in particular that the cumulative effects of the long periods of poverty and privation have resulted in the aggravation of the nutritional and health problems from which many people, particularly children, have been suffering. This has been stressed by a number of witnesses who appeared before the Working Group. One witness emphasized the view that hunger was the most serious current problem in Chile and that it gives rise to many disastrous consequences.

493. The Group received extensive evidence to the effect that the availability of health services for the majority of the population has continued to diminish, in contrast to the achievement of the previous régime. Some witnesses have asserted that there is a marked deterioration of both the mental and physical health of the people throughout the country, and that this poses serious national problems.

494. A number of qualified persons who testified before the Group have drawn particular attention to the increasing prevalence of malnutrition and infectious diseases, particularly among children. According to them, the major causes of this situation, in addition to economic causes, has been the apparently deliberate government policy aimed at the gradual elimination of the National Health Service, which had previously served the needs of most of the population. It has been said before the Working Group that this sector now receives only a fraction of the former level of government support, causing personnel reductions, closure of

facilities, etc. Other evil consequences that this has brought in its wake are the non-availability of free medicines in public dispensaries, and the high price of medicines available elsewhere; the increasing necessity to pay for medical care previously extended free of charge; and the reduction in the number of doctors. At this juncture, it is pertinent to point out that after the military coup a large number of competent and distinguished Chilean doctors were compelled to leave the country, which indeed is an unfortunate national loss. Some witnesses indicated that private groups are trying, with the limited means at their disposal, to fill some of the gaps caused by the reduction of public health services and noted the establishment of health clinics by the Vicariate of Solidarity, a voluntary, non-political social service organization recently started by the Catholic Church. Other evidence points to the severity of the malnutrition problem among children in some areas, which has caused the Government to reinstitute the milk distribution programme it had earlier terminated. The Group is informed that government milk distribution is now being carried out on a much more limited scale than before.

495. Cultural rights 1/ can only blossom and flourish in an atmosphere of intellectual freedom. In a country where the latter is lacking, the former cannot take roots. It has been pointed out in the chapter entitled "Intellectual freedom" that the all-pervasive governmental control amounts to a denial of intellectual freedom in Chile. Unfortunately, these tendencies to control on the part of the Government have created conditions in which it is safe to follow blindly what the Government lays down, and dangerous to use one's own judgement and to dare to differ. Thus, with the lack of intellectual freedom to the individual, the question of the individual enjoying cultural rights becomes an exercise in futility.

1/ For further information, see chap. IX.

XII. CONCLUDING OBSERVATIONS

496. In presenting for the second time to the General Assembly a report on the present situation of human rights in Chile, the Ad Hoc Working Group of the Commission on Human Rights is fully aware of its obligations to the United Nations. The task which it was asked to perform touches upon very delicate relationships between those who govern and those who are subject to their rule; between a State and an international organization of which that State is a Member; between national levels of acceptance of human rights and the clearly-voiced concerns of the international community based on legal instruments and deeply-felt ethical convictions as regards the minimum standards of respect for the basic rights of every human being.

497. The functions of the Group were defined by the Commission on Human Rights and the General Assembly itself and they are the sole framework within which the Group can conduct its activities. They consist of gathering and assessing facts, inside Chile, if that is possible, and outside that country, reviewing the written and oral evidence received from the standpoint of its reliability and its bearing on the problems proposed for its evaluation and, as the General Assembly requested in 1975, reporting "in particular, on any developments which occur to establish respect for human rights and fundamental freedoms" in Chile. Finally, the Group has to present as full and objective a picture as possible to the Assembly and the Commission on Human Rights, based on the totality of the reliable information it has gathered and assessed.

498. A year and a half after coming into existence - after thousands of pages of documentation have been submitted to it and hundreds of witnesses of many nationalities and religions, of all ages, of many shades of opinion, belonging to many professions and occupying diverse social positions have been heard by its members, after the facts and the points of view which the Chilean Government has submitted in writing and orally have been examined, the Group is confident that its survey of the situation of human rights in Chile, as expressed in this report, is adequate to permit further consideration of this question by the General Assembly.

499. It cannot be denied that the visit to Chile, as envisaged by the Commission on Human Rights and at first unconditionally accepted by the Chilean Government, would have furnished to the Group an incomparable means of initiating or completing its investigations. Such a visit would, however, be fully effective only if, as requested, the Government of Chile extended its genuine co-operation in granting to the Group the indispensable facilities, including a sufficient degree of freedom of movement in the country. This it has not yet done, in spite of the solemn appeals of all the United Nations organs concerned, as well as those of many organizations functioning outside the United Nations, whether public or private.

500. The reasons given for the refusal to honour the previous commitment are in no way convincing. An investigatory group of the Organization of American States was admitted to Chile two years ago, an International Labour Organisation group was in Chile in 1975, many private groups have visited Chile; Chile acted as host to hundreds of delegates, observers, and members of the press during the June 1976 session of the General Assembly of the American States. It is hard to believe that facilities would not be available for a visit of five persons, accompanied by a small secretariat, whose objectivity and good will are beyond question and who were appointed by the world organization to inquire into matters of international concern. The reasons must be elsewhere.

501. Neither can they be reasonably found in concerns of internal security if the statements emanating from official Chilean and foreign sources regarding the maintenance of public order in Chile are taken into account; nor can they be found in concern for the modalities of the visit, if previous practice in the case of investigations by United Nations bodies and those of other organizations is borne in mind. Clearly, the Chilean Government prefers at this time to take a negative attitude as regards an official United Nations on-the-spot inquiry, or to delay such an inquiry as long as possible. The attempts in the course of the year to create divisions among the members of the Group or to consider some of them as more acceptable to the Government than others appear to the Group as contrary to the wishes of the competent United Nations organs and to United Nations practice. The members of the Group have repeatedly manifested their determination to work as an indivisible team, except as to special tasks which each of them may be called to perform in the course of the normal work of the Group.

502. The Group went as far as it could in utilizing in the performance of its functions the alternative method of co-operation proposed by the Government of Chile, that is, to examine written information transmitted from time to time by the Government on its own initiative or in response to the Group's requests, and in exchanging periodically outside Chile views and information with representatives of the Chilean Government. The Group does not wish to underestimate the value which such exchanges of views and information may have for its work, especially when they are conducted in an atmosphere of courtesy and frankness. It cannot, however, accept the proposition that the work of the Group should exclusively or essentially consist in transmitting to the Government specific cases of serious abuses of human rights of which the Group may have knowledge, waiting for written replies by the Government, and then discussing them with the Government's attorneys. Independently of the fact that its terms of reference do not restrict it to such a course of action, and even assuming that sufficient guarantees could be obtained for the safety of the persons involved and of their families in the conditions prevailing in Chile, such a method would not be sufficient in the view of the Group for the adequate fulfilment of the mandate given to it by the Commission on Human Rights and the General Assembly. It may be relevant to point out in this connexion that the Inter-American Commission on Human Rights, whose second report on the situation of human rights in Chile is referred to in the introduction to the present report, also took the position that it was not limited under its terms of reference to investigations and conclusions arising only from "individual denunciations", i.e. those relating to specific cases presented to it. Its report shows abundantly that when it used such a procedure, its work was greatly hampered by delays in receiving replies from the Chilean Government, by the incomplete character of such replies and by the absence of any replies whatsoever to vital questions.

503. As stated before, the essential task of the Group is to inform the General Assembly and the Commission on Human Rights to the best of its ability on the present situation of human rights in Chile, and in this regard the Group has to report to its great regret that developments since last year, though showing certain changes, do not indicate progress in the restoration of human rights. The assertions of the representatives of Chile before the Group or before other United Nations organs that there are no violations of human rights in Chile deserving the special attention of the United Nations, or that elements of possible concern do not exceed those which would normally be found in countries wishing to comply with internationally agreed standards of respect for human rights, are contradicted by the massive information before the Group. In fact, the Group often found from reliable evidence that at the very time when such statements were being

made on behalf of the Chilean Government, very serious infringements of basic human rights were taking place in Chile.

504. The Group's consistent impression during its work was of the extreme contrast between assertions and facts, between a façade and a reality. The façade consists of laws that have been abundantly commented upon as regards their form and content, and the statements of a general character of persons or associations assuming high responsibilities under the present régime. The reality is the situation as depicted by persons whose veracity is, in the opinion of the Group, attested to by long and honourable careers, the respect of their fellow countrymen and their proven dedication to human rights, often independently of any political affiliations. This reality has been repeatedly confirmed by independent foreign observers and by persons who left places of detention and torture a few weeks, sometimes days, before they appeared before the Group. The façade is the normalcy of daily life in the streets of Santiago observed by foreign visitors on short official or unofficial stays. The reality from the point of view of this inquiry is the existence of another world - the world of those who favoured previous régimes, of those whom the authorities consider as potential opponents, of those arrested, detained in camps, tortured, disappeared, found dead or released without a real possibility of finding gainful employment, of those deported from their country without permission to return and without any regard to law.

505. What is profoundly disturbing is that in our time, that of the Universal Declaration of Human Rights and of the International Covenants, when memories of fascist régimes and their excesses are still fresh, a concept of government in relation to human rights persists under which a sizable portion of the population is persecuted or eliminated from national life because of its real or alleged political views, and that the most elementary concepts of democracy, such as any form of election to office, are discarded. The application of such policies and methods of indoctrination and punishment for the purpose of cleansing a country of opponents to officially held doctrines must be a source of grave concern. It was pointed out to the Group that the official doctrine of relations between the State and the individual as it is developing inside the Chilean State is one which would lead to new forms of totalitarianism with many analogies with régimes the existence of which the world would like to forget or at least not to see renewed.

506. Persons suspected of opposing or potentially opposing the régime are described as "Marxists". This term is applied not only to members or former members of political parties inspired by the Marxist ideology, but loosely to anybody expressing views not corresponding to those officially held. The adjective is used in connexion not only with personalities who had a political role in the past, but with those whose functions place them outside politics, who are members of moderate or centrist movements, writers, students and even Catholic or Protestant bishops.

507. Legal procedures have to be bent to follow these concepts. "Subversion" is given as a reason for arrests and imprisonment. The expression "offences against the state of siege" is commonly used to describe unspecified charges. This report, to the great regret of its authors, shows how many of those occupying high posts in the judiciary, or those whose function it is to serve justice, act out of fear or political prejudice and become accomplices in this process of ignoring or of destroying basic juridical norms and traditions.

508. The continuation of the state of siege, accompanied by far-reaching legislative interpretations by the military authorities of concise and restrictive constitutional

provisions, long after such an exceptional situation appears to be warranted, is very generally cited as the basis and justification for the prevailing régime of repression. The Group has indicated to representatives of the Government the inconsistency of the present situation with the provisions of article 4 of the International Covenant on Civil and Political Rights, to which Chile is a party. The Group came to the conclusion that so long as the present state of siege continues, with almost complete power vested in the military Junta, there is no hope for a reasonably speedy restoration of human rights and fundamental freedoms.

509. Furthermore, the Group is seriously concerned, on the basis of the information that it has, that the present state of siege may be lifted to make the situation look apparently normal, but that it may be transformed into a constitutionalized and continuing state of siege under a camouflaged name. If this happens, in order to safeguard a particular concept of protected democracy, it is clear that it would not change the present situation with respect to the restoration of human rights and fundamental freedoms.

510. Some aspects of the legal façade as used for internal and external public relations purposes are, for instance, the fact that by Decree the number of "official" detention camps was reduced to three, while in reality, according to evidence repeatedly received by the Group from those who had had the misfortune to be inmates, the number of "unofficial" places of detention in which interrogations and torture are conducted has greatly increased, as already pointed out in chapter V above. The consequences are unfortunate. Though some elements of generally accepted standards of criminal procedure may still be found in connexion with "official" detention places, there are none in the other category. As the fact of such "unofficial" detention places has to be hidden and as the persons coming out of torture in such specialized "houses" are often not presentable to the outside world, many of them "disappear", either by remaining in detention for unlimited periods or by losing their life while at the mercy of their gaolers. Regarding the practice of torture, the Group's inquiries show that, though the number of victims may be said to have decreased, it is undeniable that the methods used have been considerably refined.

511. It is practically impossible to obtain any official information about the DINA and its activities. The subject appears to be "taboo" and outside the discussion area. A number of torturers belonging to that organization whose identities have still not been published have, however, now been identified in this report through reliable testimony. The Group sees great practical advantages in the publishing of these names and in the punishment of the persons involved, in the name of outraged humanity. The Group has already referred in this connexion to Oswaldo Romo, whose existence has been denied by Chilean representatives before the General Assembly but of whose nefarious actions the Group has received much confirmation of recent date. The fact that torture can be considered to be a crime against humanity makes it obligatory on the part of the Group to state that a torturer of the type of Oswaldo Romo should be tried for this crime by the international community. This would be more than a symbolic action, and it would act as a deterrent to all such torturers everywhere. The Group has also received some information on the activities of certain private groups of "patriotic" pretensions who have engaged in their own work of torture and assassination and whose relationship to the DINA has not as yet been clearly established.

512. Since the overthrow of the previous régime, a number of military courts have been established which have been armed with authority by decrees and administrative

orders of the military Junta. Military courts decide cases that come up before them in an expeditious manner far below the level of generally accepted standards of criminal procedure in cases which have far-reaching consequences for those prosecuted. To expect justice in the prevailing conditions from military courts, where members of the armed forces sit as judges, is to expect the impossible. So long as the military courts continue to exercise judiciary powers, without normal legal remedies being available to the accused suspect in the eyes of "internal security", the people of Chile will continue to be denied justice.

513. The Group has stated in its previous reports the position of the long-honoured institution of amparo under the state of siege. The situation in this regard has not improved at all. The position today in Chile is that people are arrested or detained under the state of siege. The courts, in particular the Supreme Court, take the stand that any action of this nature taken under the state of siege is beyond their jurisdiction. This amounts to a complete denial of the right of habeas corpus. This once again demonstrates the all-pervasive power of the present state of siege, which makes it impossible for many in Chile to enjoy even the most basic human rights.

514. Since the Group was set up, a number of eminent Chileans and other citizens of Chile have appeared before it complaining that when they left their country, often going straight from prison to the airport, their passports were marked with the words "Válido sólo para salir del país". The Group has continued to receive such evidence from many Chileans who have appeared before it since it submitted its last report to the Commission. The plight of such individuals and families, who are scattered in different countries, far away from their native land, holding only such a passport, can be better imagined than described. This poses the problem of the disintegration of family units in Chile. There are thousands of Chilean nationals settled in various countries who have, by this act of the Government of Chile, become, in fact, stateless persons. This is a serious human problem and deserves to be solved in specific cases as rapidly as possible, in order to eliminate much human misery and humiliation.

515. At its thirtieth session, held in New York in February 1974, the Commission on Human Rights authorized its Chairman, Mr. Felix Ermacora, to send a telegram to the Government of Chile concerning the release of five eminent Chilean citizens. Between the thirtieth and thirty-second sessions of the Commission, the Group was informed that four of them had been released by the Government of Chile. Considering the same situation, the Commission at its thirty-second session authorized its Chairman, Mr. Leopoldo Benites, to send a telegram to the Government of Chile concerning the release of 13 eminent Chilean personalities. According to the information transmitted to the Working Group by the Government of Chile, five of these have now been released and subsequently expelled from Chile. However, eight continue to be under detention. They are: Mr. José Cademartori, Mr. Luis Corvalán, Mr. Alfredo Joignant, Mr. Leopoldo Luna, Mr. Jorge Montes, Mr. Tito Palestro, Mr. Eric Schnake and Mr. Daniel Vergara. They have been in detention for almost three years on unspecified charges, without being brought to trial. The Working Group feels strongly that the recommendation of the Commission on Human Rights to the Government of Chile as communicated on 19 February 1976 by its Chairman should be fully implemented, and that the remaining eight persons mentioned above should be released. The General Assembly may wish to endorse this

request of the Commission and, in the manner it may consider most appropriate, make its own position in this regard known to the Government of Chile.

516. The Working Group, having considered all the evidence received by it during 1976, has come to the conclusion that there is no justification for the continuation of the state of siege. Personal freedom of the individual, and the integrity of persons suspected, are menaced and violated. Other human rights and fundamental freedoms, including social rights, are seriously hampered by the system. The Group is aware of new sectors of suppression systematically developed - the Church, trade unions, press organizations, university circles and lawyers. The Group finds that cases of detention and torture have decreased in number, but increased in system. The Working Group could not find that the newly adopted instruments which, in the opinion of the Government, make appropriate provision for guaranteeing the rights of persons detained under the state of siege are at all effective to guarantee personal liberty. The fate of missing persons, whose number is still debated, could not be satisfactorily clarified by the replies of the Government. It may be observed that the Group found alarming contradictions, between explanations of the Government and the evidence before the Group regarding frequent expulsions of Chilean citizens indicating a complete lack of protection by the State. They are practically put in a situation of statelessness, particularly when passports referred to the no return condition stamped in them. It is the opinion of the Group that the Government of Chile has not complied with the appeals of the United Nations bodies as to the restoration of human rights in Chile.

517. The Group fully realizes that it is up to the General Assembly itself and the Member States to determine the nature of the international action which may be called for on the basis of the evidence produced of the denial of human rights and fundamental freedoms, torture and inhuman, cruel and degrading treatment, which appears to have been adopted as a pattern of government policy in Chile since the military coup of 11 September 1973. The Group, for its part, believes that the international community should not watch passively a situation where a change of government by violent means leads to such conditions, and it fears the creation of dangerous precedents. The Group, in its report to the Commission on Human Rights, has recommended that the appropriate United Nations organs should give special attention to this problem of the impact of change of régimes by violence on human rights as it continues to endanger and threaten the existence of respect of the human person as understood by the United Nations.

518. The Group also ventures to express the opinion that at this stage of the evolution of the Chilean situation the mere adoption of resolutions containing appeals which remain unheeded may not be sufficient and that some concrete steps should also be taken on behalf of the international community as represented by the United Nations system of organizations. The present situation would call, inter alia, in the Group's view, for initiatives for the establishment of a United Nations trust fund which would provide, outside any political considerations, humanitarian aid and legal aid, by Chilean and if possible foreign lawyers, to persons prosecuted under the state of siege legislation and procedures. The Group would also hope that sufficient international pressure would develop to protect those who courageously and in spite of great difficulties continue to provide defence and social services to detainees and their families, as well as to others in need, and that they may be enabled to pursue these humanitarian activities

without hindrance. The Group wishes to pay tribute to such persons, in particular the Vicaría de la Solidaridad set up by the Cardinal and the Catholic bishops of Chile, which pursues its work in a lofty spirit of charity and human solidarity.

519. The Group feels that a special and probably an effective role might be assumed by the many members of the United Nations who have sizable trade relations or economic ties with Chile and who may be further encouraged to use their good offices in influencing the Government of Chile as regards the progressive restoration of human rights in that country. It may be recalled here that one State has cut its military aid to Chile and has reduced its economic aid to that country by about 50 per cent and has indicated clearly that those levels of assistance would be reviewed if and when human rights in Chile are restored. The Working Group is also of the opinion that all the United Nations agencies that render technical or economic assistance to Chile should be requested to use their good offices with the Government of Chile to secure the restoration of human rights in that country without delay in the interests of the people of Chile, for the benefit of whom their activities are meant to be performed.

520. It is with deep sorrow that the Ad Hoc Working Group once again finds itself obliged to draw the attention of the General Assembly to facts and situations which, in its view, should not occur in our time in any country. The Group takes comfort from whatever may bring comfort; from the fact that many Chileans can still leave their country; from the genuine solidarity displayed towards these exiles in many countries and the use made abroad of their professional talents and deeply-rooted culture. The Group also recognizes that outside the dark areas of State security, some kind of normalcy and economic stability has returned to those Chileans who are not considered by deeply suspicious authorities as a danger to the State.

521. Above all, the Group finds satisfaction in reliable, emphatic statements and reports that the continuous concern directed to the problem of human rights in Chile by United Nations organs and its own work have been of identifiable benefit to the Chilean people and may have led to the saving of many people's lives and to many others escaping torture. It was deeply moved by reports that the concern of the international community, as expressed in particular in its reports, has been a source of great moral comfort to the people of Chile, including those who hear about them in the darkness of their cells and who long for the world's understanding, help and solidarity.

522. The Group has tried to do its best to perform its mandate in good conscience. It remains at the disposal of the United Nations and the international community for which the Organization stands. It is always prepared to fulfil the obligations that may be entrusted to it hereafter by the United Nations.

XIII. ADOPTION OF THE REPORT

523. At the meeting held on 10 September 1976 the present report was unanimously adopted and signed by the members of the Ad Hoc Working Group.

(Signed) Ghulam Ali Allana (Pakistan)
Chairman/Rapporteur

(Signed) Leopoldo Benites (Ecuador)

(Signed) Abdoulaye Dieye (Senegal)

(Signed) Felix Ermacora (Austria)

(Signed) M.J.T. Kamara (Sierra Leone)

A N N E X E S

Annex I

GENERAL ASSEMBLY RESOLUTION 3448 (XXX) of 9 DECEMBER 1975

3448 (XXX). Protection of human rights
in Chile

The General Assembly,

Conscious of its responsibility under the Charter of the United Nations to promote and encourage respect for human rights and fundamental freedoms for all,

Recalling that, in accordance with the Universal Declaration of Human Rights,^{a/} everyone has the right to life, liberty and the security of person and the right not to be subjected to arbitrary arrest, detention or exile, or to torture or to cruel, inhuman or degrading treatment or punishment,

Recalling that, in its resolution 3219 (XXIX) of 6 November 1974, the General Assembly expressed its deepest concern about reported constant and flagrant violations of basic human rights and fundamental freedoms in Chile and urged the authorities in that country to take all necessary steps to restore and safeguard those rights and freedoms,

Noting that the General Conference of the United Nations Educational, Scientific and Cultural Organization at its eighteenth session, the General Conference of the International Labour Organisation at its sixtieth session, the World Conference of the International Women's Year and the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its twenty-eighth session called for the cessation of violations of human rights and fundamental freedoms in Chile,

Noting that, in its resolution 8 (XXXI) of 27 February 1975, ^{b/} the Commission on Human Rights, after expressing its serious concern about the continuing reports of violations of human rights in Chile, decided to establish an ad hoc working group to inquire into the present situation of human rights in that country on the basis of all available evidence, including a visit to Chile, and appealed to the authorities of Chile to extend their full co-operation to the group,

Having considered the report of the Secretary-General under General Assembly resolution 3219 (XXIX) ^{c/} and, in particular, the progress report submitted by the Ad Hoc Working Group on the Situation of Human Rights in Chile, ^{d/}

^{a/} Resolution 217 A (III).

^{b/} See Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4 (E/5635), chap. XXIII.

^{c/} A/10295.

^{d/} A/10285, annex.

Convinced that the progress report contains evidence from which to conclude that constant flagrant violations of basic human rights and fundamental freedoms have taken place and continue to take place in Chile,

Expressing its appreciation to the Chairman and the members of the Ad Hoc Working Group for their report, which has been prepared in a commendable manner notwithstanding the refusal of the Chilean authorities to permit the Group to visit the country,

Reaffirming its condemnation of all forms of torture and of cruel, inhuman or degrading treatment or punishment,

1. Expresses its profound distress at the constant flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention and exile - to which the progress report of the Ad Hoc Working Group on the Situation of Human Rights in Chile, established under resolution 8 (XXXI) of the Commission on Human Rights, brings additional evidence - which have taken place and, according to existing evidence, continue to take place in Chile;

2. Calls upon the Chilean authorities to take, without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile is a party and, to this end, to ensure that:

(a) The state of siege or emergency is not used for the purpose of violating human rights and fundamental freedoms, contrary to article 4 of the International Covenant on Civil and Political Rights, e/

(b) Adequate measures are taken to end the institutionalized practice of torture and other forms of cruel, inhuman or degrading treatment or punishment in full respect of article 7 of the International Covenant on Civil and Political Rights;

(c) The rights of all persons to liberty and security of person, in particular the rights of those who have been detained without charge or are in prison solely for political reasons, as provided for in article 9 of the International Covenant on Civil and Political Rights, are fully guaranteed and steps are taken to clarify the status of those individuals who are not accounted for;

(d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed, contrary to article 15 of the International Covenant on Civil and Political Rights;

(e) No one, in accordance with article 15, paragraph 2, of the Universal Declaration of Human Rights, shall be arbitrarily deprived of Chilean nationality;

e/ Resolution 2200 A (XXI), annex.

(f) The right to freedom of association, including the right to form and join trade unions, shall be respected, in accordance with article 22 of the International Covenant on Civil and Political Rights;

(g) The right to intellectual freedoms, as provided for in article 19 of the International Covenant on Civil and Political Rights, shall be guaranteed;

3. Deplores the refusal of the Chilean authorities to allow the Ad Hoc Working Group to visit the country, notwithstanding previous solemn assurances given by the authorities in this regard, and urges them to honour these assurances;

4. Invites the Commission on Human Rights to extend the mandate of the Ad Hoc Working Group, as presently constituted, to enable it to report to the General Assembly at its thirty-first session and to the Commission on Human Rights at its thirty-third session on the situation of human rights in Chile and, in particular, on any developments which occur to re-establish respect for human rights and fundamental freedoms;

5. Requests the President of the thirtieth session of the General Assembly and the Secretary-General to assist in any way they may deem appropriate in the re-establishment of basic human rights and fundamental freedoms in Chile.

Annex II

COMMISSION ON HUMAN RIGHTS RESOLUTION 3 (XXXII) of 19 FEBRUARY 1976

3 (XXXII). Study of reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment

The Commission on Human Rights,

Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all,

Recalling that the Universal Declaration of Human Rights solemnly declares that everyone has the right to life, liberty and security of person and the right not to be subjected to arbitrary arrest, detention or exile, or to torture or cruel, inhuman or degrading treatment or punishment.

Recalling General Assembly resolution 3452 (XXX) of 9 December 1975, by which the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted unanimously,

Recalling further General Assembly resolution 3219 (XXIX) of 6 November 1974, in which the Assembly expressed its deepest concern about reported constant and flagrant violations of basic human rights and fundamental freedoms in Chile and urged the authorities in that country to take all necessary steps to restore and safeguard them,

Recalling in this connexion its resolution 8 (XXXI) of 27 February 1975, in which it expressed its serious concern about the continuing reports of violations of human rights in Chile, and in which it decided to establish an Ad Hoc Working Group to inquire into the present situation of human rights in the said country on the basis of all available evidence, including a visit to Chile, and appealed to the authorities of Chile to extend its full co-operation to the Group,

Noting General Assembly resolution 3448 (XXX) of 9 December 1975, entitled "Protection of human rights in Chile", by which the Assembly inter alia deplored the refusal of the Chilean authorities to allow the Ad Hoc Working Group of the Commission on Human Rights to visit the country, notwithstanding previous solemn assurances given by them in this regard, and urged them to honour those assurances,

Noting also, inter alia, recent Supreme Decree No. 187 of 20 January 1976, relating to the need for the protection of persons detained as a result of the state of siege, the effects of which have yet to be ascertained,

Having considered the report of the Ad Hoc Working Group (A/10285 and E/CN.4/1188) established under Commission resolution 8 (XXXI),

1. Expresses its appreciation to the Chairman and members of the Ad Hoc Working Group for the report, which has been prepared in a painstaking and objective manner, notwithstanding the refusal of the Chilean authorities to permit the Group to visit the country;

2. Expresses its profound distress at the constant, flagrant violations of human rights, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrest, detention and exile, of which the present report brings further evidence, which have taken place and, according to existing evidence, continue to take place in Chile, soon after the adoption of General Assembly resolution 3448 (XXX);

3. Reaffirms its condemnation of all forms of torture and cruel, inhuman or degrading treatment or punishment;

4. Appeals to the Chilean authorities to take, without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile is a party, and to this end to ensure that:

(a) The state of siege or emergency is not used for the purpose of violating human rights and fundamental freedoms, contrary to article 4 of the International Covenant on Civil and Political Rights;

(b) Adequate measures are taken to end the institutionalized practice of torture and other forms of cruel, inhuman or degrading treatment or punishment in full respect of article 7 of the International Covenant on Civil and Political Rights;

(c) The rights of all persons to liberty and security of person, in particular those who have been detained without charge or are in prison solely for political reasons, are fully guaranteed, as provided for in article 9 of the International Covenant on Civil and Political Rights, and steps are taken to clarify the status of those individuals who are not accounted for;

(d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, contrary to article 15 of the International Covenant on Civil and Political Rights;

(e) No one, in accordance with article 15 (2) of the Universal Declaration of Human Rights, shall be arbitrarily deprived of Chilean nationality;

(f) The right to freedom of association, including the right to form and join trade unions, shall be respected in accordance with article 22 of the International Covenant on Civil and Political Rights;

(g) The right to intellectual freedoms as provided for in article 19 of the International Covenant on Civil and Political Rights shall be guaranteed;

(h) The request of the Commission communicated by its Chairman in 1974 to the Government of Chile is implemented, that persons still in detention are released and that no steps are taken and no trials held against them on a retroactive basis;

5. Concludes that the practice of torture has been systematically employed by some State agencies, particularly by the Dirección de Inteligencia Nacional (DINA), and calls upon the Chilean authorities to undertake effective measures to investigate and put an end to such activities of these agencies and of individuals in relation to acts of torture;

6. Extends the mandate of the present Ad Hoc Working Group, made up of the following members, to work as experts in their personal capacity: Mr. Ghulam Ali Allana (Pakistan, Chairman/Rapporteur), Mr. Leopoldo Benites (Ecuador), Mr. Felix Ermacora (Austria), Mr. Abdoulaye Diéye (Senegal) and Mrs. M.J.T. Kamara (Sierra Leone), and requests it to report to the General Assembly at its thirty-first session and to the Commission on Human Rights at its thirty-third session on the situation of human rights in Chile, in particular any developments, legislative or otherwise, which may occur to re-establish respect for human rights and fundamental freedoms in implementation of General Assembly resolution 3448 (XXX) and all other relevant resolutions and decisions of United Nations bodies; thereafter the Group shall cease to exist;

7. Requests the Secretary-General to render to the Ad Hoc Working Group all the assistance which it might require in its work;

8. Recommends to the Economic and Social Council to make arrangements for the provision of adequate financial resources and staff for the implementation of the present resolution;

9. Decides to consider at its thirty-third session as a matter of high priority the question of the violation of human rights in Chile.

Annex III

TELEGRAM DATED 20 FEBRUARY 1976 ADDRESSED TO THE GOVERNMENT OF CHILE BY THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS AND REPLY DATED 14 MAY 1976 FROM THE MINISTER FOR FOREIGN AFFAIRS OF CHILE TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS

A. Telegram dated 20 February 1976 addressed to the Government of Chile by the Chairman of the Commission on Human Rights

On behalf of the members of the United Nations Commission on Human Rights and as Chairman of the Commission at its thirty-second session, I have been authorized to send the following telegram to your Government:

"The Commission on Human Rights recalls the telegram that was sent on its behalf by its Chairman on 1 March 1974 to the Government of Chile in which, inter alia, the release of some notable Chilean personalities was requested. The Commission, noting that while others mentioned in that telegram are no longer in detention, Luis Corvalán and Pedro Felipe Ramírez continue to be held in detention, expresses its profound concern on being informed that José Cademartori, Luis Corvalán, Fernando Flores, Alfredo Joignant, Leopoldo Luna, Jorge Montes, Tito Palestro, Aníbal Palma, Pedro Felipe Ramírez, Eric Schnake, Andrés Sepúlveda, Daniel Vergara and Sergio Vuskovic, who have been in detention for over two years, are likely to be brought to trial before a military tribunal. The Commission urges the Government of Chile to desist from holding the contemplated military trials and to release the above-mentioned persons without further delay."

B. Letter dated 14 May 1976 from the Minister for Foreign Affairs of Chile addressed to the Chairman of the Commission on Human Rights a/

[Original: Spanish]

The Government of Chile has chosen to reply in this letter to the telegram dated 20 February 1976 sent to it by the Commission on Human Rights, of which you are Chairman, rather than replying by telegram, because information was being studied which had a bearing on the status and circumstances of the persons in whom the Commission was interested.

Moreover, since my Government is aware of the fact that the Ad Hoc Working Group of the Commission is to meet representatives of the Government of Chile, I wanted to make a reply in writing which could be handed to you and would be more informative and more useful than a short telegraphic reply would have been.

I am in a position to report to you that the present situation of the persons about whom details are sought from the Government of Chile is as follows:

(1) Mr. Pedro Felipe Ramírez, Mr. Sergio Vuskovic and Mr. Andrés Sepúlveda have been released;

(2) Mr. Eric Schnake, Mr. Aníbal Palma and Mr. Tito Palestro are being detained by decision of the courts of justice, the first for his responsibility for crimes of treason and sedition, the second for his responsibility for a crime of flagrant disrespect for the judicial power, and the third because he is awaiting trial on a charge of misappropriating public funds; a charge in the case of which a defendant may not be set at liberty pending trial in our country;

(3) Mr. Luis Corvalán, Mr. José Cademartori, Mr. Jorge Montes, Mr. Daniel Vergara, Mr. Fernando Flores, Mr. Alfredo Joignant and Mr. Samuel Luna are being detained by virtue of the provisions arising from the State of Siege.

The Commission was also concerned about the existence of a procedure under which those persons would be tried in accordance with the rules of military justice.

On that point I can report to you that the military judge, when reviewing the evidence in their cases, deemed it appropriate to carry out a series of inquiries prior to rendering final judgement. That action is without prejudice to the fact that the state of the proceedings requires that, once those inquiries have been made, the judge shall render a judgement which, as the Commission knows, may either bring charges or recommend that the proceedings be abandoned.

Having explained the above, I feel bound to submit some information which the Government of Chile considered it essential to bring to the notice of the Commission.

The measure under which the persons mentioned are detained is being maintained in the exercise of an exclusive constitutional function of the Executive Power and in the belief that those persons are dangerous to national security.

In fact, the political groups which they headed and to which they are still linked are seeking the overthrow of the Government of the Republic. This is a matter of public knowledge, as is confirmed by the weapons of foreign origin which are still being found in the country every day and likewise by the radio broadcasts in Spanish beamed at Chile every day from a number of transmitters abroad, which systematically preach subversion and violence.

My Government has so informed the Secretary-General of the United Nations, the General Assembly and the Commission on Human Rights. All the evidence confirming the assertions of the Government of Chile have been supplied, such as the names of the radio transmitters, the country and city in which they are situated, the wavelength frequency and times at which their programmes are transmitted for Chile, all of which is reported in pages 36 and 37 of volume II of the document entitled "Present situation of human rights in Chile".

I also feel bound to tell you that the Government of Chile is surprised by the telegram to which I am referring, both because, in its opinion, it constitutes interference in matters that are specifically within the competence of the local authority and because the document shows concern only for the fate of certain specified persons and not for the situation of human rights in general, which gives grounds for believing that the motivation of the Commission was political rather than caused by its obligation to ensure real and effective respect for human rights in all cases and countries in which they may be violated.

Nevertheless, you are in a position to appreciate the way in which my Government has treated the telegram sent by the Commission, which constitutes a further demonstration of the attitude of the Government of Chile, which is to be constantly prepared to co-operate with the competent organs of the United Nations, even when no similar position is adopted by those who have set themselves up as accusers of the people of Chile.

This, moreover, was the Government of Chile's intention when it submitted to the General Assembly a draft resolution seeking to establish a procedure, both effective and respectful of the sovereign powers of each country, to safeguard and protect fundamental human rights. Nevertheless, my Government cannot but regret that that draft resolution received the attention of neither the General Assembly nor its Commission on Human Rights.

The present reply, and the attitude of my Government with respect to the forthcoming meeting with the Ad Hoc Working Group of which you are a member, serve to demonstrate the consistent co-operation of the Government of Chile and its intentions, while awaiting the recognition which it deserves and which has hitherto been arbitrarily denied it.

It is my earnest desire that the contacts between representatives of my Government and you and the other members of the Working Group will be as fruitful as the situation which my country is undergoing deserves and commensurate with the efforts Chile is making to secure such an outcome.

Accept, Sir, etc.

(Signed) P. CARVAJAL

Annex IV

STATEMENT BY THE AD HOC WORKING GROUP ISSUED AS A PRESS RELEASE
AT UNITED NATIONS HEADQUARTERS, NEW YORK, ON 26 MAY 1976

Press Release HR/1340 of 26 May 1976

Following is a statement by the Ad Hoc Working Group of the United Nations Commission on Human Rights to inquire into the present situation of human rights in Chile:

The Ad Hoc Working Group of the Commission on Human Rights to inquire into the present situation of human rights in Chile met at United Nations Headquarters from 17 to 25 May 1976. The meetings were held in response to a proposal by the Minister for Foreign Affairs of Chile contained in a letter dated 12 April 1976, addressed to Leopoldo Benites, the current Chairman of the United Nations Commission on Human Rights, and G.A. Allana, the Chairman/Rapporteur of the Ad Hoc Working Group.

In his letter, the Minister for Foreign Affairs expressed the view "that it would be useful to meet with the Ad Hoc Working Group to review the form that the collaboration extended by the Government should assume, with a view to enabling the Group objectively to achieve the task entrusted to it when its mandate was extended by the Commission on Human Rights". The letter raised certain questions relating to the scope of the mandate of the Group, the procedures it should follow, the manner in which it should deal with matters of a general nature and "the problem created by on-the-spot observations".

The Ad Hoc Working Group, which since its establishment had been desirous to obtain the co-operation of the Government of Chile in the conduct of its investigations, agreed to meet with the representatives of the Government of Chile, despite the fact that it had to advance its scheduled meeting by one week. Sergio Diez, Miguel Schweitzer Jr. and Octavio Errazuriz represented the Chilean Government in the exchanges of views which were held from 18 to 24 May 1976.

The Ad Hoc Working Group was particularly interested in ascertaining whether the Government of Chile was now ready to respond positively to the resolution of the Commission on Human Rights establishing the Group, which requested the Group to conduct its inquiries into the present situation of human rights in Chile, inter alia, on the basis of a visit to Chile. It may be recalled that the Government of Chile had repeatedly and publicly stated, in 1975, that it had agreed to such a visit, but had notified the Group, in July 1975, that it had to cancel the visit to Chile by the Working Group "until a more auspicious occasion". The General Assembly, the Economic and Social Council and the Commission on Human Rights, as well as many Governments and private organizations active in the field of human rights, had deplored the refusal of the Chilean authorities to allow the Ad Hoc Working Group to visit the country, notwithstanding previous solemn assurances, and urged them to honour these assurances.

In spite of its endeavours, in the course of its exchange of views with the representatives of the Chilean Government, the Group could not obtain either a firm commitment that circumstances now permitted the Chilean Government to consent to the

Group's visit to Chile; before the Group prepared its next report for the General Assembly, nor even a declaration in principle that it was the intention of the Government of Chile to agree to the visit of the Group.

The representatives of the Chilean Government indicated that the position of the Government in this respect would be determined by the Group's attitude with respect to the other matters raised in the letter of the Foreign Minister of Chile of 12 April 1976. The Group agreed to discuss these matters on the understanding that no decision or commitment would be taken in regard to them until such time as the question of the visit of the Group to Chile had been settled to the satisfaction of the Group. The Group approached these discussions in a spirit of accommodation and expressed its readiness to take into account the views of the Chilean Government to the extent that these views would permit the Group to perform its functions as envisaged by the competent United Nations organs and in conformity with the international standards governing investigations by international bodies.

As regards the mandate of the Group, the Group was ready to accept the position that its future reports to the General Assembly and the Commission on Human Rights should cover the situation of human rights in Chile as from the adoption on 19 February 1976 of the resolution of the Commission extending the mandate of the Group, it being understood that such a decision would in no way affect the substance and conclusions of previous reports of the Group, either in part or as a whole. Nevertheless, cases and situations already mentioned in previous reports which continue to exist could be studied by the Group and its findings or conclusions recorded in the reports. The Group felt, however, that it could not diminish or depart from its terms of reference as they were determined by the Commission on Human Rights and decisions of other appropriate United Nations organs.

As regards its procedures, the Group could not accept the point of view of the Government of Chile that it should confine its study of the current situation of human rights in Chile only to examine those specific cases, information about which would have to be communicated to the Government of Chile for its observations. All such observations, according to the proposals of the Chilean Government, would have to be subject to further exchanges of views with the representatives of the Government of Chile, and then they would have to be incorporated in the reports of the Group.

The Group was concerned about the safety of the persons who appeared before it as witnesses and of the members of their families, as well as of the persons who are referred to in the testimonies. The Chilean representatives could offer only general assurances in this regard. The Group expressed its readiness to communicate some of the cases of alleged violations of human rights in Chile to the Chilean authorities for their observations and comments, but it could not accept that those cases also would be communicated where there was no express consent forthcoming to that course of action by the witnesses concerned. The Group also maintained that cases which were not communicated to the Government of Chile could be utilized in the assessment by the Group of the current situation of human rights in Chile. They could also be included in the Group's reports to the General Assembly and the Commission on Human Rights.

The Chilean representatives agreed that the Group could describe in its reports situations of a general nature affecting human rights, other than specific instances of violation of such rights of individuals. The Chilean representatives also agreed

agreed in the course of the discussions not to insist on the condition that description of situations should be solely based on information emanating from Chilean Governmental sources or available to the specialized agencies.

There was no agreement on the interpretations to be given to the provisions of article 4 of the International Covenant on Civil and Political Rights under which, even in time of public emergency, no derogation from certain rights stated in the Covenant could be made. The Chilean representatives wished to subject the application of such a provision to the right of Chile as a sovereign state to judge and regulate such emergency situations. The Group did not wish to deviate from accepted international standards in this regard.

At the final stage of the negotiations, the representatives of the Government of Chile stated that if the points proposed by their Government "are approved by the Working Group, the Government of Chile will, as soon as it has this express approval in its possession, submit a document to the Working Group containing the suggestions of the Government of Chile on the conduct of the investigation in the country on the basis of the competence and procedure described above".

The Group came to the conclusion, to its regret, that the present exchange of views did not result in a significant improvement of the co-operation with the Government of Chile, and in particular that the Group could not visit Chile during this summer. The Group expressed the hope that the discussions just held would clarify positions as to the minimum requirements of the investigations which it is to conduct. It stated its readiness to meet with the representatives of the Government of Chile in the future, in order to ascertain possibilities of co-operation, taking into account the working programme and the mandate of the Group.

The Group will pursue the work entrusted to it by the Commission on Human Rights, in conformity with the resolutions of the General Assembly and the Economic and Social Council, on the basis of the appropriate provisions of the said resolutions. Therefore, it will continue to gather oral and written evidence from all relevant sources, which may be made available to it, to analyse it in detail, to assess and evaluate it.

Annex V

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION
OF MINORITIES RESOLUTION 3 B (XXIX) of 31 AUGUST 1976

3 B (XXIX). Question of the human rights of persons subjected
to any form of detention or imprisonment

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling that, in its resolutions 8 (XXVII) and 2 (XXVIII), having expressed its utmost concern about numerous and serious reports of continuing flagrant and mass violations of human rights and fundamental freedoms in Chile, including arbitrary arrests, torture and cruel and inhuman treatment of prisoners and those arrested and kept in prisons and concentration camps without any charge, it urged the Chilean authorities to take without delay all necessary steps to restore and safeguard the basic human rights and fundamental freedoms, to stop torture and cruel, inhuman and degrading treatment and persecution for political reasons and to free all persons detained without a charge being brought against them or arrested for political reasons,

Recalling also that, in its resolution 3448 (XXX), the General Assembly called upon the Chilean authorities to take, without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms and fully to respect the provisions of the international instruments to which Chile was a party,

Taking into account that in its resolution 3 (XXXII) the Commission on Human Rights called upon the Chilean authorities to take specific measures to restore and safeguard basic human rights and fundamental freedoms and in particular to end the institutionalized practice of torture and other forms of cruel, inhuman and degrading treatment or punishment and to free those who had been detained without charge or were in prison solely for political reasons,

Bearing in mind that United Nations specialized agencies, intergovernmental conferences and organizations have also urged the Chilean authorities to stop violations of human rights and fundamental freedoms,

Mindful that the reports a/ of the Ad Hoc Working Group of the Commission on Human Rights, prepared in a highly commendable manner, are further evidence that constant and flagrant violations of human rights continue to take place in Chile,

Deploring the refusal of the Chilean authorities to allow the Ad Hoc Working Group of the Commission on Human Rights to visit the country,

1. Expresses once again its profound distress at the constant, flagrant violations of human rights in Chile, including the institutionalized practice of torture, cruel, inhuman or degrading treatment or punishment, arbitrary arrests, ~~subsequent~~ disappearances, detention and exile;

a/ A/10285 and E/CN.4/1188.

2. Urges once again the Chilean authorities to take, without delay, all necessary measures to restore and safeguard human rights in full compliance with the International Covenant on Civil and Political Rights, to which Chile is a party, to stop torture and cruel, inhuman or degrading treatment, arbitrary arrests, subsequent disappearances and persecution for political reasons, and to free all persons still detained without a charge brought against them or arrested for political reasons;
3. Requests the Commission on Human Rights at its thirty-third session, taking into account the report of its Ad Hoc Working Group, to take further steps to put an end to the flagrant and mass violations of human rights in Chile;
4. Deems it also important for the Commission on Human Rights to pay special attention to the serious abuses committed by the State security agencies of Chile, particularly by the DINA, often in collaboration with similar agencies of other countries;
5. Invites the Commission on Human Rights to recommend appropriate measures regarding legal and humanitarian aid that may be made available to political prisoners and other persecuted persons in Chile, as well as measures to render financial support and other relief to alleviate the sufferings of their dependants;
6. Further invites the Commission on Human Rights to consider the adverse consequences for the enjoyment of human rights of the various forms of aid and assistance being given to the Chilean régime;
7. Requests the Secretary-General to invite international organizations, including in particular ILO, UNESCO, the World Bank, CAS and the Inter-Parliamentary Union, to inform the Commission on Human Rights regarding their recent activities that relate to human rights in Chile, so that the Commission may take such information into account when dealing with this question at its thirty-second session.

Annex VI

LETTER DATED 12 APRIL 1976 FROM THE MINISTER FOR FOREIGN AFFAIRS
OF CHILE TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS a/

[Original: Spanish]

In the light of the results of the thirty-second session of the Commission on Human Rights, the Government of Chile has deemed it advisable to write to you in order to propose that a meeting should be held between the Ad Hoc Working Group of the Commission of which you are Chairman and representatives of the Government of Chile.

This initiative by my Government is based fundamentally on Chile's re-iterated spirit of co-operation in regard to the work of the international organizations, and it has as its motive the respect to which the sovereign States members of these organizations are entitled. In this spirit of mutual co-operation and respect, the Government of Chile considers it desirable to hold a meeting with the Ad Hoc Working Group in order to discuss the possible form of the collaboration which the Government has offered in order to enable the Group to carry out objectively the task entrusted to it at the time of the extension of its mandate by the Commission on Human Rights.

This meeting might, in my Government's view, be held from 17 to 21 May in New York.

We suggest these dates and place for the meeting on the understanding that they would not present any problem for the Working Group, and would at the same time enable the Government of Chile to arrange for its representatives both to meet with the Group and to attend the session of the Inter-American Commission on Human Rights, which is to be held from 24 May to 4 June at Washington, D.C. It would not be possible for the Government of Chile to meet with the Group later, since the General Assembly of the Organization of American States is to open in Chile on 4 June.

The Government of Chile, making this proposal, is doing so on the understanding that there are problems of form and substance that require clarification in the interests of the exalted objectives which are common to Member States and to the United Nations itself.

The main questions inter alia which might constitute the agenda for the meeting relate to: the Ad Hoc Working Group's sphere of competence; procedure; analysis of general matters; and the problem of the Group's visit.

A. Competence

In this regard, my Government takes the view that the Ad Hoc Working Group, having already issued one report, should in any report to be prepared in future refer exclusively to the period beginning with the decision to extend the

a/ Transmitted under cover of a note verbale from the Permanent Mission of Chile to the United Nations Office at Geneva dated 20 April 1976.

Group's mandate. Further, it should deal with concrete and specific cases of alleged violations of fundamental rights of persons, and not of rights which constitute individual guarantees and were conceived for periods of constitutional normality in countries. In my Government's view, this is the way of objectively determining the present situation in Chile in this respect. Also, if this criterion is not followed, there will be renewed analysis of situations that have already been discussed and settled, and have become past history.

In the opinion of the Government of Chile, a report of this kind, if it is to be really fruitful and achieve its real objective, should consist of a study of specific cases which, if they actually occurred, involved violation of fundamental human rights of the individual, and provided that they occurred after the date of the extension of the mandate of the Ad Hoc Working Group of the United Nations Commission on Human Rights.

B. Procedure

The Government of Chile also believes that the establishment of a satisfactory procedure offering guarantees of objectivity will necessitate changes in the rules adopted by the Working Group without the consent of my Government.

The ideas which should in the opinion of the Government of Chile be incorporated for this purpose are indicated below, without prejudice to any others which may be agreed upon at the meeting:

- (a) Each case which the Working Group believes to be of sufficient importance to form part of or constitute a basis for the report should be communicated to the Government of Chile in such a manner that the Government is able to know which situation is being referred to, though this need not involve providing details concerning the Group's sources of information;
- (b) In each of these specific situations, the Government of Chile should have reasonable time in which to send a reply to the Group concerning the veracity of the facts and offering any explanations that may be required;
- (c) The reply by the Government of Chile should be included in the report, if the specific case on which information is requested is also included therein. If there has been no reply from the Government, the absence of a reply should also be mentioned;
- (d) Agreement should be reached on the system whereby the Government is to participate in the analysis of each case;
- (e) The Government of Chile should have an opportunity to make general comments on the report or preliminary report before they are submitted to the General Assembly or to the Commission on Human Rights, and its comments should be incorporated in the final text of these documents.

C. Matters of a general nature

Since matters of a general nature have been referred to in all reports on Chile, the Government considers it appropriate to make some observations in this respect.

In the first place, it takes the view that references to matters of a general nature may be made only if they are directly related to alleged violations of specific human rights of a particular individual. Consequently, it should be demonstrated in what way the general situation referred to has a bearing on the proper protection of the right which is alleged to have been violated.

Secondly, for the inclusion in the report of information on situations of a general nature, the only sources of information to be used should be those emanating from specialized agencies of the United Nations, or official information provided by the Government of Chile.

Thirdly, whenever a reference is made to a situation of a general nature, it should be made in such a manner as to embrace the situation in its totality and not in partial form, so as not to give distorted impressions of national realities in Chile.

D. Study of the problem of investigation on the spot

As has already been stated, the Organization of American States will be holding its General Assembly in our country from 4 to 27 June next.

As will be well understood, this problem is related to decisions to be taken at that session; and my Government is therefore unable to express an opinion in this regard.

It believes nevertheless that this matter should be considered at the meeting to be held, with a view to exchanging ideas which may serve as a basis for resolutions that may be adopted in future.

Accept, Sir, etc.

(signed) PATRICIO CARVAJAL PRADO
Minister for Foreign Affairs

Annex VII

MEMORANDUM PRESENTED TO THE AD HOC WORKING GROUP ON
24 MAY 1976 BY THE REPRESENTATIVES OF THE GOVERNMENT
OF CHILE

[Original: Spanish]

Memorandum
(Working paper)

With a view to clarifying the content of talks between the Working Group and the delegation of the Government of Chile, we are appending a summary of what was discussed during last week and of the texts exchanged in connexion with the letter dated 12 April 1976 from the Government of Chile.

1. With respect to the rules governing competence, we agree to the text supplied by the Working Group dated 19 May (76-10621), which refers to section A of our letter.

In connexion with section A, we wish to place on record our interpretation of the references in that text to the study of "cases and situations", the definition of this last phrase and the meaning of the reference to article 4 of the International Covenant on Civil and Political Rights. With this interpretation, which was not disputed by you, the text might read as follows:

"The competence of the Working Group arises from and relies on the following resolutions:

- "1. Commission resolution 8 (XXXI);
- "2. General Assembly resolution 3448 (XXX);
- "3. Commission resolution 3 (XXXII);
- "4. Economic and Social Council resolution 1994 (IX).

"The Working Group will consider only cases that have arisen since the date of the renewal of the Committee's mandate. This, however, does not exclude the possibility that the Working Group may continue to study the cases and situations already mentioned in any of its previous reports, to the extent that those cases and situations appear to be still applicable. By 'situations' is to be understood the repetition of individual cases of similar nature.

"The rules adopted concerning competence and procedure shall not have retroactive effect and shall not affect the status of earlier reports.

"The Group shall also investigate the effect of the measures taken by the Government of Chile to restore human rights.

"In the application of paragraph 4 (a) of resolution 3 (XXXII) of the Commission on Human Rights, the Working Group shall take into account article 4 of the International Covenant on Civil and Political Rights and shall deal with those human rights which may not be restricted even in emergency circumstances, subject to respect for the sovereign State's own decision to judge and regulate such emergency situations."

2. With respect to section B of our letter, the thinking of the Government of Chile is given in the document which we handed to you on Friday, 21 May, which reads as follows:

"1. The Working Group agrees to communicate to the Government of Chile the specific cases of which it has knowledge so that the Government of Chile can be aware of which situation is being dealt with and can therefore provide background information which it considers relevant to each case.

"2. The Group can receive information which it considers pertinent and will decide which information it will communicate to the Government of Chile.

However, those cases which the Group considers should not be communicated to the Government of Chile cannot appear in the report or serve as a basis for any considerations or conclusions.

"3. The Government of Chile will, of course, offer guarantees that it will not take reprisals against those who testify or against members of their families.

"4. The Government of Chile shall have the right to send to the Group observations relating to the cases communicated to it, provided that it does so within a reasonable period of time. Moreover, those observations must be included in the report if the case to which they relate is an integral part of the report.

"5. The Government of Chile should participate with the Working Group in the analysis of each case in order to demonstrate the verisimilitude of the Government's version or of that given to the Group. In no case should such participation be interpreted as participation in the decision or judgement which the Group deems it appropriate to make in each case.

"6. The form of the Government's participation described above gives substance to the co-operation which has been offered and which must be effected in such a way as not to impede the work of the Group or prevent it from exercising its competence.

"7. Any general comment which the Government of Chile sends to the Working Group at the appropriate time in connexion with its reports must be incorporated in the final text of such reports."

3. With respect to section C, we accept, in general, the Group's proposal, which was handed to us on 21 May 1976 and of which we have only the English version.

Nevertheless, in this English version we do not accept the expression "whenever possible" which occurs in the first paragraph and in paragraph 3, bearing in mind that the Group has offered to discuss with the Government of Chile the "relevant points", to take its comments into account and to include them in its reports; this will be done in all cases and not "whenever possible".

Likewise, in paragraph 3 it should be made clear that the wording used by the Working Group, namely, "endeavour" and later on "to take into account", should be understood as binding the Group not only to take into account but to include in its report such comments as the Chilean Government makes concerning the points referred to.

4. If the foregoing observations, which, in our view, are a summary of last week's talks, are accepted by the Working Group in the form explained in this letter, they shall be understood to be the applicable rules with regard to competence and procedure and may not be modified or amplified or their interpretation restricted by the Working Group without the express written agreement of the Government of Chile.

5. If the foregoing points are approved by the Working Group, the Government of Chile will, as soon as it has this express approval in its possession, submit a document to the Working Group containing the suggestions of the Government of Chile on the conduct of the investigation in the country on the basis of the competence and procedure described above.

Annex VIII
Annex VIII

LETTER DATED 25 MAY 1976 FROM THE AMBASSADOR DELEGATE OF CHILE
TO THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS ADDRESSED TO
THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS

[Original: Spanish]

The Chilean delegation participating in the talks with the Ad Hoc Working Group of the United Nations Commission on Human Rights, over which you preside, has felt it appropriate to address Your Excellency in the hope that in the exercise of your important functions you will be able to use your good offices as a means of bringing about an agreement between the Ad Hoc Working Group and the Government of Chile.

As we brought out at the last meeting held with the Working Group, the Government of Chile considers that the talks are open in nature, that the points of divergence are not insurmountable and that study of these points later on can contribute towards narrowing the gap between our positions.

We can presently inform Your Excellency that the Government of Chile is willing to study the proposal of the Representative of Austria, Professor Ermacora, regarding interpretation of Article 4 of the Pact on Civil and Political Rights, one of the two points of disagreement with respect to jurisdiction and procedure.

At the same time we wish to request the Working Group through your intervention to consider the position of the Government of Chile, which merely requests a minimal procedural guarantee, namely, that of being informed by the Working Group of the specific charges of violation of human rights of which Chilean authorities or civil servants are being accused in order to be able to answer them or investigate and correct those that appear to be well-founded. My Government cannot accept that, with your collaboration, a report will be prepared in which non-specific situations figure without the information necessary for investigating the facts and without the possibility of exercising its legitimate right of defense, a right that belongs not only to a sovereign State but also to any individual within universally accepted minimum procedural standards.

As we stated at the meeting with the Group on Monday, 24 May, if the two preceding points are resolved by common accord to the satisfaction of both parties, one or two United Nations delegates could be designated - or even delegates from the Working Group itself, if it so prefers - in order to make an on-site inspection of the degree of veracity of the accusations made against Chilean authorities or civil servants and verify the observations that the Government could formulate in each case. This would be carried out under the standards of competence and procedure already agreed upon, with the exception of the points that have motivated this letter.

Be assured, Mr. President, that the Government of Chile is willing to establish with the Group or any delegates that may be appointed the date, the plan of action and the means in which the visit to Chile will be carried out so that the Working Group may accomplish its task and present a report to the United Nations General Assembly in September containing the background information and exhibits compiled in Chile.

Please accept, etc.

(Signed) Sergio Diez Urzúa
Ambassador Delegate of Chile
to the United Nations
Commission on Human Rights

Annex IX

TWO LETTERS DATED 3 JUNE 1976 AND TWO LETTERS DATED 4 JUNE 1976
FROM THE CHAIRMAN OF THE AD HOC WORKING GROUP ADDRESSED
TO THE PERMANENT REPRESENTATIVE OF CHILE
TO THE UNITED NATIONS OFFICE AT GENEVA

A. Letter dated 3 June 1976

[Original: English]

In the course of the meetings which were held at United Nations Headquarters between 17 to 25 May 1976, in response to a proposal by the Minister for Foreign Affairs of Chile in a letter dated 12 April 1976, representatives of Your Excellency's Government suggested to the Ad Hoc Working Group on the present situation of human rights in Chile that further meetings could be held between the Group and the representatives of the Government. The Group expressed its readiness to meet with the representatives of the Government of Chile in the future, in order to ascertain possibilities of the co-operation which Your Excellency's Government may wish to extend to the Group, taking into account the working programme and the mandate of the Group.

As the representatives of Your Excellency's Government were informed the Group will resume its activities in the course of the month of July 1976 and I should like to inform Your Excellency's Government that the Group would be prepared to meet with its representatives at the United Nations Headquarters in New York on 26 and 27 July 1976. Should there be any specific points which the Government of Chile would wish to discuss on those dates the Group would appreciate to be informed of such points in advance of the meeting.

Accept, Sir, etc.

(Signed) Ghulam Ali Allana
Chairman
Ad Hoc Working Group

B. Letter dated 3 June 1976

[Original: English]

I have the honour to inform you that the Ad Hoc Working Group to inquire into the present situation of human rights in Chile has recently received a number of communications from various sources, in which grave concern was expressed as regards the safety and the whereabouts of certain persons who are alleged to have been recently arrested by security forces in Chile.

The names that repeatedly and most prominently appear in most of the above-mentioned communications are: Victor Diaz, Mario Zamorano, Jorge Munoz, Hernan Montealegre, Jose Auilera, Bernardo Arya, Corolos Carvajal, Malaquias Ciudad, Ariel Valenzuela, Elisa Escobar, Maria Cristina Castillo, Vicente Fodich, Jorge Silva, Uldericio Donaire, ~~Fernando~~ Lara, Luis Recabarren and José Weibel.

The Ad Hoc Working Group has requested me to address this letter to Your Excellency, in order to draw the attention of Your Excellency's Government to these and any similar cases, and to appeal to it that humane treatment should be assured to the persons involved and that these persons should be released from detention as early as possible. The Group would very much appreciate receiving information from Your Excellency's Government regarding the situations of these persons.

Accept, Sir, etc.

(Signed) Ghulam Ali Allana
Chairman
Ad Hoc Working Group

C. Letter dated 4 June 1976

[Original: English]

I have the honour to transmit to you, for the information of Your
.... Excellency's Government, copy of a statement, herewith attached, unanimously
adopted by the Ad Hoc Working Group to inquire into the situation of human
rights in Chile, at its last meeting in New York on 25 May 1976 and made
public at the United Nations Headquarters.

Accept, Sir, etc.

(Signed) Ghulam Ali Allana
Chairman
Ad Hoc Working Group

D. Letter dated 4 June 1976

[Original: English]

I have the honour to refer to General Assembly resolution 3448 (XXX) entitled "Protection of human rights in Chile", adopted on 9 December 1975,^{7F} and resolution 3 (XXXII) adopted by the Commission on Human Rights of 19 February 1976, and to transmit copies of these resolutions to Your
.... Excellency.

In both the above mentioned resolutions, an appeal is made to the Chilean authorities to take without delay, all necessary measures to restore and safeguard basic human rights and fundamental freedoms, and fully to respect the provisions of the international instruments to which Chile is a party, and to this end to ensure that:

"(a) The state of siege or emergency is not used for the purpose of violating human rights and fundamental freedoms, contrary to article 4 of the International Covenant on Civil and Political Rights;

"(b) Adequate measures are taken to end the institutionalized practice of torture and other forms of cruel, inhuman or degrading treatment or punishment in full respect of article 7 of the International Covenant on Civil and Political Rights;

"(c) The rights of all persons to liberty and security of person, in particular those who have been detained without charge or are in prison solely for political reasons, are fully guaranteed, as provided for in article 9 of the International Covenant on Civil and Political Rights, and steps are taken to clarify the status of those individuals who are not accounted for;

"(d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed, contrary to article 15 of the International Covenant on Civil and Political Rights;

"(e) No one, in accordance with article 15 (2) of the Universal Declaration of Human Rights, shall be arbitrarily deprived of Chilean nationality;

"(f) The right to freedom of association, including the right to form and join trade unions, shall be respected in accordance with article 22 of the International Covenant on Civil and Political Rights;

"(g) The right to intellectual freedoms as provided for in article 19 of the International Covenant on Civil and Political Rights shall be guaranteed;

"(h) The request of the Commission communicated by its Chairman in 1974 to the Government of Chile is implemented, that persons still in detention are released and that no steps are taken and no trials held against them on a retroactive basis".

..... In its resolution 194 (LX), adopted on 12 May 1976, copy of which is attached herewith, the Economic and Social Council, requested the Ad Hoc Working Group of the Commission on Human Rights, in fulfilling its mandate under resolution 3 (XXXII) of the Commission on Human Rights and resolution 3448 (XXX) of the General Assembly, also to ascertain any effect which any measure taken by the Chilean authorities might have on the re-establishment of respect for human rights and fundamental freedoms in implementation of resolution 3448 (XXX).

In accordance with operative paragraph 4 of Commission resolution 3 (XXXII), the Ad Hoc Working Group has to submit a report to the General Assembly at its thirty-first session on the situation of human rights in Chile, and in particular any developments which occur to re-establish respect for human rights and fundamental freedoms. The Group would be greatly helped in its work if Your Excellency's Government agreed to transmit to it information on any of the matters referred to in the above mentioned resolutions of the General Assembly, the Commission on Human Rights and the Economic and Social Council. Bearing in mind the programme of activities of the Working Group, the Group would appreciate it if such information could reach the Group by 5 July 1976. Any additional information could be examined by the Group if it is transmitted by Your Excellency's Government, if possible, not later than 5 August 1976.

Accept, Sir, etc.

(Signed) Ghulum Ali Allana
Chairman
Ad Hoc Working Group

Annex X

LETTER DATED 2 JULY 1976 FROM THE MINISTER FOR FOREIGN AFFAIRS
OF CHILE TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS a/

[Original: Spanish]

With reference to the note sent to my Government by Mr. Allana, Chairman of the Ad Hoc Working Group, and received during June, requesting information on the present situation with regard to human rights in Chile, I have pleasure in drawing your attention to the following:

(1) The 26 and 27 July, which the Chairman of the Working Group suggests as the date for the meeting requested by the representatives of the Government of Chile, seems to us too late, since the Working Group has to prepare a report which must be available to the United Nations General Assembly in September.

In addition to the foregoing, there is the fact that the aforesaid report must be made available to the Government of Chile a reasonable time beforehand to enable it, at least, to comment on it at the General Assembly.

My Government's opinion is confirmed by the fact that the Working Group itself, in the note in which it asks for general information on human rights in Chile, informs us that that information must be in its hands by 5 July at the latest and that additional information can be provided until 5 August, the latest date on which it can be considered by the Working Group in view of its mandate to report to the General Assembly.

(2) It is a matter of surprise to my Government that the Working Group should seek to ascertain whether we would wish to include any specific point in the subjects for discussion and asks us to let it know beforehand. As you are aware, Sir, since you took part personally in the conversations in May and from the letter which our representative, Mr. Sergio Diez, sent you from Washington immediately after the conclusion of the negotiations in New York, the Group has adequate knowledge of the points in question. It is only after the outstanding problems have been resolved that it will be possible for the Government of Chile to co-operate fully.

(3) The Government of Chile finds it most unsatisfactory that the Working Group has agreed to meet for 10 days in Mexico and has set aside only two days to meet the representatives of the Government afterwards. Given this decision, irrespective of the result of the conversations at the end of July, it will be impossible, owing to the time factor, for Chile to collaborate; for this reason the meeting on the date proposed seems to us unsuitable.

(4) Sir, with your great discernment you cannot fail to be aware that to select Mexico as the meeting place does not constitute an appropriate response to the co-operative attitude which my Government is prepared to adopt towards the Group,

a/ Transmitted under cover of a note verbale from the Permanent Mission of Chile to the United Nations Office at Geneva dated 7 July 1976.

since the Government of Mexico not only does not maintain relations with the Government of Chile but even refuses or delays the grant of visas to official Chilean representatives to international meetings in its territory. This choice of place is even more disturbing after the meeting of the Organization of American States at Santiago de Chile, at which Mexico stood out as the sole absentee from the meeting of Government representatives of the American countries. To explain its absence from this meeting, it gave reasons which were unfriendly to Chile. The attitude of the Working Group is not as objective as we had expected it to be, since there are some twenty American countries in which the meeting could be held and to which not only representatives of the Government of Chile but also representatives of institutions and individuals wishing to make statements and give evidence in person to the Working Group could come.

(5) We ask you once again, Sir, not only to make our point of view known to the Working Group but to urge it to change its arrangements, to cancel its decision to meet in Mexico, to put forward the date proposed for the meeting with our representatives and to accept the terms of rapprochement and collaboration of our letter to you of 12 April 1976.

In the hope of an encouraging reply,

Accept, Sir, etc.,

(Signed) Patricio Carvajal Prado

Minister for Foreign Affairs of Chile

Annex XI

TELEGRAM DATED 12 JULY 1976 FROM THE ACTING CHAIRMAN OF THE
AD HOC WORKING GROUP TO THE MINISTER FOR
FOREIGN AFFAIRS OF CHILE

I have the honour to inform Your Excellency that the Ad Hoc Working Group entrusted by the Commission on Human Rights of the United Nations in its resolutions 8 (XXXI) and 3 (XXXII) with the task of inquiring into the present situation of human rights in Chile has requested me to inform Your Excellency's Government that the Group is prepared to continue to meet with representatives of the Chilean Government for the purpose of pursuing negotiations with Your Excellency's Government in accordance with its terms of reference as set out in the above-mentioned resolutions of the Commission on Human Rights.

Taking into account the work to be carried out by the Group prior to the thirty-first session of the General Assembly, these consultations could be held at United Nations Headquarters in New York between 26 and 30 July 1976, or between 23 August and 10 September at the United Nations Office in Geneva. During these periods the Group would also be prepared to hear any person or institution the Chilean Government may wish to propose as being in a position to furnish information which it may deem appropriate. However, because of the obligations deriving from its terms of reference the Group would very much appreciate an opportunity of meeting with Your Excellency's Government between 23 and 27 August in order to be able to include in its report to the General Assembly the authorized views of your Government. The observations of the Ad Hoc Working Group concerning the contents of the communication dated 2 July which Your Excellency addressed to the Chairman of the Commission on Human Rights and which he received on 9 July and transmitted to the Chairman-Rapporteur of the Ad Hoc Working Group will be communicated to Your Excellency as soon as the Group has considered the various points submitted for its consideration.

Annex XII

LETTER DATED 31 JULY 1976 FROM THE CHAIRMAN OF THE AD HOC
WORKING GROUP TO THE MINISTER FOR FOREIGN AFFAIRS OF CHILE

[Original: English]

I have the honour to refer to the communication dated 2 July 1976 which Your Excellency addressed to the Chairman of the Commission on Human Rights, care of the Division of Human Rights in Geneva, concerning the letter which, at the request of the Ad Hoc Working Group to inquire into the present situation of human rights in Chile, I sent to the Permanent Representative of Chile to the United Nations Office at Geneva on 3 June 1976.

In my letter of 3 June I recalled the suggestion made by the Representatives of Your Excellency's Government during its exchange of views with the Ad Hoc Working Group which took place in May 1976 at United Nations Headquarters in New York, that further meetings should be held between the Group and the Representatives of the Government as well as the readiness expressed by the Group to meet with the Representatives of the Government of Chile in the future, in order to ascertain the possibilities of co-operation which Your Excellency's Government may wish to extend to the Group, taking into account the working programme and the mandate of the Group. The dates of 26 and 27 July 1976 were suggested to Your Excellency's Government for the purpose of such further consultations, at the United Nations Headquarters in New York.

I wish also to refer to the telegram which the Acting Chairman of the Ad Hoc Working Group sent to Your Excellency from Mexico City on 16 July 1976 in which other dates and places of meeting were suggested to Your Excellency's Government and Your Excellency was informed that further observations of the Ad Hoc Working Group on the contents of the letter dated 2 July would be transmitted to Your Excellency as soon as the Group had examined the various points submitted for its consideration.

In connexion with this exchange of correspondence the Group requested me at the very outset to draw to the attention of Your Excellency's Government that consistently with United Nations practice, letters to the Working Group should be addressed to its Chairman. The Group, although established by the Commission on Human Rights, has an autonomous status as regards the performance of the functions entrusted to it.

The Group also requested me to remark that within the framework of its mandate and the administrative and financial arrangements made to enable it to exercise its functions it has to retain final responsibility for determining its programme of work.

As regards the points made in the paragraph numbered one of Your Excellency's letter I wish to observe that the suggested dates of 26 and 27 July appeared to the Group as the most satisfactory taking into account the requirements of the Group in the light of that programme. Mutually accepted changes to suit the convenience of Your Excellency's Government were not excluded by these suggestions.

/..

It may be observed in this connexion that the Representatives of Your Excellency's Government have restricted the possibility of certain earlier consultations on the ground that meetings of the Assembly of the Organization of American States were being held in Chile. In this connexion, the Group wishes to remark that its activities on behalf of the United Nations cannot be conditioned by the requirements of regional organizations acting independently of that World Organization.

The question of the information which was requested from Your Excellency's Government in my letter of 4 June 1976 as regards matters referred to in resolution 3448 (XXX) of the General Assembly and resolution 3 (XXXII) of the Commission on Human Rights was in the opinion of the Group distinct from that of the meetings between the Group and the Representatives of Your Excellency's Government on modalities of co-operation between Your Excellency's Government and the Group. The dates suggested for the submission of such information as Your Excellency's Government may wish to forward took into account the programme approved by the Group with a view to the timely submission of its report to the thirty-first regular session of the General Assembly.

As regards the questions raised by Your Excellency in paragraph numbered 2 of the letter of 2 July the suggestion in my letter of 3 June that Your Excellency's Government may wish to refer in advance to specific points which might be discussed by its Representatives with the Group was solely designed to facilitate further consultations, by indicating in the light of the discussions of May 1976 the questions on which progress could be made, in particular as regards that of the visit of the Group to Chile contemplated in resolution 8 (XXXI) of the Commission on Human Rights. Your Excellency's Government will recall in this connexion the important divergencies as regards the modalities of co-operation between the Government and the Group which still remain to be resolved concerning such matters as the manner in which the Group would perform in the future the functions entrusted to it by the General Assembly and the Commission on Human Rights; the assurances which the Government would be requested to extend as regards the safety of the persons who appeared before the Group as witnesses and who had requested the Group not to divulge their names, the members of their families and the persons who are referred to in the testimonies, and the interpretation to be given to the provisions of Article 4 of the International Covenant on Civil and Political Rights under which inter alia even in time of public emergency no derogation of certain rights listed in the Covenant can be made and measures derogating from the exercise of those rights may be taken only to the extent strictly required by the exigencies of the situation.

Your Excellency's Government will understand that the Ad Hoc Working Group as a United Nations body cannot depart from the principles guaranteeing the protection of human rights which have been accepted by the International community in United Nations instruments and in particular from those which are at present legally binding on the Chilean Government; nor can the Group agree to limitations on methods of inquiry generally recognized as applicable in investigations conducted by international bodies.

Similarly as regards the proposition contained in the letter which Ambassador Sergio Diez sent to the Chairman of the United Nations Commission on Human Rights on 25 May 1976 to which reference is made in Your Excellency's letter of 2 July, that one or two United Nations delegates or delegates from the

/...

Working Group itself could be designated in order to make on site inspections for certain specific purposes, the Group has to state that it does not consider itself to be competent to express itself as to a United Nations representation, other than that of its own members. In so far as the members of the Group are concerned it is the Group's firm belief that in accordance with the resolutions under which it was established and under its mandate it has to continue to perform its functions as one group, as constituted by these resolutions.

As regards the considerations contained in paragraphs 3 and 4 of Your Excellency's letter the Group wishes to point out that its decision to meet in Mexico was taken after full consideration of various possibilities at the time when the programme of work of the Group for 1976 was adopted i.e. in February 1976, thus a long time before the decision of the Mexican Government not to attend the session of the Assembly of the Organization of American States in Santiago was announced. The Group had no reason to believe that if oral and written evidence relevant to the Group's work were to be furnished to the Group in Mexico, the necessary facilities including entry visas would not have been obtained from the authorities of that country.

During its stay in Mexico, the Group confined its activities to the gathering of information useful to its work and no consultations or discussions whatsoever were held with the representatives of the Mexican Government on the subject matter of the Group's inquiries. I wish, therefore, to assure Your Excellency that the decision to perform a part of its functions in Mexico was not motivated by any inclination of the Group to irritate Your Excellency's Government.

I venture to express the belief that the above reply to the observations contained in Your Excellency's letter dated 2 July 1976 will provide additional clarification as to the manner in which the Group considers it has to perform the difficult and important tasks entrusted to it, a reassurance as to the spirit of objectivity which its members are firmly determined to maintain in the performance of their functions and as to their hope that Your Excellency's Government will agree to extend to the Group the facilities for accomplishing a task which corresponds to deep concerns of the world community.

Accept, Excellency, etc.,

(Signed) Ghulam Ali Allana
Chairman

Ad Hoc Working Group

Annex XIII

LETTER DATED 19 AUGUST 1976 FROM THE MINISTER FOR FOREIGN AFFAIRS
OF CHILE TO THE CHAIRMAN OF THE AD HOC WORKING GROUP a/

[Original: Spanish]

In reply to your letter of 31 July 1976 concerning the exchange of communications between my Government and the Ad Hoc Working Group under your chairmanship, I am pleased to inform you of the following:

1. My Government is prepared to continue the conversations with the Working Group with a view to arranging the co-operation needed to carry out the mandate entrusted to it by the United Nations Commission on Human Rights. The first move along these lines was made by the Government of Chile in May this year at the meetings then held in New York.

2. Accordingly, representatives of the Government of Chile will come to Geneva on the dates suggested by you on behalf of the Working Group of which you are Chairman.

3. Without prejudice to such decisions as may be reached by the representatives of my Government and the Working Group at their forthcoming meetings, there are a few points in the letter I am hereby answering which my Government deems it necessary to clarify:

(a) The Government of Chile has never sought to impose on the work of the Group restrictions other than those internationally recognized in instruments signed by my Government, by international practice and by universally-accepted legal theory. On the contrary, Chile has only asked that, in view of its sovereign decision to co-operate with international organizations, the latter should recognize Chile's inalienable rights and treat it with the dignity to which it is entitled as a sovereign State, and that it should be assured that the actions taken by the organizations concerned are objective and impartial. It therefore asked to take part in drafting the rules of procedure which, subject to its consent, would enable the Working Group to fulfil its mandate;

(b) You will recall that since May 1975 the representatives of the Government of Chile have asked for their views to be taken into account in the drafting of the rules of procedure for the Group, in accordance with Chile's status as a sovereign State and with a view to harmonizing national and international jurisdiction when both are concerned with reviewing human rights in a particular country. We would point out once again that no international instrument, practice or treaty-drafter has excluded a sovereign State from taking part in a review of the observance of human rights on its territory. Accordingly, my Government must make it clear once again to the representatives of the international community that the co-operation of a sovereign State requires, as an essential prerequisite, that minimum rules of procedure should be drawn up. Any other Government in a similar position would have made the same request.

a/ Transmitted under cover of a note verbale from the Permanent Mission of Chile to the United Nations Office at Geneva dated 25 August 1976.

(c) I must also point out, as stated on repeated occasions, that my Government does not ask, nor has it ever asked, that the Working Group should supply it with the names of witnesses appearing before it. Hence, there is no reason for the Government of Chile to be asked for guarantees regarding the safety of these persons. Chile nevertheless insists upon being advised of specific cases of alleged violations of human rights in sufficient detail to enable it to deal with a particular situation. Only if this is done can my Government deny the allegation or, if it is substantiated, take the necessary remedial action.

With respect to the guarantees for the safety of the persons concerned or their relatives, the Government of Chile reminds you of the Memorandum (working paper) dated 24 May 1974 which was submitted to the Group in the course of conversations held in New York. It is expressly stated in paragraph 3 of that Memorandum that the Government of Chile, as a matter of course, guarantees that no reprisals will be taken against the persons concerned in the cases dealt with, or against their relatives.

(d) Finally, my Government begs to point out that although the Commission on Human Rights granted the Working Group broad terms of reference, this does not mean that these are not subject to the limitations arising from the nature of the Group and from the mission entrusted to it, in accordance with the international practices and legal theory to which we have referred.

4. Finally, my Government is convinced that its behaviour has at all times been characterized by respect for the rights of man, and it has sought to co-operate with international organizations. It has demonstrated this by co-operating not only with the United Nations but also with the Organization of American States, the International Red Cross and other institutions.

In accordance with the standard of behaviour it has consistently maintained my Government will be represented at international organizations and their subsidiary bodies and, in this particular case, the Group over which you preside, in the hope that a fair and equitable solution may be found, thus being true to its dual status as sovereign State and Member of the United Nations.

Accept, Sir, etc.

(Signed)

Patricio Carvajal Prado
Minister for Foreign
Affairs of Chile

Annex XIV

NOTE VERBALE DATED 25 AUGUST 1976 FROM THE PERMANENT MISSION
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO
THE CHAIRMAN OF THE AD HOC WORKING GROUP

[Original: Spanish]

The Permanent Mission of Chile to the United Nations Office and other international organizations at Geneva presents its compliments to Mr. Ghulam Ali Allana, Chairman of the Ad Hoc Working Group of the Commission on Human Rights, and has the honour to acknowledge receipt of his communication dated 3 June 1976 in which he seeks information on the status of detained Chilean citizens.

I beg to inform you of the following:

Jorge Aguilera Belmar was detained under the constitutional authority of the Government during the state of siege, on evidence that he served as a liaison agent of the banned Communist Party in the distribution of funds received from the Frente de Masas (Front of the Masses), i.e. trade union associations infiltrated or manipulated by that party. He was released on 12 May 1974, the day following his arrest.

Malaguías Ciudad Salazar was released under Decree No.2077 of the Ministry of the Interior, dated 24 May 1976.

Jorge Silva Rojas has been free since 20 October 1975.

Hernán Montealegre Klenner, María Cristina Castillo Campano, Horacio Ariel Valenzuela Barragán, Vicente Fodich Castillo are being detained, for subversive activities, in the Los Alamos camp under the powers which the Political Constitution of the State - in force since 1925 - grants to the Government during a state of siege.

Victor Díaz, Mario Zamorano, Jorge Muñoz, Bernardo Araya, Dolores Carvajal, Elisa Escobar, Uldaricio Donaire, Fernando Lara, Luis Recabarren and Jose Weibel. There is nothing on the record to show that they have been, or are being, detained in Chile. This does not mean that they may not have left the country illegally, under a false identity, as has happened on many occasions, or that they are not involved in underground activities inside Chile.

Annex XV

NOTE VERBALE DATED 25 AUGUST 1976 FROM THE CHARGE D'AFFAIRES A.I.
OF THE PERMANENT MISSION OF CHILE TO THE UNITED NATIONS OFFICE
AT GENEVA ADDRESSED TO THE CHAIRMAN OF THE AD HOC WORKING GROUP

[Original: Spanish]

The Permanent Mission of Chile to the United Nations Office and other international organizations at Geneva presents its compliments to Mr. Ghulam Ali Allana, Chairman of the Ad Hoc Working Group of the United Nations Commission on Human Rights, and has the honour to reply to the letter of 4 June 1976 addressed to the Government of Chile.

For the sake of clarity, a reply is given to each of the points raised in the same wording as that used in the letter referred to.

- (a) The state of siege or emergency should not be used for the purpose of violating human rights and fundamental freedoms (article 4 of the International Covenant on Civil and Political Rights)

This provision permits suspension of civil and political rights in emergencies that threaten the life of the nation. In this case the restrictions should not go beyond what is required by the exigencies of the situation, and should not involve discrimination or derogate from the provisions of the Covenant relating to the guarantee of the right to life, the prohibition of torture or of other cruel, inhuman or degrading treatment, the prohibition of slavery and servitude, the prohibition of imprisonment for debt, the non-retroactivity of criminal law and the application of the principle in dubio pro reo, and recognition of the right to freedom of thought, conscience and religion.

The identification of emergencies that threaten the life of the nation is the exclusive prerogative of the Government of that nation. Nevertheless, my Government has explained on a number of occasions the reasons that have led it to adopt various restrictions authorized by article 4.

In our legislation the state of siege and state of emergency are exceptional measures that restrict certain freedoms, but both are in accordance with article 4 of the International Covenant on Civil and Political Rights, since they do not affect the safeguards laid down in paragraph 2 of that article.

The Political Constitution of 1935 provides in article 72 (17), for the proclamation of a state of siege in case of external attack or internal upheaval. By virtue of this provision the President of the Republic is empowered to "transfer persons from one Department to another" and to "hold persons in detention in their own homes and in places that are not prisons or other premises intended for the custody or imprisonment of common criminals". Lastly, the Constitution provides that "measures taken by reason of the state of siege shall not be prolonged beyond the duration of the state of siege".

These principles were reiterated in the same wording by Legislative Decree No. 527 of 1974, Constitutional Act of the Government Junta.

Exercising the above-mentioned powers, and through the enactment of Legislative Decrees Nos. 3 and 5 of 1973, the Chilean Government declared a state of siege throughout the territory of the Republic.

Subsequently, through Legislative Decree No. 640 of 1974, various degrees of state of siege were established in order to take the gravity of each particular situation into account, instead of applying the full state of siege in full in each case.

Lastly, reflecting the progress made in the process of normalization, Legislative Decree No. 1,181 of 1975 further reduced the state of siege to the level of a "state of internal security".

The most important result of this last reduction was that as from 11 September 1975 the Peacetime Military Courts began to operate again, and the jurisdiction of the Wartime Military Courts, which had functioned from 11 September 1973 till 11 September 1975, was ended. The Peacetime Military Courts, in our legal system, come under the jurisdiction of the Supreme Court, to which their decisions can be appealed, and which can not only review those decisions but also lay down rules for the proper functioning of the Military Courts and "eliminating the defect that gave rise to the complaint".

The only exception is for a small number of offences of a particularly serious nature, such as subversion, sabotage, kidnapping and terrorism, and for those offences the option of applying the wartime procedure remains open.

It should be pointed out that while the state of siege was in force the constitutional safeguards provided in the Basic Charter were preserved with full effect, subject only to the exception embodied in the description of the powers granted to the Executive in the proclamation of the state of siege, and these powers limit individual freedoms only to a limited extent, considering the very serious situation that is a prior condition for such proclamation.

In fact, as we have seen, these powers granted to the President of the Republic are very specific powers, and the measures adopted by virtue of these powers are in force only for the duration of the said state of emergency.

Moreover, the Government has taken particular care to regulate the exercise of these powers in such a way that they provide those concerned with the broadest guarantees that, within the limitations inherent in these powers, those persons will continue to enjoy their individual safeguards.

For this purpose legal instruments have been enacted such as Legislative Decree No. 1,009 of 1975 and Supreme Decrees Nos. 187 and 146 of 1976 issued by the Ministry of Justice and the Ministry of the Interior, respectively, which establish various rules intended to protect the rights of those detained under the state of siege. In referring to points (b) and (c) we take the opportunity to analyse these rules in detail, and we accordingly refer to what they provide in this connexion.

With respect to the state of emergency, article 44 (12) of the Constitution provides that only by legislation is it possible to "restrict personal liberty or freedom of the press, or to suspend or restrict the exercise of the right of assembly, when it may be so required by the imperative need to defend the State, or to preserve the constitution or the peace of the realm, for periods in any case not exceeding six months".

In accordance with this constitutional principle, Act No. 12,927 of 1958 was enacted, on State security, and a revised text was established by Decree No. 890 of 1975 of the Ministry of the Interior.

The relevant section of this legal instrument authorizes the President of the Republic to declare a state of emergency in all or part of the national territory, the region concerned coming under the authority of the National Defence Chief appointed by the Government, who assumes the military command with the powers and duties provided for by law, without prejudice to the continued performance by the administrative authorities of their usual functions.

The powers granted to the Military Chief include certain powers relating to the subject under discussion, such as the power to "issue all orders or instructions he may consider necessary for the maintenance of internal order within the region", and particular powers relating to freedom of information, which we shall analyse in detail in relation to point (g).

The foregoing account makes it possible to appreciate that the emergency measures taken by the Government are those provided for under our legal system for situations such as those that existed in Chile, and that both the state of siege and the state of emergency are based on specific provisions in our Political Constitution, which has been in force for fifty years; that these provisions indicate the cases when such measures may be taken, and their effects; that, in the specific case of the state of emergency there have also been applied the rules provided in this respect by Act No. 12,927 of 1958 on State security, referred to above; that, in any case, the two forms of emergency permit restriction or modification only of specified individual rights, while all other constitutional safeguards retain their force, and that in fact the national authorities have applied these rules with moderation, gradually but progressively reducing their severity, and thus bringing about the process of normalization.

It may be affirmed that the Government, in carrying out its imperative duty of safeguarding the right of its people to life and to a peaceful existence, has been obliged to resort to the exceptional measures embodied in our legislation, but that in doing so it has used the powers so provided with strict observance of the constitutional principles and rules of law, thereby safeguarding respect for human rights and individual freedoms, which have been restricted or limited only to the extent laid down by the provisions in question.

- (b) Adequate measures to end the "institutionalized" practice of torture and other forms of cruel, inhuman or degrading treatment or punishment, in full respect of article 7 of the International Covenant on Civil and Political Rights

On this point, the Government of Chile must once again express its total disagreement with the terms of this paragraph of the resolution since, in appealing to the national authorities to end a particular situation, the resolution - automatically, inadmissibly and irresponsibly - takes as its starting-point the completely unwarranted and false assumption that this particular situation exists in our country.

In the case of Chile, such action is especially serious and unjust, since our legal order not only fully conforms to the provisions on the question embodied in the International Covenant on Civil and Political Rights, but also contains many provisions which are intended precisely to prevent the occurrence of acts such as those with which Chile is being indirectly charged.

Article 7 of the Covenant on Civil and Political Rights in fact provides that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" or "without his free consent to medical or scientific experimentation".

For its part, the Political Constitution of Chile, within the context of a body of provisions that accord the broadest guarantees to arrested or accused persons, some of which are quoted in other parts of this reply, expressly stipulates in the first part of article 18, second paragraph, that "torture may not be practised".

This peremptory constitutional precept is complemented by various legal provisions and regulations to guarantee its implementation.

Thus, for example, the final paragraph of article 1 of Legislative Decree No. 1,009 of 8 May 1975 establishes a specific penalty for persons who infringe this provision, by providing that "the subjection of prisoners to unlawful ill-treatment shall be punishable in accordance with article 150 of the Criminal Code or article 330 of the Code of Military Justice, as appropriate".

The latter articles in turn establish, inter alia, the appropriate penalty for persons who "inflict torture" on an accused person or "exercise unnecessary harshness in dealing with such a person", and for "military personnel who, in carrying out any order from a person of higher rank or in carrying out military duties, use or cause to be used, without reasonable grounds, unnecessary violence in the execution of the acts which they are called upon to perform".

Finally, it should be noted that Supreme Decree No. 187 of the Ministry of Justice of 30 January 1976, supplemented by Supreme Decree No. 146 of the Ministry of the Interior of 25 February 1976, lays down a number of rules to guarantee the rights of prisoners under the state of siege. The relevant provisions read as follows:

"(a) Arrested persons shall be taken only to, and remain only in, any of the three places designated for this purpose, as indicated in the above-mentioned Decree No. 146;

(b) The National Health Service and the Forensic Medicine Service shall assign to these places medical officers who shall be responsible for the continuous supervision of the medical condition of the prisoners;

(c) Every prisoner shall be examined by one of the above-mentioned medical officers before entering one of the aforesaid places or establishments. He shall undergo a similar examination during his period of detention in, and when he leaves, the said places or establishments;

(d) The medical officers shall, in each case, prepare a written report on the condition of the person examined and shall immediately submit it to the Ministry of Justice;

(e) If on the basis of this information it appears that the prisoner has been subjected to ill-treatment or undue harassment, the Ministry of Justice shall report such acts to the appropriate administrative, institutional or judicial authority;

(f) The President of the Supreme Court and the Minister of Justice shall be empowered to visit, without prior notice, any of the places of detention, to inspect them and - a point which is of particular relevance to the question at issue - 'to order the immediate medical examination of any prisoner who during the inspection claims to have been subjected to ill-treatment or undue harassment during his detention in the place in which the inspection has been carried out'.

It should be noted that, during the entry into force of this provision, the above-mentioned authorities have made many visits, including night visits, to the various places of detention, without prior notice, and that they have found no irregularities, as is evident from attestations made at the conclusion of those visits.

(g) Lastly, the Decree provides that the competent authorities, in cases relating to the provisions of subparagraphs (e) and (f) above, 'shall within a period of 48 hours order the appropriate investigation to be carried out, on the basis of the report of the President of the Supreme Court, the Minister of Justice or any official appointed by the latter, for the purpose of determining those responsible and applying the relevant penalties'."

In this connexion, the Working Group's attention is drawn to the fact that up to 31 May 1976 the Military Courts had instituted 153 proceedings involving various abuses of authority; as of that date 41 persons had been sentenced and decisions were pending in 50 cases; proceedings were terminated by nolle prosequi in 62 cases.

In addition, prisoners receive periodic visits from representatives of the International Committee of the Red Cross (ICRC), who are accompanied by their own doctors and are able to hold private conversations with prisoners, as indeed they regularly do. They make confidential reports on their visits to the competent authorities and co-operate in the good treatment to which all persons are entitled.

Officials and members of the Organization of American States (OAS) also made fact-finding visits to the places of detention during their stay in Chile on the occasion of the General Assembly of that Organization. Since leaving Chile, they have made public statements corroborating what the Government has consistently stated with regard to the good treatment received by prisoners.

It is therefore apparent that the practice of inflicting unlawful ill-treatment has not been instituted in our country, as is implied by the resolution, and that such ill-treatment is not tolerated; on the contrary, a serious, comprehensive and coherent body of provisions exist to prevent the occurrence of such ill-treatment and to punish those responsible for any type of abuse.

The Government of Chile takes this opportunity to reiterate its willingness and, indeed, determination to adopt, in accordance with the above-mentioned provisions, measures to ensure, whenever it receives a specific and responsible report on the question, exhaustive investigation of the facts and, whenever appropriate, the punishment of those responsible.

- (c) The rights of all persons to liberty and security of person, in particular those who have been detained without charge or are in prison solely for political reasons, are fully guaranteed, as provided for in article 9 of the International Covenant on Civil and Political Rights, and steps are taken to clarify the status of those individuals who are not accounted for

Article 9 of the International Covenant on Civil and Political Rights, observance of which is called for in the resolution, reads as follows:

"Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Any one who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

In the Chilean legal system the basic instrument guaranteeing the rights of individuals is Chapter III of the Constitution itself, entitled "Constitutional Guarantees", several parts of which contain provisions intended precisely to protect liberty and security of persons.

This is true, in particular, of articles 13 to 17, which read as follows:

"Article 13. No one may be arrested except on the order of a public official expressly empowered by law and after he has been legally informed of the said order, unless he has been caught in the act of committing a crime, in which case he may be arrested solely for the purpose of being brought before a competent judge.

"Article 14. No one may be arrested or taken into custody or imprisoned except in his own home or in public places intended for this purpose.

"Prison authorities may not admit to their institutions any arrested person, defendant or prisoner without copying in their register the relevant order emanating from legally-empowered authorities. However, they may admit to the prison as arrested persons, persons who have been brought there for the purpose of appearing before the competent judge; they are nevertheless obliged to report to the latter within a period of 24 hours.

"Article 15. If the authorities cause any person to be arrested, they shall, within a period of 48 hours, inform the competent judge and place the arrested person at his disposal.

"Nevertheless, in the case of crimes against the security of the State and during periods when a state of emergency is in force, the period referred to in the preceding paragraph shall be up to five days.

"Article 16. Any person who has been arrested, placed in custody pending trial or imprisoned, in breach of the provisions of the preceding articles, may, personally or through any person acting on his behalf, take proceedings before a court in order that it may indicate the law under which the legal formalities are being carried out. This court may order the person in question to be brought before it and its decision shall be strictly obeyed by all those responsible for prisons or places of detention. When the court receives the information on the case, it shall order the immediate release of the prisoner or shall ensure that the legal irregularities are remedied or shall place the person in question at the disposal of the competent judge, acting in all cases speedily and with dispatch, thereby correcting the said irregularities or reporting to those responsible for correcting them.

"Article 17. No order of isolation shall prevent the official in charge of the detention centre from visiting the person arrested, placed in custody pending trial or imprisoned.

"The said official shall, if the detainee so requests, transmit the copy of the detention order to the competent judge; require that a copy be issued to him; or personally issue a certificate to the effect that the individual concerned is in detention, if at the time of detention this requirement was not fulfilled."

These rules are repeated and supplemented by many legal provisions and regulations which govern in detail the proper safeguarding of the rights guaranteed in the articles mentioned.

However, the situation queried under item (c) of this letter relates particularly to individuals who have been detained without any charge being brought against them or who are in prison for purely political reasons.

In this respect, it should be pointed out that most of the persons deprived of liberty have been detained, tried or sentenced for offences against specific legal provisions, characterized by clearly defined actions constituting grounds for criminal proceedings.

Indeed, at 30 July 1976, 1,481 persons were in prison or detention, 1,059 of them sentenced or held in respect of cases before the Military Tribunals and 422 in application of the constitutional provisions under the state of siege.

With regard to the former, the Ad hoc Working Group may be informed that 708 persons are serving sentences and 351 are being tried.

Lastly, it should also be pointed out that of the 708 persons sentenced, 520 have had their sentences commuted to exile and are waiting to be freed either by an appropriate decree or through the receipt of a visa from a foreign country.

As will be seen from the foregoing, once these formalities have been completed the total number of persons deprived of liberty will consist of 422 detainees under the State of Siege Act, 351 awaiting trial and 188 convicted persons who have either not sought or have been refused a commutation of their sentences.

Legal requirements for arrest

In accordance with the provisions of Legislative Decree No. 1,009 of 1975 and Supreme Decree No. 187 of 1976, issued by the Ministry of Justice, the following requirements must be fulfilled:

(1) An arrest may be made only on the prior written order of the head of the corresponding specialized security body; the order must contain the following:

- (a) Identifying particulars of the arrested person;
- (b) Identifying particulars of the arresting officer;
- (c) Place to which the arrested person is to be taken;
- (d) Date, time and place of arrest;
- (e) Name, position and signature of the authorizing officer;
- (f) Stamp of the official who legalizes the order.

(2) Within 48 hours of an arrest, a copy of the relevant order must be delivered to the nearest relative of the arrested person indicated by him living at the place at which the arrest was made.

(3) Arrest by the security bodies may last not more than five days and within that period the detainee shall be either released or placed at the disposal of the competent Tribunal or of the Ministry of the Interior in cases involving the enforcement of special powers or powers granted under the state of siege, as applicable, together with a written report of the information obtained.

In accordance with the above provisions, Part V of Volume II, Section 1 of the Code of Criminal Procedure sets out the procedure to be followed in cases of arbitrary arrest or imprisonment; article 306 provides that any person in respect of whom there exists an order of arrest or imprisonment issued by an authority without powers of arrest or issued in circumstances other than those prescribed by law, without compliance with all the formalities laid down in this Code or without proper justification or grounds, may, whether or not the order has been executed and if no appeal has been lodged, demand to be freed immediately or to have the charges rectified.

The appeal mentioned may be made before the appropriate Court of Appeal by the person concerned or on his behalf by any person having legal capacity, even if he has no special power of attorney to do so, and the Court must make a decision within 24 hours.

Chile thus has a balanced set of precepts which generally speaking guarantee the liberty and personal safety of all the inhabitants and, in particular, of those being detained on any of the grounds provided for in the Constitution or the law.

Finally, with regard to the freedom of persons, a Special Board for the Commutation of Sentences was set up by Supreme Decree No. 504 of 30 April 1975. By 30 June 1976, this Board had examined 1,236 applications, with the following results:

(1) Applications approved	1,044
(2) Applications rejected	121
(3) Applications referred to the Ordinary Advisory Committee	20
(4) Applications filed	41
(5) Applications being considered	10

Thus, of the 1,236 applications submitted to the Board, only 121 have been rejected, a fact which again shows that the Chilean Government has not proceeded in the manner charged, even in dealing with persons sentenced for offences.

- (d) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence when it was committed (provisions of article 15 of the International Covenant on Civil and Political Rights)

Basically, article 15 of the International Covenant on Civil and Political Rights provides that "no one shall be held guilty of acts or omissions which did not constitute a criminal offence, under national or international law, at the time

when the criminal offence was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed". It adds that "if subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby".

The principle of non-retroactivity in criminal matters is embodied in the chapter of the Chilean Fundamental Charter relating to Constitutional Guarantees, articles 11 and 12 of which provide that no one may be sentenced until he has been legally tried in virtue of a law promulgated prior to the act to which the trial relates, and that no one may be tried by special committees, but only by the Court designated and previously established by law.

These precepts are corroborated by various legal provisions, including article 18 of the Criminal Code, which provides that no offence shall be punishable by any penalty other than that provided by a law promulgated prior to its commission.

Article 18 also ensures the application of the "pro reo" principle by providing that if after the commission of the offence and before the final judgement another law is promulgated exempting the offence from any penalty or subjecting it to a lighter penalty, it must be taken into account at the trial. This benefit is at present being extended even to convicted persons.

Offences against these provisions would always give entitlement to annulment on the basis of the law and to the right of complaint, and if any legal provision departed from these constitutional norms it would be unconstitutional and could be declared inapplicable by the Supreme Court.

(e) No one shall be arbitrarily deprived of his nationality (Universal Declaration of Human Rights, Article 15)

The above-mentioned article 15 of the Universal Declaration of Human Rights stipulates that "Everyone has the right to a nationality" and that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality".

Article 6 of the Political Constitution of the State directly regulates this matter by providing that "Chilean nationality is lost:

1. By taking the nationality of a foreign country;
2. By cancellation of the document of nationality, against which an appeal may be made within 10 days to the Supreme Court, which shall try the case;
3. By assisting the enemies of Chile or their allies in a war; and
4. By committing a serious offence abroad against the essential interests of the State during the state of emergency provided for in Article 72, paragraph 17, of the Political Constitution".

The above-mentioned constitutional provision is supplemented by article 2 of Decree-Law No. 175 of 1973, as amended by Decree-Laws Nos. 335 of 1974 and 1,301 of 1976, which stipulates that "For the purposes of the loss of nationality referred to in article 6, paragraph 4, of the Political Constitution of the State, a Supreme Decree stating the grounds shall be required, with the prior agreement of the Council of Ministers, which shall, in any case, consider a report in writing from the Ministry of Foreign Affairs, issued on the basis of official information obtained from Chilean diplomatic missions or consular offices abroad or from other trustworthy sources which it deems appropriate", adding that "the person concerned may appeal within 90 days to the Supreme Court, which shall decide the case as a matter of priority".

Lastly, the final part provides that the above-mentioned Court "shall issue the appropriate rules for ensuring the expeditious hearing of the appeal" and that "its lodgement shall stay the effects of the loss of nationality".

In turn, the Supreme Court, in fulfilment of the above-mentioned legal mandate, issued, on 26 January 1976, a decision laying down rules for the procedure in such an appeal; the relevant parts of these rules provide as follows:

"(a) The Government may not be a party to the appeal;

(b) When the appeal has been lodged, notice shall be given to the Ministry of Foreign Affairs, with a request for a certified copy of the written report which it had to issue, and of the official information which it has obtained from Chilean diplomatic missions and consular offices abroad or from other trustworthy sources to which it has had recourse;

(c) The Ministry shall report within a period of 10 days;

(d) Once the above-mentioned documents have been received, or in their absence once the stipulated period has expired, a decision shall be issued, ordering that the records shall be retained in the office of the court clerk for a period of 10 days from the date on which the interested party was notified of that decision, in order that he may file observations and produce any documents or evidence which he considers necessary;

(e) Once the period allowed for observations and evidence, referred to in sub-paragraph (d), has expired, the records shall be sent to the Public Prosecutor and, when his report has been made, instructions shall be given for the case to be brought before the Full Court, which may order such proceedings as it considers necessary to help it to reach a decision or to acquaint itself with the case;

(f) The judgement shall be pronounced within 10 days, once agreement has been reached."

This body of rules and in particular the fact that the highest court of justice in the Republic, the head of an independent and prestigious judiciary, has been made responsible for hearing the appeal and for pronouncing final judgement in these cases, constitute the best guarantee that no Chilean will be arbitrarily deprived of his nationality.

The legal provisions referred to have been applied to only two persons, and in the last case the period available to the interested party to appeal to the Supreme Court has not yet expired.

- (f) Concerning the right to freedom of association, including the right to form and join trade unions (article 22 of the International Covenant on Civil and Political Rights)

Article 22 of the above-mentioned international agreement provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

It also provides that "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".

Finally this article provides for some legislative restrictions with a view to preventing impairment of the guarantees afforded by the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize.

In connexion with the above-mentioned material, it must be emphatically stated that the Government of Chile, notwithstanding the very serious state of emergency with which it has had to deal since September 1973, has maintained unlimited respect for the exercise of the right of association and of trade union freedom, subject to the regulations and temporary restrictions which the realities of this emergency have made inevitable.

In this review the right of association will be examined first, and then trade union freedom in the country.

I. Right of Association

The rule relating to this right in the Political Constitution of the State is contained in article 10, paragraph 5 of which reads:

"5. The right of association without prior permission and in conformity with the law".

Article 365 of the Labour Code is intimately connected with this rule; it provides that:

"Article 365. The right to join trade unions is granted to persons of both sexes, over 18 years old, who work in the same enterprise or occupation or who exercise the same trade or profession or similar or related trades or professions, whether intellectual or manual.

These unions may be unions of employers, employees, workers, mixed, or of persons who exercise an independent profession or trade.

The unions are industrial or professional."

With regard to respect for this constitutional guarantee, it can be categorically affirmed that in Chile there is full freedom of association and, what is more, that this freedom has been authentically strengthened. This has not prevented the Government, in the exercise of the prerogatives granted to it by the legislation in force, from dissolving the Central Unica de Trabajadores, an organization of a political nature presided over, during the past Administration, by a member of the Central Committee of the Communist Party, who was at the same time Minister of Labour and who was establishing a real trade union dictatorship.

It is appropriate to point out that the Government has fully recognized the valuable contribution made by community organizations, professional associations and other similar entities, in their co-operative effort to solve various national problems; it has considered, however, that even though the situation in the country has been practically normalized, it does not yet appear advisable to authorize indiscriminately the renewal of their governing bodies. This is why the Government issued decree law No. 349 of 13 March 1974, whereby the mandate of the Governing bodies of intermediate organizations, i.e. of neighbourhood councils, mothers' centres, community entities, professional associations, co-operatives, foundations, etc., is prorogued.

This decree law provides, in article 2, that if through physical or moral incapacity or for any other reason one or more members of the above-mentioned governing bodies cannot perform his functions and those governing bodies remain without a quorum, the respective appointment shall be made by the Executive Power, on the proposal of the workers, as is explained later on.

It can be affirmed that these entities exercise the functions which are appropriate to them in accordance with an immutable tradition, which has its origin in the legislation applicable to them; at this juncture it seems appropriate, on account of the nature of the functions which they fulfil, to make specific reference to two of these professional organizations: the Bar Association of Chile and the Association of Journalists.

By decree law No. 474 of 31 May 1974, the Bar Association was excluded from the provisions of decree law No. 349 which extended the term of office of the governing boards of various intermediate bodies, for the reasons given in the preambular clauses, namely:

"That, under the regulations of the Judicature Act (Código Orgánico de Tribunales) and the statutes (Ley Organica) of the Bar Association, the said Association has prerogatives related to those of the Judiciary, namely, the preparation of lists of lawyers who are candidates for judicial posts and for positions in the Supreme Court, the Courts of Appeal and the Labour Courts.

That the Honourable Governing Junta has publicly and repeatedly proclaimed its intention of respecting the autonomy of the Judiciary and its right to perform its functions without restriction; and

That it is desirable to reacknowledge the intention of the Government to honour the prerogative of advocates to co-operate in the administration of justice and to protect the rights of both parties in a spirit of complete independence."

By virtue of decree law No. 971 of 18 April 1975, the Counsellors (Consejeros) of the Bar Association of Chile, whose functions come to an end upon the expiry of their term of office, may continue to perform their functions through the extension of their respective mandates for all legal purposes.

It is evident from the provisions commented on or reproduced that there is good reason to claim that the Bar Association acts in complete independence of the Executive, thereby effectively contributing to the preservation of the Chilean judicial system.

With respect to the same subject, it should be mentioned that a body of such undeniable importance among the communications media as the Association of Journalists held free elections in 1975 for its national governing board, when one of its most eminent members resigned to assume an important post enjoying the full confidence of the Government of the Republic.

II. Trade union freedom

In September 1973, the Government, on assuming power, assured the workers that the economic and social benefits they had acquired would not be changed in any substantive respect. This statement has been faithfully adhered to, although the chaos reigning in the country at the time made it imperative to enact certain important regulations concerned with labour questions, in particular.

One example is the enactment of decree law No. 198 of 29 December 1973, establishing provisional regulations on trade union activities, which, in the more important preambular clauses, emphasizes:

"The desire of the Government to guarantee the exercise of trade union activities by workers and employers in accordance with the laws in force;

The existence of councils in the unions which are totally or partly lapsed or leaderless, and the suspension of union licences and permits, which have prevented trade union organizations from pursuing their activities in a normal way;

The grave moral, administrative and economic crisis afflicting the country when the Government took it over, which made it impossible for trade union activities to be immediately and fully normalized, particularly in view of the reform of the Political Constitution and of the Labour Code itself, with its supplementary legislation, which are in process of consideration in the light of which the new rules for trade union activities are to be drawn up; and

The urgent need to regularize trade union activity in the country as a whole."

This decree law prorogues the mandates of the union officials elected before 11 September 1973, sets up different machinery for the establishment of new unions or for dealing with special cases, and empowers the Minister of Labour and Social Security to promulgate whatever regulations he may deem appropriate.

On this basis, additional regulations have been enacted at the request of the parties concerned, for the appointment of union officials, since the general principles of length of service are inapplicable. In practice, this is tantamount

to election by the workers, since they themselves propose the council officials. From September 1973 to April 1976, about 640 new trade union organizations and six new federations were set up (a detailed list was transmitted to the Secretary-General in November).

On 1 July 1976, there were 1,849 industrial trade unions and 4,106 professional trade unions in the country.

Also with regard to trade union activities and participation, mention may be made of Supreme Decrees No. 3 and No. 494 of 9 January 1975 and 25 October 1975, respectively, establishing the Labour Co-ordination Committees, which are composed of representatives of the Government and trade union organizations. The specific purpose of these committees is to enable the Government to be duly informed of labour problems in the public and private sectors and to receive suggestions which might contribute to the solution of such problems.

Lastly, it should be noted that the Government has appointed a commission of labour law specialists, whose task is to prepare a preliminary draft labour code in accordance with current methods and principles of legislation in force throughout the world. This task has already been completed, and the draft has been brought to the attention of trade union organizations so that they may comment on it as they see fit. More than 400 institutions have already expressed their views and the debate on the most important points has been reported by the mass media. (The summary of the opinions of trade unions, universities, professors and private persons was transmitted to the Secretary-General in November 1975.)

This brief summary does not, of course, provide a complete picture of all the measures adopted by the Government with a view to the gradual improvement of the exercise of the right of freedom of association and the right to form and join trade unions in Chile. It merely describes some of the most important rules and measures adopted for this purpose.

In any case, there are irrefutable arguments to prove that the right to freedom of association, including the right to form and join trade unions, has been restored in Chile in accordance with the way these rights are guaranteed in truly democratic countries.

More information on this matter may be found in the "Observations of the Government of Chile on the second report of the Inter-American Commission on Human Rights", which the Government has transmitted to the Secretary-General of the United Nations (OEA-AG-667-76).

(g) The right to intellectual freedoms as provided for in article 19 of the International Covenant on Civil and Political Rights

Article 19 of the International Covenant on Civil and Political Rights provides that "Everyone shall have the right to hold opinions without interference", that "Everyone shall have the right to freedom of expression" and that "this right shall include freedom to seek, receive and impart information and ideas of all kinds" through any media. The article also states that the law may restrict the exercise of this right in order to ensure respect of the rights or reputations of others and to protect national security, public order, public health and morals.

Article 10, paragraph 3, of our Political Constitution establishes "freedom to express opinions, without prior censorship, either orally or in writing, through the medium of the press, radio, television or in any other way, subject to liability for offences and abuses committed in the exercise of this freedom, as provided for by law.

The exceptional circumstances prevailing in our country have made it necessary to regulate some aspects of this freedom.

Thus, Legislative Decree No. 77 outlawed and dissolved the political parties which incited the country to a fratricidal war and made it an offence to spread propaganda orally, in writing or by any other means, for the Marxist doctrine or any other doctrine substantially consistent with its principles and objectives.

Chile thus put into effect a precautionary measure, when it characterized as an offence any voluntary activity designed to organize, promote or incite the organization of the illegal associations referred to in article 1 and any propaganda activities, carried out orally, in writing or by any other means, for the Marxist doctrine or any other doctrine substantially consistent with its principles and objectives.

In general, as long as the state of emergency lasts, Law No. 12,927 of 1958 on the security of the State, which has been mentioned so many times, gives district officers wide powers and authorizes them to prevent the spread of news which might cause panic in the civilian population.

These wide powers are embodied in Legislative Decree No. 1,281 of 1975, which provides that, in specific cases, the Chief Officer of the Emergency Area may suspend the printing, circulation and sale of newspapers for up to six issues, and radio and television broadcasts for up to six days. The medium in question has 48 hours in which to contest this measure in the military Court.

It should also be pointed out that, since 11 September 1973, there have been only seven cases in which the Government has used the above-mentioned powers in the Emergency Area (once in the case of a newspaper and six times in the case of the same radio station), and that no journalist has been penalized for abuse of freedom of the press. This shows that freedom of the press and information exist and that they have been a tradition in our country, subject to the above-mentioned restrictions imposed for reasons of national security.

(h) The request that persons still in detention should be released and that no steps should be taken and no trials held against them on a retroactive basis

In other parts of this note, we have already examined the policies followed by the Government of Chile with regard to persons in detention and we have pointed out the following:

1. On 30 July, the number of persons detained under the state of siege was 422;
2. The number of pardons granted at the same date was 1,044 out of a total of 1,236 petitions;

3. The number of persons still in detention awaiting trial by the Military Court is 351; and
4. 708 persons sentenced by the Military Court are in prison; decrees commuting the sentences of 520 of these persons have been approved and are being prepared.

Complete lists of the persons released on the orders of the President of the Republic in the last few months have been transmitted to the Division of Human Rights.

With regard to the retroactivity of criminal law, the observations made in paragraph (c) of this note are applicable.

Conclusions

It should be pointed out that many of the replies to questions contained in this letter are given in greater detail in the document entitled "Observations by the Government of Chile on the second report prepared by the Inter-American Commission on Human Rights in that country" (OEA-AG, Doc. 667/76), which will be transmitted to the Director of the Division of Human Rights in due course.

It should also be noted that, in various notes, the Government of Chile has provided the Secretary-General with extensive documentation and information on the various aspects of the situation in Chile. This documentation and information has undoubtedly been of great assistance to the Group of which you are the Chairman.

The Permanent Mission of Chile is sure that the information contained in these replies will be of great interest to the Ad Hoc Working Group in its efforts to clarify the situation of human rights in Chile and it takes this opportunity to express to Mr. Ghulan Ali Allana the assurances of its highest consideration.

(Signed) Luis Winter Igualt
Chargé d'Affaires a.i.
Permanent Mission of Chile

Annex XVI

TELEGRAM DATED 26 AUGUST 1976 FROM THE MINISTER FOR
FOREIGN AFFAIRS OF CHILE TO THE CHAIRMAN OF THE
AD HOC WORKING GROUP

[Original: Spanish]

As you know, the Government of Chile, in its spirit of constant co-operation with the United Nations and with the Commission on Human Rights in particular, appointed Ambassador Extraordinary Mr. Sergio Diez to go to Geneva and continue the conversations with the Group over which you preside, for the purpose of supplying all such information as the Group might request and inviting two of its members, chosen by agreement between the Working Group and the Government of Chile, to visit the country next January, thus making it possible to achieve the purposes entrusted to the Ad Hoc Working Group.

Yesterday I was informed by Ambassador Diez that the Group had rejected the proposal made by the Government of Chile and had officially put forward a counter-proposal that two of its members, including the Chairman, should visit Chile next January and that, some days later, the three remaining members should join them at Santiago.

The Government of Chile, in addition to informing you that it cannot accept the counter-proposal, profoundly regrets that its offer has not been accepted, because it is convinced that it would have helped to institute effective co-operation between the Government of Chile and the Ad Hoc Group over which you preside and would have made it possible to verify in a trustworthy manner the situation with regard to human rights in the country.

These last considerations induce the Government of Chile to maintain its offer in the certainty that it will be considered by the Group on a forthcoming occasion.

Accept, Sir, etc.

Patricio Carvajal Prado
Minister for Foreign Affairs of Chile

Annex XVII

NOTE VERBALE DATED 30 AUGUST 1976 FROM THE PERMANENT MISSION
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED TO
THE CHAIRMAN OF THE AD HOC WORKING GROUP

[Original: Spanish]

The Permanent Mission of Chile to the United Nations Office and International Organizations having their Headquarters at Geneva presents its compliments to Mr. Ghulam Ali Allana, Chairman of the Ad Hoc Working Group of the United Nations Commission on Human Rights, and has the honour to supplement the information contained in its note of 25 August 1976 with the following particulars:

The Chilean national Bernardo Araya Zuleta left Chilean territory on 7 April 1976, via the Caracoles pass, for Argentina, in a vehicle of an international transport company.

The Chilean national Mario Zamorano Donoso left the country on 13 May 1976 by a flight departing from Pudahuel Airport for Argentina.

The Chilean national Onofre Jorge Muñoz Boutais left Chilean territory on 13 May 1976 by a flight departing from Pudahuel Airport for Argentina.

Attached to this note are memoranda from the International Frontier Control recording these facts.

Attachment No. 1

INTERNATIONAL FRONTIER CONTROL

Santiago, 20 August 1976

Memorandum

Examination of the International Frontier Control Section's records reveal travel entries recorded for the following persons, as from the date shown:

MARIO JAIME ZAMORANO DONOSO, as from 1/5/76
DEPARTURE: 13/5/76 PUDAHUEL ARGENTINA
ENTRY: NOT RECORDED.

ONOFRE JORGE MUÑOZ BOUTAYS, from 13/5/76
DEPARTURE: 13/5/76 PUDAHUEL ARGENTINA
Identity Card No. 2595417-7 Santiago, born 16/12/33, married, self-employed, Chilean.

BERNARDO ARAYA ZULETA and MARIA FLORES BARRAZA, no travel entries recorded as from March 1976.

It is hereby declared that a check was made from 1 April to 31 July 1976 only on Pudahuel and not on other frontier points, because the relevant data is being processed by computer.

MANUEL CORNEJO OYARZUN
DEPUTY CHIEF
INTERNATIONAL FRONTIER CONTROL SECTION

Attachment No. 2

INTERNATIONAL FRONTIER CONTROL SECTION

Memorandum

Examination of the International Frontier Control Section's records as from April 1976 show the persons in question, BERNARDO ARAYA ZULETA and MARIA OLGA FLORES BARRAZA recorded as leaving the country on 7 April 1976 by the Avanzada de Caracoles, destination ARGENTINA, in an unidentified private vehicle.

No subsequent re-entry is recorded.

MANUEL CORNEJO OYARZUN
DEPUTY CHIEF

Annex XVIII

PHOTOGRAPHS OF FIVE MISSING PERSONS

The Government of Chile in a report presented to the thirtieth session of the General Assembly (A/C.3/639) stated in relation to persons reported to have disappeared that 153 of these alleged missing persons "do not exist legally and that it is a matter of assumed or invented names". The Government listed these 153 persons in an annex to that document. During the course of its current inquiry, the Group received photographs with biographical information of numerous individuals who were reported to have disappeared. Among these were photographs of and biographical information concerning five persons listed by the Government in the annex to document A/C.3/639 as legally non-existent. These photographs are reproduced below.



MAUREIRA MUÑOZ SERGIO ADRIAN

Date of detention - 7 October 1973



MULLER SILVA JORGE HERNAN

Date of detention - 29 November 1974



SILVA CARRENO RAMON LUIS

Date of detention - 16 October 1973



TORRES ARAVENA RUPERTO ORIEL

Date of detention - 13 October 1974



TORMEN MENDEZ SERGIO MANUEL

Date of detention - 20 July 1974

Annex XIX

LIST OF SOME MISSING PERSONS

In the course of its inquiry during 1976 the Ad Hoc Working Group received from various sources information concerning persons who were reported to have been detained by Chilean authorities and who subsequently disappeared. Although the Group itself has not had the opportunity to investigate each case, the following constitutes a list of the most reliably attested cases of persons who have disappeared during 1976.

<u>Name</u>	<u>Date of disappearance</u>
Boettger Vera Octavio Julio	17 January 1976
Cancino Armijo Adan del Carmen	13 January 1976
Gonzalez Muñoz Jorge Luis	6 January 1976
Merino Varas Ulises	2 February 1976
Weibel Navarrete Jose Arturo ^{a/}	29 March 1976
Araya Zuleta Bernardo ^{a/ b/}	2 April 1976
Escobar Cepeda Elisa del Carmen ^{a/}	10 April 1976
Eugenio Eugenio Basilio	29 April 1976
Flores Barraza Maria Olga ^{c/}	2 April 1976
Hernandez Zazpe Juan Humberto	3 April 1976
Mena Alvarado Nalvia Rosa	29 April 1976
Mujica Maturana Moises Eduardo	29 April 1976
Recabarren Rojas Manuel Segundo	30 April 1976
Recabarren Gonzalez Manuel Guillermo	29 April 1976
Recabarren Gonzalez Luis Emilio ^{a/}	29 April 1976
Tamayo Martinez Manuel Jesus	April 1976
Alvarado Gonzalez Mauricio	19 May 1976
Cerda Cuevas Cesar Domingo	19 May 1976
Concha Bascuñan Marcelo Renan	10 May 1976
Cortez Alruiz Juan	May 1976
Diaz Lopez Victor Manuel ^{a/}	10 May 1976
Diaz Silva Lenin Adan	9 May 1976
Donaire Cortes Uldarico ^{a/}	5 May 1976
Donato Avendaño Jaime Patricio	4 May 1976
Elizondo Ormaechea Antonio	26 May 1976
Espinoza Fernandez Eliana Marina	21 May 1976
Lara Rojas Fernando Antonio ^{a/}	7 May 1976
Maino Canales Juan Bosco	26 May 1976
Medina Hernandez Rodrigo Alejandro	28 May 1976
Morales Ramirez Miguel Luis	3 May 1976
Muñoz Poutays Jorge Onofre ^{a/ b/}	5 May 1976
Muñez Benavides Rodolfo Marcial	18 May 1976
Muñez Rojas Luis Herman	25 May 1976
Paredes Perez Ernesto Enrique	15 May 1976
Rekas Urrea Elizabeth de las Mercedes	26 May 1976
Valdivia Gonzalez Oscar Dante	27 May 1976
Zamorano Donoso Mario Jaime ^{a/ b/}	3 May 1976

<u>Name</u>	<u>Date of disappearance</u>
Acuña Acuña Carmela	23 June 1976
Alvarez Vasconcello Tomas	23 June 1976
Avello Avello Oscar Eduardo	24 June 1976
Castillo Asencio Pedro Segundo	3 June 1976
Cornejo Campos Raul Guillermo	16 June 1976
Flores Castillo Carol Fedor	10 June 1976
Fuenzalida Loyola Sergio Manuel	28 June 1976
Garategua Quintero Orlando	25 June 1976
Hinojosa Araos Jose Santos	26 June 1976
Maturana Gonzalez Luis Emilio	8 June 1976
Orellana Catalan Juan Rene	7 June 1976
Ovalle Narvaez Miguel Hernan	27 June 1976
Pardo Pedemonte Sergio Raul	16 June 1976
Allende Marambio Emilio	17 July 1976
Butnick Shwartsman Eduardo	22 July 1976
Butnick Shwartsman Julio	22 July 1976
Canteros Prado Eduardo	23 July 1976
Canteros Torres Clara Elena	23 July 1976
Diaz Aranda Augusto	20 July 1976
Galvez Astudillo Guillermo	28 July 1976
Gianelli Company Juan Antonio	26 July 1976
Harper Ibañez Maria Cecilia	30 July 1976
Lopez Suarez Nicolas Alberto	30 July 1976
Loyola Martinez Carlos Francisco	12 July 1976
Macaya Molina Hector Juan	16 July 1976
Martinez Quijon Guillermo Albino	21 July 1976
Miranda Godoy Dario Francisco	30 July 1976
Montoya Vilches Raul Gilberto	21 July 1976
Moraga Garces Juan Hector	22 July 1976
Quiñones Ibaceta Juan Luis	23 July 1976
Rodriguez Urzua Alejandro	27 July 1976
Saavedra Quiroz Roberto	26 July 1976
Salina Contreras Jaime Gabriel	21 July 1976
Santis Camus Patricio	29 July 1976
Solovera Gallardo Jorge	30 July 1976
Tolosa Vasquez Jose Vincente	15 July 1976
Toro Bravo Nicomedes	July 1976
Turiel Palomera Mariano Leon	15 July 1976
Atencio Cortes Vincente	11 August 1976
Castillo Tapia Gabriel	5 August 1976
Corvalan Valencia Jose Enrique	9 August 1976
Castro Saravia Julio Encarnacion	5 August 1976
Delgado Delgado Exequiel del Transito	5 August 1976
Flores Garrido Jose Edilio	12 August 1976
Godoy Lagarrigue Carlos Enrique ^{d/}	4 August 1976
Gomez Busto Jorge Ivan	3 August 1976
Hernandez Concha Eduardo Enrique	3 August 1976
Herrera Benitez Alicia	4 August 1976
Insunza Bascuñan Ivan Sergio	4 August 1976

<u>Name</u>	<u>Date of disappearance</u>
Juica Vega Mario Jesus	9 August 1976
Lozano Molina Irma Marina	4 August 1976
Maureira Vasquez Mario Osvaldo	8 August 1976
Morales Mazuela Victor Hugo	9 August 1976
Nuñez Ferrada Hector Mario	11 August 1976
Palma Robledo Daniel	4 August 1976
Ramos Ramirez Oscar Orlando	6 August 1976
Ramos Vivanco Oscar Eduardo	6 August 1976
Rojas Paez Rolando Aliro	9 August 1976
Rosales Chavez Omar Rigoberto	11 August 1976
Santander Miranda Jose Eduardo	6 August 1976
Silva Bustos Pedro Eduardo	9 August 1976
Ugarte Roman Marta Lidia	9 August 1976
Vivanco Bega Hugo Ernesto	4 August 1976
Vizcarra Cofre Carlos Mario	11 August 1976
Atencio Cortes Vicente	11 August 1976

a/ The Permanent Mission of Chile to the United Nations Office at Geneva, in note verbale of 25 August 1976 (see annex XIV) informed the Group, concerning Victor Diaz, Mario Zamorano, Jorge Muñoz, Bernardo Araya, Elisa Escobar, Uldaricio Donaire, Fernando Lara, Luis Recabarren and José Weibel, that: "There is nothing on the record to show that they have been, or are being, detained in Chile. This does not mean that they may not have left the country illegally, under a false identity, as has happened on many occasions, or that they are not involved in underground activities inside Chile".

b/ The Permanent Mission of Chile to the United Nations Office at Geneva, in note verbale of 30 August 1976 (see annex XVII) informed the Group that:

"The Chilean national Bernardo Araya Zuleta left Chilean territory on 7 April 1976, via the Caracoles pass, for Argentina, in a vehicle of an international transport company.

"The Chilean national Mario Zamorano Donoso left the country on 13 May 1976 by a flight departing from Pudahuel Airport for Argentina.

"The Chilean national Onofre Jorge Muñoz Boutais left Chilean territory on 13 May 1976 by a flight departing from Pudahuel Airport for Argentina."

c/ A copy of a memorandum from the Deputy Chief, International Frontier Control Section, which was attached to note verbale of the Permanent Mission of Chile to the United Nations Office at Geneva dated 30 August 1976 (see annex XVII), stated: "Examination of the Control Section's records as from April 1976 show the persons in question, Bernardo Araya Zuleta and Maria Olga Flores Barraza recorded as leaving the country on 7 April 1976 by the Avanzada de Caracoles, destination Argentina, in an unidentified private vehicle. No subsequent re-entry is recorded."

d/ The Permanent Mission of Chile to the United Nations Office at Geneva, in a memorandum dated 30 August 1976, informed the Group concerning the Chilean citizen Carlos Godoy Lagarrigue that: "There is no record of his being or having been arrested, and no warrant has been issued for his arrest".

Annex XX

NOTE VERBALE DATED 6 SEPTEMBER 1976 FROM THE PERMANENT MISSION
OF CHILE TO THE UNITED NATIONS OFFICE AT GENEVA ADDRESSED
TO THE CHAIRMAN OF THE AD HOC WORKING GROUP

[Original: Spanish]

The Permanent Mission of Chile to the United Nations Office at Geneva conveys its compliments to Mr. Ghulam Ali Allana, Chairman of the Ad Hoc Working Group of the United Nations Commission on Human Rights, and has the honour to refer to the query concerning Dr. Carlos Godoy Lagarrigue.

In this connexion, I must inform you that, after appropriate inquiries in Chile, this Mission has been informed that there is no record that Dr. Godoy is or has been in detention.

Annex XXI

LIST OF SOME MISSING CHILDREN

According to reliable information provided to the Ad Hoc Working Group, the following children were reported to have been detained by Chilean authorities and thereafter are reported to have disappeared:

<u>Name</u>	<u>Age</u>	<u>Date of disappearance</u>
Poblete Vasquez Jorge	15	23 January 1974
Valdes Acevedo Roberto	16	14 March 1974
Cabralier Crisostomo Fernando	17	30 August 1974
Salinas Vera Mario	16	20 October 1973
Gonzales Castillo Mauricio	17	22 January 1974
Ortiz Orellana Ramon	17	18 January 1974
Carreno Aguilera Ivan Sergio	16	13 August 1974
Meneses Gaete Roberto Alonso	17	28 August 1974
Cavieres Sepulveda Yenive	17	15 August 1974
Narvaez Riveros Rosa Eliana	15	13 August 1974
Parra Vergara Igor Edgardo	15	28 October 1974
Villenas Reyes Jose Bernardo	17	25 October 1974
Santander Albornoz Ignacio del Transito	17	24 September 1973
Lopez Elgueda Ricardo	14	20 September 1973
Farina Oyarce Carlos Patricio	13	September 1973
Valle Perez Jose Miguel	16	17 October 1973

Annex XXII

LETTER DATED 8 JUNE 1976 FROM FIVE CHILEAN LAWYERS ADDRESSED TO THE MINISTERS
FOR FOREIGN AFFAIRS ATTENDING THE SIXTH GENERAL ASSEMBLY
OF THE ORGANIZATION OF AMERICAN STATES IN SANTIAGO

[Original: Spanish]

We, the signatories to this submission, are a group of lawyers residing in Chile and practising here.

We follow with interest and concern the world debate on the problem of human rights. We fully subscribe to the United Nations Universal Declaration of Human Rights and are prepared to struggle for the realization of its aims throughout the world. We are therefore categorically opposed to any attempt to justify specific situations, whether these are inspired by doctrine or by government or party policy, in which there is a violation of human rights, in their fullest sense as represented by the Universal Declaration.

We note that, as far as Chile is concerned, world opinion seems to regard the matter as though it were simply a question of two extremes: that of Chileans resident abroad who were supporters of the Government of Salvador Allende and are directly affected by certain coercive measures, and that of the Chileans who live in the country itself and deny the existence of any problem of human rights. We feel that these extremes represent only part of the truth. We are convinced not only that an enormous number of citizens in Chile know fully and better than anyone else what the situation is, but also that they can give specific, objective and fully trustworthy evidence on the matter. We believe that we form part of this group. In view of our professional experience, we are in a position to offer such evidence; not because we have any personal grievance but because we know the law, appear in the courts, are in contact with the administrative or political authorities, collaborate in the social and legal welfare tasks of the churches and, above all, are in daily touch with a large number of specific situations of the kind in question.

Seeing that the Sixth General Assembly of the Organization of American States is meeting in Santiago, we felt that we should not remain silent. We are not abetting any campaign inspired from abroad, nor are we serving any political interests opposed to the Government. Both the Government of Chile and any such campaign must undergo the strict scrutiny of the truth. If it is proved that there is systematic and extensive violation of human rights, the Government of Chile must answer for it; if, on the other hand, there are no such wrongs, the responsibility for the charges will fall on those who concocted them. This presupposes, however, a full and unfettered investigation, with the accused Government having both the right to a proper defence and the duty to do away with any inhuman laws and practices if they are shown to exist.

The present document is not secret. It is a public document. What we wish is for the representatives of Chile to answer in the Assembly the criticisms and accusations which the document contains. We are consciously discharging our responsibilities and we hope that everyone else will do the same.

1. The state of siege as a permanent and systematic situation

Since 11 September, the country has been living under a state of siege and as a zone of emergency. Until 11 September 1975 there was also a state of war. These measures, which were designed to be exceptional steps confined to limited periods, are renewed systematically as soon as the constitutional period of six months expires. Thus the provision establishing that limitation is deprived de facto of any effect. Legislative decree No.1281 of 11 December 1975 has transformed the state of emergency into a permanent régime.

Under the Fundamental Charter, a state of siege must be declared in the event of internal disturbance, and the Executive cannot maintain it against the wishes of Congress. As things are now, the Government has assumed all the powers. It simply enacts a legislative decree to renew what is an exceptional measure, thus placing the country in an abnormal situation. This conflicts with the continual declarations on the part of the Government that a state of absolute calm reigns throughout the country.

The state of siege is being nullified by a policy of repression. In this connexion, we should like to draw attention to the following points:

(a) There is no situation of internal disturbance and consequently the succession of declarations has come to represent an abuse of power.

(b) The state of siege merely empowers the Executive to transfer persons or detain them in places which are not prisons; nowadays, however, persons are detained or transferred in such quantities that it has been necessary to set up camps, in which the security organs hold detainees incommunicado for periods of time which are absolutely arbitrary, interrogate them illegally, subject them to prison régimes or confine them in places which are not known to the public at large or in many cases even to many of the higher authorities either.

(c) The state of siege brings into existence powers which are intended to prevent activities directed against the security of the State, but in no event may it be used as a weapon of punishment or as a substitute for the courts of justice. Unfortunately, however, this is its real purpose in a large number of cases of detention which are based on the powers in question.

An example is the case of the distinguished jurist Hernán Montealegre Klenner, detained illegally in that no supreme decree was produced to him; he was not engaged in any political activity, he was not a militant member of any party and no reason was given for his detention. All he had done was to undertake the defence of persons indicted before councils of war.

(d) According to the spirit of the Constitution, the powers conferred by the state of siege may not be used as an instrument for the mass detention of members of the public, a phenomenon which, under other régimes, would be described as a continuous and unlimited purge. This is what is happening in Chile today. The position is not that, as a result of the events of 11 September, it was necessary to take steps against a large number of dangerous persons - in any case, that number would now be diminishing. Almost three years have gone by and the mass imprisonment of members of the public continues. Persons are now arrested as being dangerous who were not dangerous at any time during that period: relatives of other detainees, malcontents, political militants from groups outside the Popular

Unity Front those who show the slightest criticism or commitment in social institutions, universities and trade unions, and so on. Detainees are moving in and out of the prison camps the whole time. The numbers are constantly changing. The concept of a state of siege has thus been completely nullified.

2. The transformation of the intelligence services into a secret police which is immune from responsibility and omnipotent

No one would deny, in view of the complexity of present-day problems, that a nation's internal security requires the existence of an intelligence service. However, no one would deny either that the murky history of secret police forces, which have developed under cover of the totalitarian régimes of the present century, cannot continue without reducing mankind to the primitive condition of its forbears.

Such a situation can be shown to exist in Chile. The intelligence services began arrogating powers to themselves as soon as the present Government was installed; not powers of obtaining information, but powers of extra-legal investigation, involving even the right to determine the fate of individuals. Later on, the intelligence services were organized into a single body, the Dirección de Inteligencia Nacional (DINA). It was only in Legislative Decree No. 521 of 14 June 1974 that the official existence of this new authority was made known. This decree provides that the function of DINA is to obtain information connected with the adoption of measures to safeguard national security and the country's development. The structure of DINA appears to be established by a regulation which is not known to anyone in Chile. Its staff are drawn from the armed forces, but it can also recruit individuals from elsewhere by supreme decrees signed by the Minister of Finance. Not a single one of these supreme decrees has ever been made known, yet a large number of civilians work for DINA and anyone who has had anything to do with them will always emphasize that they have been recruited from the lowest moral and cultural levels of Chilean society, and even include criminals. The budget of DINA appears in global figures in the National Budget Act. The fact is that no one knows anything about the subject or dares to investigate it. It is a logical consequence of the existence of this anomalous institution within the legal order that Legislative Decree No. 521 contains a legal aberration: it stipulates that three articles of the decree are restricted matter (cf. the sole transitional article). The public is thus affected by provisions of which it has no knowledge. This state of affairs, which is a legal disgrace, has never been brought to the consideration of the President of the Republic by the judiciary or by the College of Advocates.

Furthermore, DINA is subject exclusively to the Military Junta, and now in fact to the person of the President of the Republic. The Ministry of the Interior has no control over its decisions except after the event, and a long time afterwards at that.

The personnel of DINA are prohibited from appearing in court even if summonsed; this is what the Director of DINA habitually tells the regular judiciary and the military judges, and even the Court of Appeal and the Supreme Court. He attributes the instructions to the President of the Republic himself.

Any criminal proceedings which are instituted for murder, abduction, disappearance, violation or on other grounds following acts of arrest by DINA personnel inevitably end in the proceedings being dismissed, since the judge can never secure the appearance of the personnel in question. Moreover, the Government

considers any investigation as completed once it receives DINA's report denying the arrest of the person who has died or is missing or has been abducted or violated. Finally, the Court of Appeal and the Supreme Court always accept the report of the Ministry of the Interior, which is based on what DINA has said. Thus all these grievances, fears and tragedies become shrouded in complete silence and are relegated to the secret tribulation of the homes of the families affected. Except in very exceptional cases, the Chilean press does not entertain information of this kind. The hostility of the censor's offices to certain media is largely due to the fact that the latter have broken the rules.

It should be noted that the decree which created DINA gave it no powers to act on its own initiative. It can only act by order of the court or by virtue of supreme decrees of the Ministry of the Interior. However, by habitually flouting that requirement, it has created a legally anomalous de facto situation which not even the Government has been able to remedy, as we shall see in the following pages.

3. The immediate consequences of the above system

Our experience as advocates enables us to give cogent evidence about a whole range of facts which we see before us every day, and which are contrary to the essence of the human rights universally recognized by the United Nations.

The following is a bare summary of these facts:

(a) The Constitution, the laws, the judicial decisions and the legal treatise of Chile clearly establish that, under a state of siege, detention must take place in accordance with specific procedures, among which is the promulgation of a supreme decree signed by the Minister of the Interior. Without that, the detention can be contested by means of an action for protection of rights (amparo or habeas corpus).

The procedures in question have seldom been observed since 11 September 1973. Despite that, amparo proceedings have been rejected by the Court of Appeal and the Supreme Court solely on the ground of the existence of the state of siege.

In view of the increasing number of abuses, the Government was obliged to promulgate Legislative Decree No. 228 of 24 December 1973, which confirmed the correct rules and required the formalities to be observed. Unfortunately, however, article 2 of this decree, encroaching on the powers of the judiciary, absolved from all blame anyone who had acted illegally; this opened the door to the de facto continuance of the previous situation. In point of fact, arrests have continued to be made by DINA directly, without the intervention of the Ministry of the Interior, i.e. without any supreme decree being promulgated in the name of the Government Junta. This practice is ratified after the event by the Ministry of the Interior. The fate of the detainee is thus sealed and justice suppressed.

The system of illegal detention of members of the public has naturally led to illegalities concerning the period and nature of detention. Three very serious circumstances must be pointed out:

1. The period of detention by the security forces is indefinite and arbitrary.
2. The use of measures which aggravate the detention, such as illegally holding the detainee incommunicado for an unlimited period of time, has become a habit.

3. Extrajudicial interrogation, which is unconstitutional and is based on duress, has been made an essential feature of the system.

Once again, because of the huge volume of abuses, the Government took formal steps to remedy the matter by promulgating Legislative Decrees Nos. 1008 and 1009, which made detention conditions less stringent and provided greater safeguards for detainees' families. It was provided that the authorities empowered to detain persons for reasons of the internal security of the nation must release them and produce them to the court or the Ministry of the Interior within a period of five days; in addition, they must notify the arrest to the family within 48 hours. Furthermore, by a curious association of ideas, there was a reiteration of the punishment stipulated for persons who subject detainees to illegal oppression.

Unfortunately, these provisions have remained a dead letter. Arrests have continued to take place without any supreme decree or signed authorization by the Ministry of the Interior. Many families receive no notification. Persons are held for more than five days without their case being heard by any authority mentioned in the decree.

It must also be remembered that the period of five days conflicts with the period of 48 hours which the Constitution stipulates for the production of an arrested person to a judge by the authorities having power of arrest. It also means that DINA can keep a person in prison for five days without having any formal powers of arrest of its own, as explained above. Consequently, although Legislative Decree No. 1009, if observed, might appear to improve the situation of those affected, it is no advance on the law in force in Chile and is merely an improvement vis-à-vis the secret practices of DINA. What is more, DINA tacitly becomes recognized as the real arbiter of the state of emergency, since the Ministry of the Interior need not intervene until five days after the arrest, and then only in the best of cases and in order to consent to the exercise by another authority of a power which the Constitution and the law reserve exclusively to the Ministry itself.

Ultimately, arrests take place by the simple process of armed men in plain clothes arresting members of the public at home or in the street without leaving any trace. There is no record of their actions. The Ministry of the Interior is not informed of the facts and DINA denies them. Yet a large number of persons have disappeared from their homes after armed men have gone there to arrest them. The security services have not established that these abductions have been undertaken by bands of subversive extremists. The entire subject has been hushed up under cover of an a priori explanation that these are premeditated acts intended to influence the minds of the Foreign Ministers meeting in Santiago.

4. Other extremely serious consequences of the above system

(a) Secret places of confinement

The Constitution states that persons detained in accordance with powers exercised under a state of siege must be held either in a place which is not a prison or at their own home. This has always been understood as signifying that in no case can the place in question be anything less than a common gaol or prison.

However, the actual situation in Chile is very different. There are known places of confinement, which today amount to four: Tres Alamos, Cuatro Alamos, and Puncuncaví (Regulatory Decree No. 187). Of these, Cuatro Alamos was never mentioned until a few months ago; it is used for persons who are kept strictly incommunicado and subjected to unknown treatment for periods of time which depend solely on DINA. What is more, DINA has maintained and continues to maintain a large number of secret places of imprisonment, the names of which have been given in international reports and have not been refuted by the Chilean Government. In some cases it has even confirmed them; for example, the house at 38 Calle Londres, Santiago, which the OAS Commission was not allowed to visit and which has since then been closed. There is also the secret detention centre known as Villa Grimaldi in the Avenida Jose Arrieta in Santiago, where many persons have been systematically held prisoner without any intervention by the Minister of the Interior or any other authority.

These assertions are confirmed by two direct arguments:

1. The Government itself was obliged to promulgate Regulatory Decree No. 187 which reduces the number of prison camps to four, empowers the President of the Supreme Court and the Minister of Justice to visit them as they see fit and provides for other measures to safeguard the life and health of detainees.

2. Following subsequent visits by these officials under the powers in question, public communiqués were issued which proved that Villa Grimaldi had been used for interrogating detainees. At least one detainee was seen by the Minister himself and interrogated in his presence.

Despite these visits (which at least represent a considerable step forward), conditions at Cuatro Alamos have not changed in the slightest and activities at Villa Grimaldi continue as before.

(b) Torture

An impressive volume of testimony supports the charge that torture is practised in Chile in secret places of confinement and also at Cuatro Alamos. This possibility is strongly reinforced by knowledge of the kind of personnel used by DINA, the state of utter defencelessness of the detainees, the absence of any hearings of the cases concerned by judicial magistrates, the ignorance in which the Ministry of Interior is kept, the practice of holding persons incommunicado, the illegal circumstances of the detentions, the lack of any public proceedings and punishment for the torturers, the fact that DINA officials have immunity from responsibility to the judiciary, and so on.

We believe that a mere visit to the prison camps would suffice to show that there are many detainees whose bodies bear the marks of such treatment.

(c) Missing persons

Again, there is an impressive weight of testimony and all kinds of judicial evidence to suggest that an increasing number of persons arrested by military patrols or DINA squads have subsequently disappeared.

There are various cases where it is absolutely certain that violent death was not due to enemies of any other kind (as was the case with Lumi Videla). There are cases where arrests took place in the presence of members of the family, where there were witnesses to the period of detention on secret premises, and so forth.

The whole world was shocked when the news appeared in the Argentine and Brazilian press about the death or disappearance of 119 Chileans as a result of guerilla encounters with the armed forces. That news was false. In actual fact, the persons concerned were young people who had been arrested previously by the Chilean authorities or their representatives. The method of detention was illegal and the places of confinement were never known to the families involved. Attempts to obtain information about the detainees' whereabouts met with a negative response. The official investigation by the Ministry of the Interior followed strictly along the lines of the report of DINA, i.e. of the body which was criminally liable for illegal arrests and morally responsible for the lives of the persons in question. The question still remains completely unresolved, since the Government of Chile, despite official promises, has given no explanation or acknowledgement or furnished any information about the investigations which were ordered. The number of missing persons is now much larger. The judiciary, represented by the Supreme Court, has refused to appoint an inspecting judge to investigate this and other charges concerning mass disappearances. Detailed studies exist on this subject and will be submitted to the Government for a conclusive explanation.

5. The official reply from the Chilean Government to the charges in question

The countries of America, and indeed of the world as a whole, are already familiar with the arguments put forward by the Government of Chile in support of its claim that the authorities in Chile provide the necessary safeguards for the rights of citizens.

The first argument refers to the conditions prevailing in the country under the previous Government.

Although, as we have already stated, we were opposed to that Government, we do not regard this as a valid reason for failing to examine the events now taking place in our country.

Another argument is that other countries violate human rights and therefore have no moral authority to impugn Chile.

This too, in our view, is simply a delaying argument. Chile is not authorized to violate these fundamental rights simply because others may do so. It should allow committees of inquiry to enter the country, precisely to dissociate them from those who might accuse it unjustly.

The third argument is that the accusations against the Government of Chile constitute interference in its internal affairs and consequently infringe the principle of non-intervention.

This is not a valid reason either. World international organizations like the United Nations and regional bodies such as OAS must observe both the principle of non-intervention and that of respect for human rights. They are not contradictory but complementary.

The fourth argument is that the reports are based on evidence obtained outside Chile.

This can be rejected as well. The Chilean Government refused to allow a group appointed by the United Nations Commission on Human Rights to enter the country. How then was the group supposed to question witnesses in Chile? Moreover, the Government keeps a close watch on persons who have any communication with foreign observers and even allows reprisals to be taken against them. A case in point is that of the lawyer José Zalaquett, who was detained and then expelled from the country after having communicated with three members of the United States Congress. The explanations given in his case by the Ambassador of Chile to OAS differ from those given by the Government in Chile itself. At this very time, the Chilean delegation, during talks with the members of the group set up by the United Nations, has said that no definite guarantees can be given as regards persons who might give evidence before the group if and when it went to Chile.

The fifth argument is to deny the truth of the accusations.

It is impossible to accept the official position of the Government after reading its reply to the report of the United Nations group (its reply to the report of the OAS Commission has not been published in Chile).

No one who is aware of the facts and assesses the validity of the documents can believe that the Government has proved its case. On the contrary, the omissions, inaccuracies and meaningless arguments, as well as the overwhelming mass of opposing evidence, are undeniable. As just one example of the lack of any evidential value in the Government's reply, we would point out the astonishing fact that, in the section consisting of annexes, the Government included approximately 70 sworn statements by detainees who, upon their release from the Cuatro Alamos camp, testified before a notary public that they had been properly treated and that the descriptions of tortures were the product of an international campaign against Chile.

It is clear from an examination of these documents, as any court would agree, that they represent an ideological falsification of the detainees' position to make the latter say what the camp authorities wished them to say. The attempt to pass off evidence of this kind in a United Nations forum is in point of fact a criminal act and affords one more proof of what we have already asserted.

The judiciary and the College of Advocates of Chile

It is distressing for us to examine the conduct of the judiciary and College of Advocates in the face of these events.

Under the Allende Government, and even before that, both bodies displayed a commendable attitude of preserving their independence against political pressures from the Executive. During the years 1970-1973, the Court of Appeal and the Supreme Court were particularly zealous in defending the rights of the citizen against the Government, and even took part in public controversies with the President of the Republic in which political ideas were exchanged in the bluntest of terms.

We supported them in this, but now things have completely changed. From 11 September 1973 to the present day, the Chilean courts of justice have not protected any Chilean who has been detained under any of the procedures we described earlier. The right of habeas corpus is no longer honoured in our

country despite our exemplary democratic traditions. The Supreme Court, notwithstanding its history and the pertinent provisions of the law, voluntarily surrendered its right to hear appeals against the odious judgements of the military courts, particularly during the first two years of the present Government. The courts of first instance, either through indifference and fear or because of the extrajudicial situations created by the secret security forces, do no more than reluctantly try cases of murder, abduction, violation and so on. Often, the only possible course for judges and other officers of the law is that of simply declaring themselves incompetent. Even the régime's journalists are apparently free to abuse and slander citizens. There is nothing and nobody to stop them. Very few judges have preserved their integrity, and those who have done so have suffered from the hostility of the unconditional supporters of the régime.

The College of Advocates has also failed in its duties. Some of our colleagues have managed to preserve their seats on the Council by taking advantage of the fact that the Government forbids the holding of assemblies and elections. Their role consists in supporting the Government, even in problems outside their sphere of competence. Their defence of colleagues who have been persecuted is invariably half-hearted, and on some occasions they have even justified the measures which the Government has taken. All this is based on political interest rather than professional criteria; there has never been any factual evidence to justify the measures taken by the Government against the colleagues in question.

The lawyers who have prepared and signed this report are well aware that they will be attacked, abused and threatened by certain sections of the press and even by Government officials. The campaign has in fact begun, with various references by the Co-ordinator of the Assembly to documents that might be submitted to the Foreign Ministers. The word "treason", which embodies a whole set of political and penal concepts, has even been uttered.

Nevertheless, the Organization of American States has met, among other things, to review the status of human rights in Latin America. It is only logical that information that throws light on the facts should be presented to it. We are being of service to Chile, to Latin America and to the whole of mankind when we denounce the conditions that we describe. We are therefore ready to present our case and to discuss the evidence with the representatives of the Chilean Government, and are willing to give our assistance in any way that may be thought appropriate.

We conclude this document by requesting:

First, that this text should be made available to and considered on an official basis by the OAS Commission on Human Rights.

Secondly, that the facts and information given should be investigated.

Thirdly, that stress should be laid on the need for the Commission on Human Rights to pursue in Chile the inquiries already begun, with the necessary conditions being established for the Government of Chile to present its point of view, and with general procedures being laid down for investigating wrongs of this kind in any country in America.

Fourthly, that the role of the Organization of American States in matters of human rights should be strengthened.

Fifthly, that a recommendation should be made with a view to ending the serious legal anomalies which exist in the present institutional system of Chile with regard to human rights, as described in the present document.

Accept, Sir, the assurances of our highest consideration.

(Signature)

Eugenio Velasco Letelier

Lawyer, Professor Emeritus of the University of Chile, Titular Member of the Academy of Social Sciences of the Institute of Chile, former Dean of the Faculty of Juridical and Social Sciences of the University of Chile, former Director of the Law School, former Professor of the Law School and former Ambassador of Chile.

(Signature)

Jaime Castillo Velasco

Lawyer, Professor of the University of Chile, former Minister of Justice, former representative of Chile to the United Nations Commission on Human Rights.

(Signature)

Héctor Valenzuela Valderrama

Lawyer, former President of the Chamber of Deputies, former representative of Chile to the United Nations, former representative of Chile to the Organization of American States, former Professor of the Catholic University.

(Signature)

Andrés Aylwin Azócar

Lawyer, former Professor of the University of Chile, former Deputy to the National Congress for three sessions.

(Signature)

Fernando Guzmán Zañartu

Lawyer, former Head of the Penal Department of the Committee on Co-operation for Peace in Chile.

Annex XXIII

LETTER DATED 18 AUGUST 1976 ADDRESSED TO THE PRESIDENT OF
THE SUPREME COURT OF CHILE BY 300 CHILEAN CITIZENS
CONCERNING THE EXPULSION OF TWO LAWYERS

[Original: Spanish]

In exercise of the right of petition granted to us by the law, we, as Chileans deeply concerned by the situation in our country, wish to apply to the Supreme Court over which you preside.

On Friday, 6 August, the lawyers Jaime Castillo and Eugenio Velasco were expelled from the national territory on the charge of having seriously threatened "domestic law and order". This accusation, according to the Government, was based on "factual evidence of involvement by those citizens in subversive activities". Those general and vague charges have not been substantiated. The evidence on which they are based has so far remained secret. It is a fact, however, that Mr. Castillo and Mr. Velasco have suffered the serious penalty of expulsion, by executive action, without any court having heard the case. Not only did the authorities, in their haste to carry out that action, by-pass the due processes of the law, forestalling the court's decision on the writ of civil rights protection (amparo) which had been lodged in favour of the victims, but Mr. Castillo and Mr. Velasco were also humiliated and the former was handcuffed and savagely beaten, his clothing was torn and he suffered painful injuries. We are therefore in the presence of a flagrant disregard for legality and a clear violation of the fundamental rights of the human person.

This occurrence, which is particularly shocking in view of the high human qualities and the considerable national and international prestige of the victims, is one of many cases, similar or worse, which are affecting the safety, liberty and even the life of individuals in our country.

You are aware, Sir, that Mr. Jaime Castillo and Mr. Eugenio Velasco are eminent lawyers and university teachers of great distinction. We are sure that the members of the Court, like ourselves, cannot believe that either of them could have taken part in subversive activities. They are both renowned for their unswerving devotion to the values of law and justice, their unwavering loyalty to democratic principles and methods and the firmness with which they denounced the inhuman abuses of the Soviet régime and any totalitarian system, in general. We vividly remember the courage with which both fought on the side of reason and the law against the excesses and menaces of the preceding régime. During those years they devoted themselves to the defence of human rights, by their professional activities in the courts of law, their dealings with the political and administrative authorities, their co-operation with the Catholic Church in this task and public - never clandestine - representations to the competent organs or communication media in defence of freedom and the law.

We have ample reason for affirming that it is their engagement in these activities which was the real and true cause of the unjust and oppressive action which has been taken against Mr. Castillo and Mr. Velasco. The process of their detention and expulsion, which confirms the truth of the accusations made by them, appears to be an act of revenge or reprisal against them.

In an open letter to the Ministers for Foreign Affairs meeting during the Assembly of the Organization of American States in Santiago, scarcely two months ago, Mr. Jaime Castillo and Mr. Eugenio Velasco denounced the flagrant violations of human rights in our country, of which they had become aware during the exercise of their profession as lawyers. At that time, representatives of the Government of Chile to the OAS averred that the fact that the jurists were able to make such a representation was evidence of the respect for law and freedom existing in our country. For its part, the OAS Assembly, in its resolution on the question, urged the Government of Chile to continue to offer the Inter-American Commission on Human Rights the co-operation it might need in carrying out its work, and to give appropriate guarantees to individuals and institutions supplying the Commission with information, testimony or evidence.

The expulsion of Mr. Castillo and Mr. Velasco makes a mockery of this resolution. If measures such as this cause a reaction at the international level, it cannot then be claimed to be the work of extremist propaganda against Chile.

As Mr. Castillo and Mr. Velasco pointed out in the aforementioned letter to the OAS, the abuse of the emergency powers which the Government keeps on extending is affecting more and more sectors and individuals. If such men are beaten today, when it is precisely by their devotion to law that they have distinguished themselves, one having been Minister of Justice and the other Dean of the Faculty of Law of the University of Chile and a member of the Supreme Court, whose turn will it be tomorrow?

We are not concerned for ourselves; we are concerned for Chile, its people, its historical destiny. We see its institutions - universities, technical colleges, trade unions and guilds, the Press, culture, the judicature - languishing under the weight of being suspected and watched, if not physically repressed. There is also the serious economic situation, which is reflected in low productivity and very high inflation and unemployment rates, while poverty and despair spread among the working class, and large sectors of the professional and middle classes. Chile's disquieting isolation in the concert of nations completes this picture.

We see with anguish that this country, which for a century and a half was educated for freedom, legality and peaceful and democratic co-existence, and which was making progress within a constitutional framework and gaining international prestige, is being dragged down by unlawful acts, acts of intimidation and the systematic rejection of any kind of opposition, towards a future of violence in which hatred and resentment increase and no attempt is made to seek peace and harmony. We think that this is the worst negation of the features characteristic of Chile throughout our history, and that unless this trend is corrected in the near future, it will end by destroying the best of the national spirit. Chile will cease to be Chile.

One of these characteristics, which has been present throughout our national history, is subjection to the Constitutional State. It has been manifest in two almost uninterrupted invariables of national life: the subordination of the conduct of all, both governed and governors, to the rule of law seen as the universal and sovereign expression of the national will; and the concern to guarantee to all individuals the fullest exercise of fundamental rights and freedoms. These are the basic features of every Constitutional State, such as Chile has always claimed to be.

Neither of these characteristics can be seen in our country today.

When the law is not generated with the participation of the people, but merely represents the will of the ruler, who changes it as he wishes in order to suit himself, authority ceases to be subject to the law and becomes arbitrary.

When the state of emergency, which is by nature exceptional and temporary, becomes a normal and permanent situation, and when the Government assumes all-embracing powers to declare and apply it on its own authority, free from any of the political and jurisdictional checks and balances which the law provides for in such an eventuality, authority becomes absolute and the law a dead letter.

When any person can be detained without explanation as to the cause, without the judicial authorities having any say in the matter, when he can be kept in prison, exiled or taken away, held in solitary confinement by his gaolers without a warrant, interrogated, threatened, humiliated and put under pressure by unknown individuals who have nothing to do with the courts and are not unanswerable to them, the most solemn declarations about human rights become illusory or cynical.

When "habeas corpus" or the writ of civil rights protection (amparo) is systematically denied on the grounds that the Government is exercising "exclusive" powers, when the services responsible for making arrests refuse to inform the courts with jurisdiction in matters of amparo, or the authorities make a practice of delaying such reports for weeks, and the most extreme measures of deprivation of liberty, such as the expulsion of Mr. Castillo and Mr. Velasco, are put into effect hastily and surreptitiously, forestalling and thus rendering futile any legal appeal - when these things happen the judicial protection of personal liberty, which in the final analysis is the only effective guarantee, disappears.

All this is happening in Chile.

Since Magna Carta, the courts have had the sacred mission of defending the law and personal freedom. Since the dawn of our Republic, this mission has been entrusted to the Supreme Court by various constitutional and legal instruments. Throughout its history, the Court has usually been zealous and active in the performance of these noble tasks, viewing them as a sacred and unavoidable duty which the Motherland has entrusted to it.

Recalling Chile's historical vocation of total respect for law and the inspiring record of the determination of Chilean justice to guarantee it, we feel it is necessary to remind the Supreme Court of these facts and to ask it, in the exercise of the powers of safeguard entrusted to it by the Fundamental Charter, to take the necessary action to bring to an end the irregularities and abuses to which we have referred.

Not long ago the country was a witness to the strictness with which the Supreme Court complied with its obligation to "ensure without concessions the maintenance of the legal order". To that end, the Court adopted special resolutions which it transmitted to the Executive Power, envisaging situations which might seriously affect that order. In the present circumstances, when violations of the Constitutional State affect the very life and liberty of the individual, it is necessary for the highest Court in the Republic to exercise those same powers. Until it does so, those who undermine the law by arbitrary decisions and unlawful acts may feel empowered to continue. We are convinced, however, that if the Supreme Court, which is required by the Political Constitution to protect individual rights and freedoms, considers the unlawful acts which are frequently perpetrated, calls for full respect for those rights and takes the action necessary to guarantee them, its judgement will be accepted by those concerned.

In Chile at the present time, when the courts of law are the only State power to retain their legal basis, the effectiveness of the legal order and human rights depends more than ever on the wisdom and integrity with which the Supreme Court exercises its powers. The case of Mr. Jaime Castillo and Mr. Eugenio Velasco is a milestone in this regard. The flagrancy of the violation and the personal prestige of those concerned clearly show that no individual can be sure of his freedom or of respect for his fundamental rights in our country at the present time. This also does harm to Chile's reputation abroad, and is consequently prejudicial to national security.

For all these reasons, we respectfully request the Supreme Court, in view of the foregoing and without prejudice to the protection (amparo) which may be granted to Mr. Jaime Castillo and Mr. Eugenio Velasco, to take the necessary action to put an end to the detentions which are carried out without justification or by organs not publicly authorized for that purpose by law, to the transfer of persons who have been arrested to unknown destinations where they are usually kept indefinitely in solitary confinement without an order from the competent court, to interrogations by authorities or individuals having no connexion with the judiciary, to administrative measures of expulsion carried out hastily before the Courts have heard and taken a decision on the corresponding suits, to the delays by officials in transmitting the reports which are required to resolve questions of legal protection (amparo) and to the other irregularities which violate human rights and are impeding the operation of the Constitutional State in Chile.

We request you, Sir, to submit this petition to the Plenary Court for its consideration.

N.B. We enclose photocopies of our signatures, as well as the names of the signatories and of those who have authorized their signature.

Eduardo Frei Montalva	Lawyer
Luis Bossey Leiva	Lawyer
Patricio Aylwin Azócar	Lawyer
Abeliuk, René	Lawyer
Acuña, Américo	Lawyer
Alessandri C., Arturo	Lawyer
Albónico, Fernando	Lawyer
Aylwin Azócar, Andrés	Lawyer
Aylwin Azócar, Tomás	Lawyer
Ansieta N., Alfonso	
Araya Ortiz, Pedro	Lawyer
Alvarez Urquidi, Gonzalo	Physician
Alvarado, Pedro	
Argandoña, Juan	
Arriagada M., Genaro	Writer
Avilés S., Carlos	Agronomist
Andueza S., Juan	Lawyer
Alvarez, Luis	Journalist
Arévalo Cunich, Luis	
Abusleme, Abraham	Lawyer
Acuña H., Maldo	Lawyer
Boestch G.H., Hugo	Architect
Blanco, Guillermo	Writer
Ballesteros, Eugenio	Lawyer
Barros, Moisés	Civil engineer
Barrionuevo B., Raúl	
Bustamante, José A.	Agronomist
Barria L., Daniel	Lawyer
Balbontín A., Ignacio	Sociologist
Bravo, Carlos	Agronomist
Blanco, Mónica	Journalist
Bernales, Eugenio	
Balmaceda M., Alvaro	Graduate in law
Bascuñán S. Fernando	
Beca, Juan Pablo	Physician
Bernier V., Leonel	Physician
Correa L., Héctor	Lawyer
Clavel, Eduardo	Lawyer
Cauas Lamas, Antonio	Engineer
Castillo Velasco, Fernando	Architect
Celedón S. Eugenio	Engineer
Coddou C., Alberto	Lawyer
Cuevas Campodónico, Eugenio	Lawyer
Caruz, Vicente	Engineer
Cerda G., Eduardo	Agronomist
Cardemil A., Gustavo	Agronomist
Castro, Héctor	Lawyer
Calvo M., Pedro	Economist
Cruzat P., Gastón	Lawyer
Covarrubias P., Alvaro	Engineer

Carrasco Baldemar	Teacher
Cáceres S., Gabriel	Engineer
Cárdenas G., Juan Carlos	Engineer
Cañas, Arturo	
Correa, Mabel	
Cruz Portales, Manuel	Lawyer
Carrasco P., Ramón	
Correa S., Oscar	Lawyer
Caro D., Marta	Journalist
Cox B., Maximiliano	Agronomist
Cruz, S., Juan Manuel	Economist
Cisterna S., Mario	
Caballero, Emiliano	
Cancino Sánchez, J. Antonio	Lawyer
Cortés Peñaloza, L. Alberto	Lawyer
Casanueva de la B. Carlos	
Correa, M. Angélica	
Covarrubias, Alvaro	Lawyer
Corvalán Montalva, Gonzalo	Physician
D'Etigny L., Enrique	Engineer
Donoso L., Andrés	Engineer
De la Barra, Alvaro	Engineer
Díaz-Muñoz C., César	Lawyer
De Kartzow B., Renzo	Agronomist
Donoso P., Jorge	Lawyer
Dussaubat, Hernán	Lawyer
De la Jara, Guillermo	Lawyer
Dupré S., Carlos	
De La Maza, Iván	
Del Río, María Paz	Journalist
Dockendoerf V., Eduardo	Graduate in architecture
Etcheberry, Alfredo	Lawyer
Echeverría, Ricardo	Lawyer
Elgueta, Marcela	Lawyer
Escudero, Ernesto	
Figueroa Yávar, J. Agustín	Lawyer
Figueroa A., Carlos	Lawyer
Fuentes V., César	Lawyer
Foxley, Ana María	Journalist
Frei Bolívar, Arturo	Lawyer
Fritis P., José Miguel	
Fernández C., Jorge	
Fierro, Juan	Physician
Guzmán V., Manuel	Lawyer
García Alamos	Engineer
Guzmán Zañartu, Fernando	Lawyer
Gómez, Alejandro	Civil engineer
Guzmán, José Florencio	Lawyer
Galiano, José	Lawyer

Garcés Carlos	Agronomist
González, César	Pharmaceutical chemist
Galilea, Manuel	Agronomist
González C. Oscar	Journalist
Goic K. Pedro	Agronomist
García E., Pedro	Agronomist
Gana O., Rafael	Chemical engineer
González Poblete, Alejandro	Lawyer
García Huidobro, Ana María	
González Camus, Ignacio	Journalist
Gómez, Jorge	
Gazmuri, Cristián	University teacher
Garretón M., Roberto	Lawyer
García Pedro	Physician
Goic C., Alejandro	Physician
González R., Juan Luis	Physician
Hamilton D., Juan	Lawyer
Hernández, Angel	Lawyer
Hales, Alejandro	Lawyer
Held, Gunther	Economist
Herrera L., Luis Oscar	Lawyer
Hales D., Jaime	Lawyer
Herman B., M. Isabel	
Izquierdo, Luis	Biologist
Irureta, Narciso	Lawyer
Irarrázaval L., Manuel José	
Isla M., Ricardo	Agronomist
Irarrázaval G., Jorge	Sociologist
Jaque, Duborlindo	
Jeannerot, Teresa	Economist
Jara, Moisés	Civil engineer
Justiniano Stewart, Francisco	Lawyer
Jiménez M., Alejandro	
Jiménez de la J., Eliana	
Jordán Morales, Paul	
Karsulovic K., Juan	Engineer
Krauss, R., Enrique	Lawyer
Kindermann, Jorge	Graduate in law
Kunsemüller, Carlos	Lawyer
Keller, Pablo	Publicist
Klingenberg, Gunther	Agronomist
Katunaric, Juan F.	Agronomist
Lima A., Marcos	Economist
Le Roi, Raúl	
Lavanderos, Jorge	
Lorca V. Alfredo	
Luco Larenas, Ramón	Lawyer

Llanos E., Manuel	Lawyer
Lillo Viveros, Osvaldo	Economist
Lavados Montes Hugo	Economist
Latorre, Juan Carlos	Civil engineer
Letelier del Dolar, Fabiola	Lawyer
López H. Marcial	
Lushinger R., Osvaldo	
Larraín García, Samuel	
Moreno R., Rafael	Agronomist
Musalem Saffie, José	Lawyer
Marín S., Oscar	Physician
Martínez, Fernando	Civil engineer
Montes R., Arturo	Lawyer
Monares, José	Chemist
Montt, Julio	Physician
Millas Correa, Hernán	Journalist
Monckeberg, María Olivia	Journalist
Martín, Luis	Farmer
Montenegro, Alejandro	Publicist
Moreno, Fernando	Sociologist
Martínez O., Gutenberg	Graduate in law
Muñoz Leiva, Sergio	
Mayorga L., Roberto	Lawyer
Matta Manuel A.	Graduate in law
Mansilla Y., Héctor	Physician
Marchant, Fernando	Graduate in law
Montecinos C., Pedro	
Martínez Candia, Marcelo	
Monge E., Joaquín	
Moraga, Leopoldo	Engineer
Márquez Rojas, Fernando	Lawyer
Muñoz Melo, Guillermo	
Muñoz Cárdenas, Luis	
Moreno, Gastón	Lawyer
Morales, Gonzalo	Lawyer
Matus M., Sergio	
Marasso B., Giacomo	Journalist
Müller V., Max	Physician
Naudon A., Alberto	Lawyer
Navarro, Amador	
Novoa Aldunate, Eduardo	Lawyer
Narbona, Fernando	
Nava, Raúl	
Numhauser, José Miguel	Economist
Olguín Zapata, Osvaldo	Physician
Orrego V., Claudio	Writer
Ortíz Quiroz, Luis	Lawyer
Ortíz, José	Journalist
Ortúzar H. Carmen	Journalist
Orchard, Jorge	Lawyer

Palma V., Ignacio	Engineer
Pareto, Luis	
Pacheco, Máximo	Lawyer
Pablo E., Tomás	Lawyer
Pesce S., Alfredo	Engineer
Paul, Héctor	Lawyer
Prado, Benjamín	Lawyer
Pinochet de la Barra, Oscar	Lawyer
Páez, Sergio	Builder
Pereira, Santiago	
Pozo R., Felipe	Student of journalism
Pérez, Tolentino	
Penna, Marino	
Palza A., Humberto	Teacher
Palet, Enrique	Journalist
Piñera, José	Engineer
Piccinini, Doris	University teacher
Pómes M., Jorge	
Quiroz Q., Luis Iván	
Retamal, Eugenio	Civil engineer
Rojas S., Patricio	Physician
Rojas Y., Ernesto	
Ruiz-Esquide, Mariano	Physician
Ramírez, Gustavo	
Rodríguez, Darío	University teacher
Rojas M., Alvaro	Veterinary surgeon
Rojas Urzúa, Javier	Journalist
Rosas López, Marcelo	
Rodríguez S., Fernando	Physician
Sanhuesa, Manuel	Lawyer
Serrano P., Horacio	Member, Institute of Chile
Santa Cruz Serrano, Víctor	Lawyer
Salcedo V., Danilo	Engineer
Scharpe C., Mario	
Sanfuentes V., Andrés	Economist
Silva Silva, Juan Enrique	Lawyer
Santa María, Domingo	Engineer
Saavedra, Wilna	Social worker
Sepúlveda W., Eduardo	Journalist
Sepúlveda M., Eduardo	Lawyer
Sabaj, Hosain	
Sesnic Morales, Oscar R.	
Segraña, Heriberto	University teacher
Salinas, Anatolio	Teacher
Sáez, F.	
Saavedra V., Oscar	Journalist
Scherz, Luis	University teacher
Sáinz O., Gerardo	Journalist
Salles G., Ricardo	Engineer
Santibáñez, Abraham	Journalist

San Martín, Jaime	
Santibáñez, Luis Angel	Lawyer
Santander F., Ramón	Lawyer
Soffia I., Fernando	Lawyer
Sepúlveda O., Daniel	
Silva N., Jaime	
Troncoso Castillo, Raúl	Lawyer
Tudela, Ricardo	Dentist
Torres, Mario	
Trivelli Oyarzún, Hugo	Economist
Tobar M., Sergio	
Torres L., Iván	Agricultural technician
Tudela Arosa, Carlos	
Tapias, Iván	
Urzúa, Germán	
Uthoff Botka, Andrés	Economist
Urzúa Munita, Ricardo	Journalist
Venegas, Arturo	Lawyer
Valdés Ph. Héctor	Architect
Valenzuela S., Ricardo	Chemist
Vial Vial, Sebastián	Lawyer
Valdés Ph., Arturo	
Valenzuela V., Héctor	Lawyer
Vergara, Lautaro	Journalist
Valdéz, Juan	Accountant
Valenzuela, S., Oscar	Veterinary surgeon
Valenzuela L., Renato	Lawyer
Ventura M., Marianela	Journalist
Valenzuela, Javier	Veterinary surgeon
Valdivia P., Víctor	Economist
Velasco B., Ismael	
Vergara Balbontín, Sergio	
Vásquez, Guillermo	
Velásquez, Alberto	
Videla Vial, Guillermo	Lawyer
Vargas S., Hernán	
Velasco R., Sergio	
Vergas P., Patricio	
Wilson, Carlos	Lawyer
Walker H., Rafael	
Wilson P., Sergio	Lawyer
Zaldívar Larraín, Andrés	Lawyer
Zaldívar Larraín, Alberto	Lawyer
Zaldívar Larraín, Adolfo	Lawyer
Zañartu, Mario	Economist
Zahler M., Roberto	Economist
Zambrano, Abraham	

Annex XXIV

LETTER DATED 18 AUGUST 1976 ADDRESSED TO THE PRESIDENT
OF THE SUPREME COURT BY 10 CHILEAN LAW PROFESSORS
CONCERNING THE EXPULSION OF TWO LAWYERS

[Original: Spanish]

Profoundly concerned about the expulsion from Chilean territory of our distinguished colleagues, Jaime Castillo Velasco and Eugenio Velasco Letelier, we are writing, through you, to the judges of the Supreme Court, in order to co-operate with the highest court in the land in the task of preserving the rule of law.

As credentials for making this submission, we cite the solemn task of lawyers to co-operate with the courts in the administration of justice, and the calls of our conscience to come to the defence of the higher values that have been jeopardized by the events to which we refer.

1. As a starting point, we would note that the power to order the expulsion of particular persons from Chile is one that is described as "regulated", and we would emphasize that the legitimate exercise thereof is subject to the observance of requirements of law, unlike so-called discretionary powers, which can be exercised when their holder deems it prudent or advisable.

This is what emerges from the clear and explicit text of article 2 of legislative decree No. 31, of 11 October 1973, under which expulsion from Chile may be ordered only "when the higher interests of the security of the State so require". Accordingly, if the higher interests of the State do not require the expulsion of a particular person, the Government lacks the legal authority to order expulsion from Chile. To assert the opposite is to go against the literal wording of the law and, more serious still, it implies an assertion that the Government can, of its own free will, ignore the inescapable duty of ensuring to all inhabitants of Chilean territory, and more particularly to Chileans, the full enjoyment of the human rights embodied in the Constitution and in international agreements.

The requisiteness of the existence of acts that can be charged against a particular person and unavoidably necessitate his expulsion from Chile so as to safeguard "the higher interests of the security of the State" is made clear by the obligation imposed on the Government, in the same rule mentioned above, to order expulsion "by a substantiated order bearing the signatures of the Minister of the Interior and the Minister of National Defence"; and since, according to the dictionary, "to substantiate" (fundar) is "to support, with effective grounds and reasons", clearly the law requires the ministers responsible for maintaining public peace and security, which involves the responsibility of the Government, to substantiate the expulsion order. It is not enough simply to assert that it is necessary, as would be the case under discretionary powers. Faithful observance of the law therefore demands that the ministers indicate the grounds and the reasons why they consider that the expulsion of a particular person is necessary in the higher interests of the State. Consequently, the law guarantees that this exceptional power will be used only in the special case provided for in law, and it reaffirms that, otherwise, the exercise of that power is unlawful.

2. As to the acts that constitute "effective grounds and reasons" for substantiating the expulsion of a person, the only requirement directly specified in the written law is that they should be sufficient to make it necessary, in "the higher interests of the security of the State", that the perpetrator leave Chilean territory.

However, in addition to this indispensable relationship of cause and effect, the legal importance of which cannot be ignored, the law does not say what is encompassed by "the higher interests of the security of the State", nor does it define even by way of an example, the importance of the acts likely to threaten them. The rule is one of those known as "indeterminate", for its actual and specific content is not indicated in the rule itself and is understood only through general considerations of law, as is the case with the notions of public order and morality.

In this connexion, the first thing to be said is that the acts have to be extremely serious. This is common sense.

Acts cannot constitute "effective grounds and reasons" when, because of their scant material significance or because the perpetrator is not very dangerous, they lack the objective and subjective characteristics that would give them the gravity required to threaten "the higher interests of the security of the State".

The gravity of the acts must be extreme, as extreme as the power of government.

To deprive a Chilean of his right to live in the country in which he was born, with his relations and friends, and in the social, historical, cultural and economic world that has fostered him so far, is a very special step that, in its turn, calls for equally exceptional acts to warrant it.

A further argument is that legislative decree No. 81 was enacted in order to meet "the need to ensure the security of the State, internal order and normality in national activities", for this phrase, taken from the third paragraph of the preamble to that piece of legislation, makes it possible to identify the "higher interests of the security of the State" with internal order and normality in national activities, and also to infer that the dangerousness of the acts ascribed to the accused has to be evaluated as at the date of enactment of the legal text - on 11 October 1973, in other words, precisely 30 days after the present Government was set up. This is not mere pedantry. It says so in the paragraph already mentioned, for after stating that "the need to ensure the security of the State, internal order and normality in national activities" is the reason for the power conferred on Government to order expulsion, it immediately adds: "in keeping with the situation which the country is living through (11 October 1973) and which acts brought to light have made evident". There can be no doubt, then, that legislative decree No. 81 was issued in order to meet an emergency situation that was endangering the survival of the fundamental institutions of the State and normality in national activities, which essentially involve the undisturbed work and the supply of the basic needs of the common man.

Only on such grounds could it seem justifiable and necessary to confer on the Government during the state of siege such an exceptionally grave power, one never possessed by any Government, either in cases of internal commotion or of war with other countries.

It inevitably follows that the only acts capable of serving as immediate grounds for the lawful exercise of this highly exceptional power must, objectively and subjectively, represent such a danger that they involve the possibility of creating institutional disturbance. Those which contradict incidental political and economic or other government positions are not of such a kind.

3. Excesses by the authorities in the exercise of this power can come under judicial review through an appeal under the civil rights protection procedure (amparo) established in the articles of the Political Constitution and in articles 306 et seq. of the Code of Criminal Procedure.

In indicating the scope of this procedure, the decision handed down by the Supreme Court on 19 December 1932 states that "it is aimed not only at guaranteeing the freedom of citizens to stay in any part of the Republic, to move from one place to another or to leave the country ... but also at penalizing those who, by the abuse of their authority or the assumption of powers they do not have, deprive persons of one of the most important rights in a properly constituted country".

These concepts - still applicable - reaffirm the full jurisdiction of the courts of justice to review the legality of acts by the authorities which infringe, inter alia, the right to remain in the territory of the Republic, and also the authority of the magistrature to re-establish the rule of law, leaving arbitrary measures without effect, besides punishing the guilty.

Unmistakably, it is right to assert that the amparo procedure is the safeguard of constitutional guarantees. To deny the admissibility of habeas corpus is to leave freedom to the discretion of the public authority, the creditor in the hands of his debtor. Laxity by the courts in their proceedings and rulings in such cases is tantamount to abandoning their proudest task: to safeguard freedom, honour, property, in short, the higher values recognized by the legal order.

Consequently, the amparo proceedings instituted on behalf of Jaime Castillo Velasco and Eugenio Velasco Letelier are, for the lawyers signing this communication, the normal means of redress for harm unjustly caused, and an opportunity to reaffirm our faith in the courts of justice and in the supremacy of law.

We have not had access to the dossier to allow us to adduce arguments in support of the admissibility of the appeals, but we are convinced that they are fully substantiated, because of the considerations and comments that we will now advance, in the hope of contributing to the examination of the problems involved in the final decision.

Since the Government's power is regulated and is not discretionary, in deciding on the appeal it has to be considered whether, in this specific case, circumstances exist to make the appeal legally admissible.

For this reason, and because it is such an exceptional power (as we have already emphasized), the inescapable conclusion is that it is for the authority concerned to prove that it acted within the limits established by the law. To that end, it is its duty to substantiate before the court the material facts on which its action is based. Complete silence on the part of the authority in this connexion would alone be enough to make the appeal admissible, because the court would in that case have no legal or moral grounds for assuming that the conditions laid down by the law are fulfilled. The same will be true if acts adduced are so vague and general as not to be amenable to the rigorous examination to which the Court has to subject them. We cannot imagine that such circumstances should have arisen, because silence or its equivalent - vagueness and ambiguity - could only be interpreted as abandonment of the government action or contempt for judicial functions. It should be added that substantiation of the order and the plea advanced in the amparo proceedings are the only valid procedural opportunities for adducing facts in evidence. Whatever is said in that regard in court rooms, apart from being inopportune, lacks the merit of testimony by the actual authority questioned; to take it into account would be to leave the appellant defenceless.

But apart from adducing facts in evidence at the appropriate time, it is for the Government to substantiate them, because if the court cannot regard them as having really taken place, it must necessarily conclude that the appeal has to be admitted.

Lastly, it will be essential for the court to weigh up and judge the facts it deems to be certain, and consider whether they are of such exceptional gravity that they call for expulsion so as to protect the higher interests of the security of State, having regard to their particular characteristics, objective and subjective.

A decision by the Court studying each of these aspects carefully and at length and admitting or rejecting amparo will bring peace of mind; even those who disagree will find in it reason to confirm the trust always placed in Chilean magistrates and evidence of their continuing and silent task of carrying out justice and strengthening the legal order.

4. We cannot finish before speaking of the personality of our colleagues expelled from Chile. Duty calls on us to pay a tribute, at a time of distress, to those whom we esteem as honourable exponents of the Chilean legal profession. We believe that it is indispensable to bear their personality in mind in judging whether it is likely that their acts can have been committed against the higher interests of the security of the State, as now charged.

Both have, in equal measure, devoted their life to the Law. In different fields, they taught at the University, brilliantly, with erudition and talent, commanding the respect of students from widely differing backgrounds. Eugenio Velasco was Dean of the Faculty of Law of the University of Chile, and it was because of him that an important reorganization took place in traditional studies, with the co-operation and approval of the other teachers.

Both, in equal measure, and even in the most difficult times, displayed without reticence their condemnation and rejection of Marxist political activity. This can be seen in their repeated public acts and, in the case of Jaime Castillo, in voluminous and noteworthy intellectual works, in newspapers, reviews, lectures and essays.

Both engaged actively in their profession, and in recent times, defended in particular those who were persecuted or deprived of freedom; and they did so with the sole aim of co-operating in the task of avoiding abuse and injustice. Neither the personal risks that this entailed nor the absence of recompense made them falter in a task that, for us, set an example.

In short, nothing leads us to believe that they have engaged in acts against the "higher interest of the security of the State". On the contrary, we are morally convinced of their proper and exemplary behaviour.

5. We also wish to mention another matter to which we attach especial importance.

We refer to the fact that the expulsion order was carried out as soon as those concerned were detained.

We cannot overlook, without protest, the fact that our colleagues were not allowed either to inform their relatives or to collect essential personal effects. Neither Jaime Castillo nor Eugenio Velasco deserved to be expelled, in degrading and inhuman fashion, from their native soil, from the country to which they have given the best of their energies, according to the dictates of their conscience.

But apart from this, which is already a great deal, the method of expulsion jeopardizes the respectability of the judiciary.

The latter, by the terms of the Constitution, is responsible for administering justice, a role that entails an obligation on the part of all other State authorities to co-operate in carrying out that task and to refrain from doing anything that might make it ineffectual. To entertain the opposite is nonsense and subverts the institutional order.

The acts that have occurred cannot take place again. To safeguard the authority of the judiciary, it seems appropriate that you should secure from the Executive an assurance that, when an expulsion order has been issued, it will not be carried until the person concerned has had time to bring any action and lodge any appeals he considers appropriate, and that the work of the courts will not be hampered.

Accept, Sir, etc.

(Signed)

DANIEL SCHWEITZER
Former Professor, Faculty of Law,
University of Chile
Former Ambassador of Chile
to the United Nations

(Signed)

VICTOR SANTA CRUZ SERRANO
Former Professor of Civil Law,
University of Chile
Former Ambassador of Chile
to the United Kingdom

(Signed) ALEJANDRO SILVA BASCUÑAN
Professor of Constitutional Law,
Catholic University of Chile
Former President of the General Council
of the Bar Association

(Signed) HECTOR CORREA LETELIER
Former Professor of Private International Law
Catholic University of Chile

(Signed) ANTONIO BASCUÑAN VALDEZ
Professor of Introductory Law Courses,
Faculty of Law, University of Chile
Former Dean of the Faculty of Legal,
Administrative and Social Sciences,
University of Chile

(Signed) MANUEL GUZMAN VIAL
Professor of Criminal Law,
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President, Institute of Criminal Sciences

(Signed) MAXIMO PACHECO GOMEZ
Professor of Introductory Law Courses,
University of Chile
Former Dean of the Faculty of Legal,
Administrative and Social Sciences,
University of Chile
Former Minister of Education
Former Ambassador of Chile to the USSR

(Signed) ENRIQUE EVANS DE LA CUADRA
Professor of Constitutional Law,
Catholic University of Chile
Former Assistant Secretary for Justice
Former Counsellor of the Bar Association

(Signed) PEDRO J RODRIGUEZ G.
Former Professor of Civil Law,
Catholic University
Former President of the General
Council of the Bar Association
Former Minister of Justice

(Signed) MANUEL SANHUEZA CRUZ
Professor of Constitutional Law,
University of Concepción
Former Dean of the Faculty of Law,
University of Concepción
Former Minister of Justice

Annex XXV

PETITION PRESENTED TO THE COURT OF APPEAL BY
MR. JAIME CASTILLO VELASCO

[Original: Spanish]

AS TO THE PRINCIPAL PETITION, DECLARES HIS INTENTION TO PLEAD THE CASE PERSONALLY AND REQUESTS THE MEASURE INDICATED, MAKING APPLICATION FOR A WRIT OF AMPARO, AND REQUESTING CANCELLATION OF THE EXPULSION ORDER, IF ANY; THE FIRST ADDITIONAL PETITION: TO BE TAKEN INTO CONSIDERATION; THE SECOND: THE PROCEEDINGS INDICATED; THE THIRD: THE WITNESSES SPECIFIED; THE FOURTH: TO BE TAKEN INTO CONSIDERATION; THE FIFTH: THE REPORT INDICATED.

TO THE COURT OF APPEALS:

I, JAIME CASTILLO VELASCO, a lawyer, at present a guest of the Venezuelan Embassy in Argentina, under the judicial decisions on protection in my favour, hereby submit to the Court:

(1) The manner in which officials of the National Intelligence Directorate arrested me and took me to Pudahuel Airport on Friday, 6 August 1976, at approximately 5.30 p.m.; the following legal arguments in my defence:

I was in my office on the second floor of 2221 Calle Los Conquistadores, working on a broadcast on the subject of the rights and duties of lawyers, which was to be made next day on Radio Presidente Balmaceda. The work remained unfinished, however, because a gang of seven or eight well-built determined men burst in and told me sharply to follow them. Without getting up from my chair, I asked who they were, what they wanted and on what orders they were acting. The leader replied that I had to obey immediately. I said that I would not move until they showed me their orders and identification. Instead of replying, they took over the room and tried to get me out by force. I resisted, without assaulting them in any way. Together, they took hold of me, dragged me, pushed me, took away my spectacles and, in spite of my resistance, took me down to the first floor by a small staircase. I struggled as much as I could, without managing to shake off my assailants. I was carried out and, before being placed inside a green or blue police car waiting alongside the house, found that I was lying on the ground, handcuffed and with my jacket torn. I have an inner apartment in a building with a garden. It was obvious that the assailants did not want the people in the street to see this spectacle. For that reason, they cautioned me to keep quiet, threatened me and tried to intimidate me; one of these individuals used the word "kill". As I insisted on defending my freedom and was lying with my back on the ground, one of them, who was tall and well-built, kicked me sharply in the stomach and then kicked me twice in the chest. I lost my breath and I was unable to speak. They were then able to put me in the car, two of them taking places in the back seat and two or three in the front. They put a blanket over my head so that I was scarcely able to breathe and, without telling me where we were going, without handing over or reading out any orders to me, without identifying themselves, they took me to Pudahuel. Once there, they changed their tone, spoke to me politely and told me there was an expulsion order against me and that I would be going to Buenos Aires. Despite my continuous protests, they replied that they were obeying orders and they even apologized.

As a result of this assault, I have had to have a medical examination. It is impossible for me to lie down for any length of time, I can hardly sleep, and any movement is highly painful. In the first few days, standing tired me and it is still difficult for me to stand up or to change position. My hands are injured and my right knee hurts when I walk because one of the assailants twisted my leg.

Why did this happen? How could seven or eight officials from the National Intelligence Directorate - acting on orders, as they said, and I believe them - feel secure enough to break into my home, terrorize the people working there, break windows, turn the room upside down, abduct me and beat me with the utmost cowardice? They could act towards the judges seated in this court in exactly the same way as they acted towards me. None would be in a position to defend himself against an avalanche of eight individuals, trained to use the maximum of violence, and almost certainly armed. The foundations of the work being done by this Court have also been undermined by my assailants. They assumed for themselves the right to interrupt my work, without any legal grounds whatsoever, in order to force me to do what they had already decided. Gentlemen, they could also do it to you.

However, I am fully entitled, like anybody else, to refuse to go along with my abductors. They have no power to tell me to do what they want. I am not obliged to follow their orders simply because I ought to assume that they belong to DINA. That agency does not govern my life, nor does it govern the life of any citizen. It has been set up by a legislative decree that contains articles which are hidden from the public. In other words, it is a perverted law. Such officials cannot in any event act save upon a judicial order or a supreme decree issued by the Minister of the Interior on behalf of the Government Junta. It does not matter that there is a leader behind this type of activity or that a group of thugs can even kill a citizen. What matters is that I am entitled not to obey an assailant who puts pressure on me and commits a number of offences: violation of domicile, ill-treatment and bodily harm, illegal arrest, abduction and threats.

I wish to place clearly on record that the officials did not produce any identification card, any warrant issued by the Government or any order issued by a Minister of State. They simply broke into my home and carried me off by force and I have not, up to now, been shown any papers whatsoever. I was taken from my home in Santiago and was put on a IAN aeroplane in Pudahuel, at about 6.30 p.m., without any passport, without money, without sufficient clothing, without contact with my family, without information regarding my future, and without being able to choose my destination. Two polite officials of the IAN Security Police, when called upon to furnish explanations, informed my companion in exile, Eugenio Velasco Letelier, and me that we were proceeding to Buenos Aires and that the plane was going no further. Thus, we reached the airport at that city without even a landing card and in total ignorance of what was to happen next. We were able to arrange the landing formalities only because of the goodwill of the airport officials. But we did not know whether the Argentine police were also going to arrest us or whether we were free; nor did we know whether other people were aware of our arrival at the airport. The Ministers of this Court are well aware that terrorist acts are common in Buenos Aires and that might be a risk that two people accused of being a threat to State security in a country under a military régime would be left totally unprotected in the streets of that city. The Minister of the Interior was fully aware, from my many letters, that anonymous threatening leaflets had recently reached my home and those of other persons and that this information was given both to him and to the Military Court. Such leaflets clearly indicated a group which had already been operating in Argentina and in other countries in Latin America and

Europe and which is ready to take action against those it threatens because it considers that they commit acts of treason. I reminded the Minister of the Interior of this, a few days before the assault committed by his officials, because of constant comings and goings by suspicious-looking motor cars in the neighbourhood of my home, as well as the suspicious arrival in the same area of individuals who, by their looks and behaviour, resembled those who abducted me last Friday. This is known to the President of the Supreme Court.

The Ministerial response was precisely to submit me, through those officials, to the unheard-of assault which I have described and to leave me abandoned in a foreign country in which nobody is ignorant of the terrorist acts that are taking place and of the international links between the groups to which I have referred. I also note that the charges in the Government's statements against me are similar to those listed in the leaflets. This does not imply any direct accusation against anybody, since I do not prejudge the intentions of the Chilean authorities, but I wish to make it clear that the facts are as I have stated. Proof of this is that, because of the generosity of many friends in Buenos Aires, steps were immediately taken for me to be received as a guest at the Venezuelan Embassy in Buenos Aires. Consequently, I have had to remain virtually in hiding and protected by the diplomacy of a country other than our own.

The conclusion to be drawn from the preceding paragraph seems quite simple: I was not legally expelled from my country. I was not notified of any legally issued Government decree. My arrest was illegal. The acts committed in carrying out the arrest were criminal in nature. I am entitled to request the Courts of my country, in application of the law, to provide remedy for the unjust and illegal acts which have been committed. My expulsion from Chile was entirely improper; what is proper is to recognize that I was the victim of an attack violating the tranquility which citizens are entitled to require of their Government. It seems to me impossible to reverse matters and to transform the victim into the person responsible for the offence. I performed no act against the Government; all I did was to forward requests on behalf of third persons or on my own behalf. It is the Government, through its civil servants, which is working against me and exposing me to complete insecurity both on Chilean territory (where I have been illegally arrested and beaten) and on foreign territory.

A legislative decree granting authority to expel a Chilean national from his country by means of a purely arbitrary act of the Government, with no attempt to substantiate the facts or observe legal process, would violate the Constitution, and any legal bodies which endeavoured to give retroactive effect to such decisions would, under the Constitution, be violating the fundamental principles of law. Moreover, the very text of the legislative decree used by the authorities was contravened, not only in substance but also in form, since I was not notified but, as was stated above, was forcibly removed from the country.

(2) In an attempt to justify the methods described above, the text of the statement by the National Social Communication Department (Dirección Nacional de Comunicación Social) affirms that both Mr. Velasco Letelier and I have repeatedly committed acts or provoked situations which constitute a threat to law and order.

I do not believe that anyone in Chile, not even the Government, believes that this is true. In all modesty, I am a citizen who, for more than 25 years have said in writing what I think about the State and public affairs. Hitherto, no one, not even in the most violent and odious partisan controversy, had been able to say such

a thing. I belong to a respectable and respected family; I am a lawyer and a university professor; for many years I was a political leader; I once stood for the senate and was twice a Minister of State; I have always supported democracy, that is to say respect of the rights of others, as my rule of life. I have never advocated violence as a political instrument but, on the contrary, have supported non-violence as the best and most thorough means of resisting violence. Nothing in my activities as a lawyer and citizen is of the nature of subversive activity.

I do not know what the Government is referring to when it states that it has long had evidence of my participation in subversive activities. If that is so, it should simply have prosecuted me. The law empowers, and even obliges, it to do so. It would be failing in its duty to the country if it did not do so. It is absurd to expel from the national territory someone who is committing an offence. The truth is that nothing to warrant the institution of proceedings against me on account of my personal activities has been found, nor does anything exist.

The Government must substantiate its charges, both in fact and in law, just as the Court cannot ratify the measure on the pretext that it cannot qualify the actions of the Executive. The latter has violated the legislative decree dealing with the expulsion of nationals from Chile (in itself already unconstitutional) and in abusing its material power when it does so out of capriciousness, arbitrariness, as a reprisal or as a punishment. The expulsion order must be substantiated; it has not been substantiated. Furthermore, competence lies with the Court when the Executive violates the law or abuses the function entrusted to it by the law. The total absence of grounds for accusing a citizen cannot be transformed, in some mysterious retort which functions heaven knows where and passes through heaven knows what brain, into a solemn but empty charge that that citizen constitutes a danger to the security of the State.

(3) I am writing these lines in exile; I do not know what specific records the Government might produce when the case is heard.

Consequently I am obliged to declare, having been publicly defamed, that it is essential for my rights and honour that my entitlement to conduct my own defence before the Court be recognized. I say this in all respect and admiration for the person who has assumed responsibility for my defence in this case, but I consider that I alone am in a position to answer fully for my own conduct in the face of information which may not be produced until the last minute.

(4) The whole country knows that during the OAS sessions in Santiago a group of five lawyers submitted to all the foreign ministers of America a memorandum in which they examined the effectiveness of human rights in Chile.

In its final resolution OAS noted the existence of problems relating to human rights in Chile and decided to request the Government to refrain, inter alia, from taking any reprisals against any persons who gave information to the Commission or the Assembly. This point of the resolution has been violated, since the measure taken against Eugenio Velasco and me is a clear violation. Our attitude has not changed; hence, any change that there is, is by the Government. If the latter does not review its attitude, I consider that we should appeal to OAS and request strict compliance with the relevant resolution.

I therefore request you kindly to bear in mind that I personally shall plead my case, and I request that the hearing be deferred until the Executive answers the communication of this Court.

First additional petition: I ask the Court to bear in mind the fact that the legislative decree empowering the Executive to expel a Chilean citizen is unconstitutional, as is the decree that established its validity with retroactive effect.

Second additional petition: I request the Court to order the National Intelligence Directorate to furnish the names of the officials who arrested me in Los Conquistadores Street and of their superiors who ordered the action, so that the responsibility of each one in the matter may be made clear.

Third additional petition: The Court is asked to note that I shall bring witnesses of what occurred on the occasion referred to in the second petition, whose names I shall give when I am before the Court.

Fourth additional petition: The Court is asked to bear in mind that measures to prevent the publication of news concerning this case are also illegal and unconstitutional and place me at a disadvantage, since the Executive is causing to be published in the Press accusations that I am guilty of an offence.

Fifth petition: I ask, further, that the President of the Supreme Court be requested to submit a report confirming that he did in fact know of the anonymous threats made against various persons, including myself, and of the report I personally made to him concerning other similar matters.