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Sixth session

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Held at Headquarters, New York,
on Wednesday, 11 April 1979, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 AND 1978 (continued)

Chile (continued) (CCPR/C/1/Add.25 and Add.40; E/CN.4/1310)

1. Mr. GRAEFRATH said that he wished to pay a tribute to the democratic traditions of the Chilean people, which had commanded world-wide respect and recognition, and which had been represented impressively in the personality of the former President of Chile, Salvador Allende. Certain questions raised by Chile's initial report now before the Committee (CCPR/C/1/Add.25) differed in principle from those raised by earlier reports, and he wished to deal with them first.

2. The Committee had in the past received reports from Member States showing how the rights recognized by the Covenant had been integrated into domestic law and how the basic human right of the people to participate in the government of their country had been realized. However, the report now before the Committee had come from an authority whose very existence was based on the elimination of the democratic and political rights of the Chilean people. The latest report of the Ad Hoc Working Group on the Situation of Human Rights in Chile, (E/CN.4/1310) stated that, since September 1973, the people of Chile had not enjoyed the basic human right to take part in the government of their country, and that fundamental changes in policy continued to be made without their participation. The Junta's attempt to create an impression of continuity with the Chilean Constitution of 1925 was misleading. The Junta itself was based on a violent breach of the Constitution in which the elected President of the Chilean people had been killed and all elected organs and political parties had been dissolved. The Committee was dealing for the first time with a report from a régime which had for years been accused in the United Nations of flagrant and mass violations of human rights. The General Assembly resolutions on the subject were well known. There was abundant evidence available to world public opinion of serious violations of human rights in Chile, much of it to be found in the reports of the Ad Hoc Working Group. None of that evidence, however, was reflected in the Junta's report, which ignored the existence both of the General Assembly resolutions and of the findings of the Ad Hoc Working Group.

3. Although the Committee was not a fact-finding body, that did not mean that it should turn a blind eye to the facts. It had a right to expect the report of the Junta to reply to the findings of the Ad Hoc Working Group, which had been established with the Junta's approval and had recently visited Chile. The credibility of a report which ignored the facts and failed to meet the requirements of article 40 of the Covenant was questionable.

4. It was customary for the reports submitted to the Committee to give an idea of the prevailing legal situation, with a review of the laws in force. The report under consideration failed to do so, firstly, because many of the laws and decrees now in force in Chile had been passed in order to annul or to limit existing

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democratic rights, and, secondly, because, as was proved by the findings of the Ad Hoc Working Group, even the decrees of the Junta were not observed by the police forces and other bodies. The report made no reference to the discrepancy between the legal situation and reality. In the report, the Junta repeated its frequent denial that violations of human rights had occurred, but the credibility of such statements was destroyed by the facts, a striking example of which was the fate of thousands of missing persons. The Junta's responsibility had been convincingly demonstrated in the petition to the Supreme Court by the Episcopal Vicars of the Archbishopric of Santiago (E/CN.4/1310, annex VIII), yet the Junta had repeatedly declared that it knew nothing about the missing persons in question, and in some cases had even denied their existence. The bodies of all the victims mentioned in the penultimate paragraph on page 8 of the petition had since been found and identified at the Lonquén lime pit. The responsibility of the police forces for the murder of those victims was thus proved. Other examples could also be cited; he had mentioned that particular case simply to show that the Junta's report provided little information about the real situation in Chile.

5. States parties to the Covenant had an obligation to ensure the realization of the rights recognized in that instrument. It was generally recognized, and had been affirmed by all the reports hitherto dealt with in the Committee, that that obligation extended to penal prosecution and punishment for grave breaches of human rights. The present occasion was the first on which a régime had boasted that it had pardoned those who had committed grave breaches of human rights and had discontinued penal prosecution against them. He fully shared the view expressed in paragraph 326 of the Working Group's report to the effect that an amnesty declared by a Government in favour of officials who engaged in systematic and gross violations of human rights was legally ineffective as contrary to the generally accepted principles of law and that on the international level persons responsible for such violations were liable for crimes committed by them. Such conduct was also a clear violation of the Covenant.

6. The Chilean report failed to provide a sufficient basis for the Committee's consideration and to meet the requirements of the Covenant.

7. Far from prohibiting discrimination, Constitutional Act No. 3, to which the report referred in relation to article 2 of the Covenant, made political discrimination a constitutional principle, as evidenced by article 11, paragraph 2. The same principle was confirmed by Decree-Law No. 2376, which disqualified certain people on political grounds from being elected as trade union leaders (E/CN.4/1310, para. 228). The draft constitution provided for the continuation of such political discrimination.

8. In relation to article 4 of the Covenant, the report dealt at length with the state of emergency and the state of siege, and an attempt was made to create the impression that the declaration of a state of siege was in conformity with the 1925 Constitution. That Constitution had, however, recognized a state of emergency only in relation to international armed conflict and not to internal conflicts, and it had not recognized such far-reaching derogations from human rights as those established by the Junta under Act No. 4. It had made no

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provision for a state of siege or state of emergency as a constitutional instrument for eliminating the country's elected political bodies.

9. Grave breaches of human rights, in particular of the right to life and to humane treatment as set forth in articles 6 and 7 of the Covenant, could not be justified by invoking a state of emergency or a state of siege. The Junta had invented a whole system of states of emergency, but it was the Junta itself that constituted the real state of emergency for the Chilean people. He could not accept that article 4 of the Covenant had been intended to justify the activities of persons who or bodies which had themselves created the emergency. Article 5, paragraph 1, of the Covenant was explicitly designed to prevent such perversion of article 4. Elimination of the state of emergency was required in order to restore the basic human rights that had been abolished as a result of the violent overthrow of the legitimate Allende Government.

10. A further example of the systematic violation of article 6 of the Covenant had been the assassination of Orlando Letelier. Contrary to the Junta's assurances that it was not responsible for the assassination, the competent court in Washington had established that three high officers of DINA had organized the crime.

11. All the reports of the Ad Hoc Working Group, including the report now before the Committee (E/CN.4/1310, para. 327), had mentioned the systematic violation of article 7 of the Covenant. The initial report of the Junta (CCPR/C/1/Add.25), however, contained no reference to the serious accusations that had been made.

12. Similarly, with regard to article 9 of the Covenant no mention was made in the Chilean report of arbitrary arrests, yet it was known throughout the world that thousands of people had been arbitrarily arrested and that such arrests were increasing (E/CN/4/1310, paras. 324 and 327). As could be seen from a comparison between the statement on page 3 of the Junta's report and the one in paragraph 325 of the Working Group's report, there was a similar discrepancy in relation to the right of habeas corpus.

13. As far as the rights recognized in articles 17 to 27 of the Covenant were concerned, a typical example of the hypocritical explanations given by the Junta could be found on pages 45 and 46 of its report, where it was stated that the Marxist political parties had been dissolved by Decree No. 77 and that for reasons of justice and non-discrimination against such parties all the other political parties had also been suspended by Decree No. 78.

14. There would be no point in requesting further information in the present case; what the Committee should ask for was a report which reflected the human rights situation in Chile, and which met the obligations set forth in article 40 of the Covenant.

15. Mr. TOMUSCHAT said that he wished to thank the Government of Chile for having submitted a carefully drafted report which made a serious attempt to clarify all the points in which the Committee might be interested, and for having sent high-calibre representatives to co-operate with the Committee in a search for satisfactory solutions to the many pressing problems of human rights in Chile.

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16. Although much had been said and written about that situation, and although many international and private organizations had been inquiring into developments in Chile since 1973, any doubts about the specific purpose to be achieved by the Committee would appear to be unfounded. The Committee had, in the International Covenant on Civil and Political Rights, a precise yardstick by which to measure the conduct of the Chilean governmental authorities. The Committee was prevented institutionally from bringing unilateral or unreliable charges that could lead to misleading conclusions. It was conducting its work in accordance with a set of carefully drafted rules of procedure, and in the presence of the Chilean representatives, with a view to obtaining further information from him on all points that required a more specific explanation. Members of the Committee had obviously taken advantage of the wealth of information that was available beyond that provided in the report submitted to them. If the impression they had gained failed to reflect the full realities of daily life in Chile, the representative of that country would have an opportunity to correct that impression. The Committee would, of course, have to follow the precedent established by its rules and prior practices. Chile would have to be treated in the same way as any other State appearing before it and should, in turn, be expected to live up to the same standards as all other States parties to the Covenant.

16a. Although a report submitted under article 40 of the Covenant should describe the legal situation in abstracto as accurately as possible, explanations had also to be given on the progress made in promoting the enjoyment of the rights set forth in the Covenant and the factors and difficulties affecting its implementation. The Committee should therefore focus its attention primarily on the reality of human rights practices. One of the basic factors on which the effectiveness of the Covenant depended was its position in the legal order of the State. The answers given in the report on the extent to which the Covenant had been incorporated into or implemented through national legislation were more implicit than explicit. The statement in the penultimate paragraph on page 2 appeared to indicate that the Covenant had not been given the force of a legal statute to be complied with directly by tribunals or administrative agencies. The judgement of the Supreme Court of Chile of 25 August 1976 could be given a similar interpretation. He would request from the Chilean representatives confirmation of the regrettable fact that the situation had remained unchanged. Although no State was obliged to make the Covenant a part of its domestic law, such action would obviously enable the Covenant to have a much stronger impact on the life of a nation than if no direct claims could be based on its provisions.

17. He was unable to understand fully what kind of derogations the Chilean Government sought to justify under article 4 of the Covenant. A communication (CCPR/C/2) transmitted to the Secretary-General of the United Nations in August 1976 had referred to the then prevailing state of siege and had listed restrictions on the rights set forth in articles 9, 12, 13, 19 and 25 (b) of the Covenant. The state of siege had, however, been lifted on 11 March 1978. What were the legal consequences of such action? Did the Government of Chile maintain that the 1976 communication applied also to the state of emergency currently in force? How did the Government justify the extension of the state of emergency at a time which, in its own words, was characterized by general calm, peace and order

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throughout the country? He strongly doubted whether the concept of "latent subversion" on which the relevant Chilean emergency act was based met the strict requirements of article 4 of the Covenant. "Latent subversion" could always be alleged to exist so that the binding force of the Covenant could be weakened. More information on that point would be welcome.

18. He questioned whether the general non-discrimination clause in article 2 of the Covenant had been adequately dealt with in the report, which, on page 11, confined itself to some general observations and made no attempt to take specific criteria into account. In particular, the Covenant prohibited discrimination on the ground of political or other opinion. No restriction could be placed on that principle. The communication of the Government of Chile had, significantly, failed to mention article 2 of the Covenant as one of the provisions that had been temporarily suspended or restricted to a greater extent than was normally admissible.

19. Non-discrimination on political grounds had far-reaching effects on the entire institutional framework of a nation. Such non-discrimination meant primarily that there should be freedom of opinion in the field of public affairs. That was in perfect harmony with other guarantees provided by the Covenant. How could there be self-determination without freedom of opinion? Article 1 of the Covenant referred to the right to self-determination of peoples, not of Governments. Similarly, the free democratic process aimed at under article 25 presupposed freedom of speech and of writing, supported by the additional guarantee of freedom from discrimination on account of opinions stated publicly.

20. As was borne out by article 19, paragraph 3, freedom of opinion admittedly had its limitations, but if the limitation clause was to have any reasonable meaning it could not be taken to mean that freedom of opinion could be restricted merely because the Government considered it to be a threat to its own stability. Freedom of expression obviously placed some strain on Governments, but such freedom was the essence of article 19, which had been freely agreed to by all participating States. Therefore, any restriction on freedom of opinion required convincing proof that a clear and present danger could not otherwise be overcome. It was reasonable to ban any incitement to use violent means of overthrowing the Government, but how could peaceful criticism of governmental policies or the objective exposure of governmental deficiencies amount to a threat which could justify repressive sanctions?

21. With those considerations in mind, he wished to refer to some features of Chile's current legislation and policy which warranted careful attention. Firstly, he asked whether any group which wished to scrutinize the bill revising the Chilean Constitution had the right to do so and publicly to express its misgivings or disapproval. It had been reported that an association of Chileans with that sole objective in mind had encountered difficulties in convening a meeting. Since a constitution could frame the life of a nation for many decades, it was inconceivable that anyone could be prevented indefinitely from taking part in the formulation of its contents.

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22. A further question concerned the right of students' associations and trade unions to engage in political activities. Freedom of opinion and freedom of association were both at stake. He understood that both kinds of association were subject to strict Government control in Chile. How could a students' union or a workers' union discharge its mission effectively without speaking out on all public matters related to its objectives? Discrimination on political grounds went so far as to disqualify from office any person who, in the 10 years preceding an election, had engaged in party political activities (Decree-Law No. 2370 of 26 October 1978). That was beyond all reasonable limits. Why should a person who had dedicated his life to democratic ideals and a just society in which human rights could flourish be barred from office, and why should political activities be the privilege of a small governmental élite rather than the legal right of everyone? A single political party or group of officials could not hold a monopoly of truth or alone be in a position to voice a nation's true interests. No attempt was made in the report to justify a situation in which a nation had been deprived of every organized form of political expression and opposition for more than a decade. He looked forward to hearing the replies which the Chilean representatives might be prepared to provide on the subject.

23. The report supplied a good deal of accurate data on the legal situation with regard to article 2, paragraph 3, of the Covenant. He was not certain, however, that he had correctly understood the nature of the legal régime in force, and he wished to ask a number of questions on the subject.

24. Firstly, did the remedy of amparo (action for enforcement of rights - p. 5, sect. (a) of the report) cover all cases in which a person had been deprived of his freedom by a governmental agency, including the executive organs and the intelligence services? He would welcome a clear description of the dividing line between amparo and the remedy of protection (p. 6, sect. (b)).

25. Secondly, when a person challenged a decision to expel him from the country, did the courts review the substantive reasons adduced to justify the decision or did they confine themselves to a formal examination? Such a purely formal assessment could not, in his view, fulfil the requirement in article 2, paragraph 3, subparagraph (a), of the Covenant that the remedy must be effective.

26. Thirdly, what legal remedies were at the disposal of a citizen deprived of his nationality under article 6, paragraph 4, of the Political Constitution?

27. Fourthly, according to Decree-Law No. 604 of 9 August 1974, certain categories of person could be prevented from entering the national territory - among them, those deemed to have acted against "national sovereignty, internal security or the public order of the country, those performing acts contrary to Chile's interests or persons who, in the opinion of the Government, presented a danger to the State". Apart from the fact that that was an extremely broad formula which had to be carefully scrutinized against the background of article 12, paragraph 4, of the Covenant, he wished to raise the question as to what remedies a person could set in motion if he or she was the victim of such a measure.

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28. Did a person have the right to lodge an action against activities of intelligence services that violated his privacy, home or correspondence, which were protected by article 17 of the Covenant?

29. Referring to expulsion from a university, he said that although the university sector as such was not covered by the Covenant, if a student maintained that the reason for his expulsion was political discrimination, he should be in a position to defend himself by resorting to an "effective remedy".

30. The same contention would apply to a public servant dismissed by virtue of the power granted under Decree-Law No. 2345 mentioned in the report (CCPR/C/1/Add.40, p. 7) supplementary to Chile's initial report. That provision was shocking and did not seem to be in line with the assertion on page 1 of the initial report to the effect that Chilean law respected acquired rights, both in the letter and in the spirit. If the public servant complained that the true reason for his dismissal was to punish him for holding political opinions not in line with those of the Government, he should be able to make a plea of political discrimination by means of the remedy of protection. Had there been any such case?

31. On the question of banishment, which raised difficult questions under article 12 of the Covenant, how could the victim of an order of banishment obtain legal redress? What kind of action was open to him? The effectiveness of article 2, paragraph 3, of the Covenant should not be over-rated. Good procedural devices did not compensate for bad substantive laws. Thus, for instance, since there was a general ban on political parties, was there any use in lodging an appeal at all?

32. Referring to article 6 of the Covenant, he said he would not comment on events prior to the entry into force of the Covenant with respect to Chile. He merely wished to ask whether the Government of Chile was fully aware of its responsibility under article 6 in cases where banishment orders were issued. A person who had spent all his life in an urban environment would be subjected to an extreme hazard, threatening even his life, if banished to a locality of the Andean region, with its high altitude, low atmospheric pressure, severe winters and general lack of adequate medical care institutions. He was not criticizing those regions for not having attained the standard which was common in the metropolitan area of Santiago, Chile, but merely wanted to stress that it was an extremely harsh decision to assign a person to a place of residence to which he was not accustomed. No reason put forward in support of the penalty of banishment could justify jeopardizing a person's health or life.

33. Turning to article 9 of the Covenant, he asked whether the Government of Chile could give formal assurances that at the present time no one would be arrested except in accordance with procedures established by law whereby he would be fully informed of the reasons for his arrest and of any charges against him and his family would be informed of his whereabouts and his fate in general. It was a matter of common knowledge that there were many complaints of arrests by unidentified individuals claiming to be members of intelligence services. He hoped the Government of Chile was committed to and capable of putting an end to such

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deplorable practices, in order to ensure compliance with article 9, paragraph 2. Concerning article 9, paragraph 3, read in conjunction with article 14, paragraph 3, subparagraph (c), he asked whether any persons were still being detained and awaiting trial in connexion with the events of September 1973. If so, what were the reasons for such a lengthy delay in the administration of justice and when would the trials be held?

34. The explanations that had been given under article 12 of the Covenant did not seem to be fully satisfactory. He appreciated the information furnished to the Committee to the effect that in 1978 no one had been expelled from the national territory and no one had been deprived of his nationality. That was a gratifying sign of a return to normality, for which the Government of Chile deserved to be commended. However, concerning the cases of persons barred from entering the national territory, what were the criteria on which the Minister of the Interior based his decisions? The simple reference to "Chile's interests", as found in Decree-Law 604 of 9 August 1974, was not sufficient to enable the Committee to make an assessment. How was that formula interpreted? What real substantive criteria did it cover? The Committee should be more fully enlightened on that point. Could the Government eventually make an announcement as to when all political exiles would be allowed to return to their country? Did the Government envisage conferring nationality on those who had lost or been deprived of it? The Government of Chile had taken the decision to enact a general amnesty covering most of the offences which had occurred in connexion with the events of September 1973. Why should it not go a step further and reinstate every citizen in the exercise of his previous rights? The cause of national reconciliation which the Government had said it was promoting by enacting the amnesty would be best served if those additional sanctions were lifted.

35. Turning to article 22 of the Covenant, which guaranteed freedom of association, he remarked that the initial report did not reflect the present state of the law. Fortunately, the supplementary report in addendum 40 brought to the Committee's attention the fact that new decrees had been enacted in 1978. He would like to know, however, how the Government of Chile justified the ban on a number of trade unions. The information given on page 7 of addendum 40 was not at all clear. If Decree-Law No. 2346 was "vitiated by an obvious flaw" (CCPR/C/1/Add.40, para. 5 (a)), why had it not been repealed? However that might be, the ban on trade unions seemed to be at variance with the substance of article 22 of the Covenant. The fact that a trade union did not share the political views of the present Government could not as such be accepted as legitimate grounds for dissolution. Could the alleged danger to national unity be indicated in a more specific and substantiated way than it was in the preambular paragraphs of Decree-Law No. 2346? The Committee must have a full account of all the relevant facts, since otherwise it would be unable to make an assessment. In the same connexion, full information should be given on cases where trade union leaders had been forced to resign from their posts.

36. Even a cursory glance at Decree-Law No. 2376 revealed such an intertwined pattern of restrictions that the most serious doubts about its compatibility with the Covenant arose. As he understood that text, no national trade unions but only

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company unions were allowed. That certainly did not correspond to the workers' own wishes. Experience from other countries showed that workers had to be organized at the national level if they were to be successful in defending their interests. He had already mentioned the questionable exclusion from political office of persons who had at earlier times engaged in political activities. The oath which an elected candidate for trade union office was obliged to take upon assuming his functions seemed to be equally inappropriate and to constitute a means of bringing pressure to bear upon trade union leaders. Why did workers not have the right to put forward a certain number of candidates of their choice? To make everyone a potential candidate, even the most inexperienced person, seriously weakened the trade union - a fact of which the Government of Chile could not have been unaware. Such artificial constraints could not serve the cause of national reconciliation but would only exacerbate feelings of resentment among workers, creating the impression that their rights were being deliberately curtailed so as to break the strength of trade unions as a political factor. Further clarification would be most welcome. In any case, it seemed to him that the future negotiations envisaged by the Chilean Government would have to be conducted bearing in mind the international Covenants to which Chile was a party.

37. Lastly, he wished to point out that the initial report stated on its last page that there were no minorities within the meaning of article 27 of the Covenant in Chile. Nevertheless, it was a well-known fact that Chile had a numerous population of Indian origin who in at least some areas had retained certain specific characteristics and, above all, their own languages. Were those populations not ipso facto within the purview of article 27? The Government of Chile would have at least to explain why it considered that those communities did not enjoy the rights referred to in article 27.

38. In conclusion he said that he wished to avail himself once again of the opportunity to express his gratitude to the Government of Chile. Although his questioning might have seemed to reflect an attitude of criticism, one thing was certain and should be acknowledged without reservation: the Government of Chile was not now trying to conceal its activities behind a smokescreen but was showing an openness and frankness in discussing its internal situation which had not been equalled by many other States. That in itself augured well for the constructive dialogue which the Committee had always sought to establish with the States parties to the Covenant.

39. Mr. TARNOPOLSKY commended the Government of Chile for the high calibre of the delegation it had sent to participate in the Committee's deliberations.

40. In trying to understand the existing situation in Chile, he had found it necessary to refer to five or six documents. The Committee's great problem was that it was dealing with an abnormal situation in which a state of emergency and a state of siege had existed before the Covenant had entered into force and measures derogating from Chile's obligations under the Covenant had been taken, as the Secretary-General had been notified on 18 August 1976. Article 4 of the Covenant allowed States parties considerable latitude in deciding when a public emergency

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justified derogation; it also stated that no derogation could be made from certain articles and required States parties to inform other States parties, through the Secretary-General of the United Nations, of the provisions from which it had derogated and of the reasons why it had done so. On 18 August 1976 notification of derogation had been made; later, however, in document A/33/293, page 8, the Government of Chile had indicated that the state of siege had ended on 11 March 1978. The question therefore arose as to what legal order had been functioning in Chile since that time. From the initial report (p. 3) it appeared that when the state of siege had ended the country had returned to a state of emergency. On page 5, in section 3 (a), it was stated that the remedy of habeas corpus retained its full force under the state of emergency. In addendum 40, dated 20 March 1979, the first paragraph on page 1 referred to the continuing institutional development of Chile and made no reference to the state of emergency. Did the state of emergency still exist? The report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (A/33/331), of 25 October 1978, referred, in paragraphs 72 and 97, to the continuation of the state of emergency. Also, paragraph 99 referred to a new declaration of a state of siege in the Province of El Loa. The second report of the Working Group (E/CN.4/1310) referred, in paragraphs 23 to 24, to a new proclamation of a state of siege in El Loa. There was no reference to that in the Chilean Government's report in addendum 40. He therefore wondered what was the position of the Committee under articles 4 and 40 of the Covenant. If the constitutional order no longer prevailed, could not the Committee ask for a further report under article 40? Should not the Committee be informed as to what the situation was? Was it not clearly the Committee's duty to ask for such information? He found it very difficult to consider parts of a detailed report referring to a normal situation when the Committee had been informed that the situation was not normal.

41. The Committee must know what restrictions had been imposed in order that it might ascertain whether they had been imposed in respect of the rights set forth in the articles from which there could be no derogation, and whether they were required by the exigencies of the situation. Was the Committee looking at a situation that existed only under a state of emergency or was it looking at a situation that would continue even if the state of emergency was terminated?

42. He was not sure of the meaning of the first paragraph on page 2 of the initial report.

43. The first sentence of paragraph 55 of the report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (A/33/331) stated that the sole limitation on the exercise of the Junta's Legislative and Constituent Powers was to be found in Decree-Law No. 788, according to which decree-laws subsequent to that date which changed the Constitution or were opposed to its provisions would have such amending effect only in cases where the Government Junta expressly stated in the text of the decree that it was issued in exercise of the Junta's Constituent Power. Did that mean that the constitutional order had prevailed at the time the report was drawn up? Or did it mean that there was a new legal order? There seemed to be a situation in which a body that had not been elected - the Junta - could change the Constitution.

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It was quite clear from paragraphs 69 and 70 of the same report that human rights and the legal instruments for their protection were subservient to the will of the military Government. Paragraphs 197-199 of the same report further confirmed his impression that it was impossible to speak of an independent judiciary power in Chile.

44. In his view, the Committee did not have enough information to satisfy itself as to what restrictions were placed on rights protected by the Covenant because of the state of emergency. Furthermore, it must ascertain whether the state of emergency was continuing and what the situation was with regard to the state of siege in the Province of El Loa. Also, quite apart from the questions to be raised under article 4 of the Covenant, the Committee should know what was the situation with respect to article 2 of the Covenant.

45. Turning to articles 7 and 10 of the Covenant, in conjunction with article 2, paragraph 3, he said the Committee must consider the evidence obtained and ask the Government of Chile for comments and information. He drew attention to the allegations of torture in paragraphs 166 to 169 and paragraph 336 of the report of the Ad Hoc Working Group (A/33/331) as well as to the cases reported in paragraphs 101 et seq. of the Working Group's report in document E/CN.4/1310. Article 4, paragraph 2, of the Covenant clearly stated that no derogation from article 7 could be made. The Committee must receive information regarding possible breaches of article 7. It must, in particular, ask what action had been taken to investigate such incidents and to punish those guilty of violations. He welcomed the Chilean Government's report in document CCPR/C/1/Add.40, which referred to provisions made with regard to article 7. However, he did not feel that the present situation could be dealt with by a general amnesty when that amnesty included individuals charged with offences which constituted violations of the Covenant.

46. With regard to articles 9 and 14 of the Covenant, a question arose as to the availability of amparo under the state of emergency. It was indicated in paragraph 187 of the Working Group's report (A/33/331) that the purpose of amparo was to remedy the mistakes of the ordinary courts, not to inquire into arbitrary abductions or into detentions by the Executive. The question arose as to whether the opinion attributed to the President of the Supreme Court in paragraph 186 was mistaken or whether, as the highest judicial officer, he was expressing the law.

47. As to the fundamental freedoms enunciated in articles 18 to 22 of the Covenant, he observed that the important thing was not whether the Constitution proclaimed fundamental freedoms but what were the allowable restrictions both under the state of emergency and under the constitutional order itself regardless of whether there was a state of emergency. What would be the state of civil and political rights under the legislative degrees referred to on pages 1 to 3 of the initial report if a group, acting on behalf of the whole nation without the supervision of a judiciary or legislative body, could change the Constitution at any time? There appeared to be no limitation on the restrictions.

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48. As to the relationship between spouses, dealt with in article 23 of the Covenant, he drew attention to the Chilean Government's comments on page 47 of its initial report that, according to the Chilean Civil Code, the husband owed protection to the wife and the wife obedience to the husband, and the husband had the right to oblige his wife to live with him and to follow him wherever he might wish to move his residence within the Republic. Such provisions were hardly in line with the Covenant.

49. As to the Chilean Government's comment concerning article 27 of the Covenant (CCPR/C/1/Add.25, p. 53), he would be interested to know why indigenous peoples were not considered ethnic or linguistic minorities. He noted from paragraph 687 of the Working Group's report to the Assembly (A/33/331) that the Mapuche population had been estimated at 1 million. They were only one of several indigenous minorities. From a reading of paragraphs 685 to 727 of that report, he had the impression that some of the minorities were seriously deprived. It was not known how much of that could be attributed to the Government or to historical circumstances, and it would be extremely important to receive information on the question. The corresponding section of the Working Group's report to the Commission on Human Rights (E/CN.4/1310, paras. 306-311) also gave rise to serious concern not only about economic, social and cultural rights, which fell outside the purview of the Committee, but also about the question of equality. If the report submitted by Chile was taken at its face value, everything was satisfactory with regard to the human rights situation in that country. If that was so, however, why was the international community continuing to express its concern? The report was a deliberate attempt to hoodwink the Committee, a body of experienced jurists. The very fact that such a document had been submitted indicated that Chile continued to ignore the conclusions and recommendations adopted by the United Nations and sought to mislead the international community and world public opinion.

50. In the very first sentence of its initial report the Chilean Junta claimed that civil and political rights were protected by constitutional and legal rules and regulations. However, that was not borne out by paragraph 70 of the Working Group's report in document A/33/331, to which he had already referred. Furthermore, in paragraph 133 the Group noted that the two changes mentioned by the Government in respect of the security agencies did not, in themselves, represent an improvement in the protection of any human right, since human rights remained dependent on the use which the President of the Republic, the Ministry of Defence and the Ministry of the Interior made of their respective powers.

51. With regard to the state of emergency, the Group had concluded in paragraph 98 of that same report that that exceptional measure, intended to be applicable for a limited period and over limited areas, had been transformed into an institutional restriction on human rights throughout the country for an indefinite length of time. In paragraph 322 of its report to the Commission (E/CN.4/1310), the Group had emphasized that the continued application of the state of siege and the state of emergency was not justified by international law. The Group had also concluded (para. 325) that the Chilean citizen could not be said to enjoy the right to an effective remedy as required by international human rights instruments. Furthermore,

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the Group had indicated (para. 327) that arrests for political or national security reasons in 1978 exceeded those reported for 1977. Was that what the Chilean régime called "progress"?

52. Clearly, the practice of arbitrary arrests was being expanded: persons were being arrested not only for left-wing activities but also for participation in the humanitarian activities of churches, as indicated in chapter II of document E/CN.4/1310.

53. The Chilean authorities were continuing the practice of torture during interrogation, despite the appeals issued by the Commission on Human Rights.

54. In its comments on article 25 of the Covenant (CCPR/C/1/Add.25, p. 52), the Junta stated that in April 1978 the President had said that the draft of the new Political Constitution of the State would be prepared that year, and subsequently submitted to popular vote by means of a plebicite. That had not occurred. Indeed, the President had indicated that no elections or referendums would be held in Chile for the next ten years.

55. In those circumstances, there was little purpose to be served by asking specific points about such a hypocritical report.

56. He shared the view that what was needed was a new, realistic and truthful report from the Chilean Junta. In view of the continuing mass violations of human rights in Chile, it was the Committee's urgent duty to seek to bring an end to such violations and to uphold the provisions of the Covenant.

57. Mr. MOVCHAN recalled that for over five years the attention of the international community had been focused on the tragic aftermath of the bloody putsch carried out by the military Junta in Chile. The United Nations, in its examination of the human rights situation in a given country, acted only in the case of proven mass violations of human rights. The General Assembly, in its resolutions 3219 (XXIX), 3448 (XXX), 31/124, 32/118 and 33/175, had consistently expressed its grave concern about the continuing flagrant and mass violations of human rights in Chile and had called for a restoration of basic human rights and full observance of the relevant international instruments to which Chile was a party. In resolution 31/124, the General Assembly, considering that previous United Nations appeals to the Chilean authorities had remained unheeded, had, inter alia, expressed its profound indignation about the institutionalized practice of torture and other inhuman treatment, the disappearance of persons for political reasons, arbitrary arrest, detention, exile and deprivation of Chilean nationality, and had invited Member States, United Nations agencies and other international organizations to take steps to promote the restoration and safeguarding of human rights and fundamental freedoms in Chile. That resolution had been adopted by States belonging to various social systems and expressed the conviction of the entire international community.

58. That condemnation was based on many documents, including the eight reports submitted thus far by the Ad Hoc Working Group. Those reports offered convincing evidence of the reign of terror instituted by the Chilean régime. The two most

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recent reports (A/33/331 and E/CN.4/1310), prepared after the visit to Chile by three members of the Working Group, had incontrovertibly confirmed the Group's earlier findings.

59. In its resolution 33/175, prepared after the submission of the initial report of Chile (CCPR/C/1/Add.25), the General Assembly had, inter alia, expressed its continued indignation that violations of human rights continued to take place in Chile, as had been convincingly established by the Working Group's report, and had called once more upon the Chilean authorities to restore and safeguard, without delay, basic human rights and fundamental freedoms and fully to respect the relevant international instruments to which Chile was a party, including the International Covenants on Human Rights. Furthermore, as recently as March 1979 the Commission on Human Rights had adopted resolution 11 (XXXV) in which it had stated that it shared the General Assembly's indignation about the violation of human rights in Chile, and had expressed shock at the recent discovery at Lonquén of the bodies of persons who had previously been reported to have disappeared, and had expressed its deep concern at the Chilean authorities' refusal to investigate the matter. The Commission had once again appealed to Chile to restore basic human rights and fully comply with the Covenant.

60. Thus, in the view of the international community, there was not a word of truth in the report submitted by Chile: it was a hypocritical attempt to conceal its policy of terror and injustice.

61. Sir Vincent EVANS (United Kingdom) said that the establishment of the Ad Hoc Working Group on the Situation of Human Rights in Chile and its visit to that country had set an important precedent, and he felt that the people of Chile had benefited from the Group's efforts. However, although important improvements had been made in the human rights situation in Chile over the past two or three years, it was evident that there had not yet been a return to normality.

62. With regard to the initial report submitted by the Government of Chile in document CCPR/C/1/Add.25, he wished first of all to consider the basic constitutional position. In the first paragraph on page 2 of that report it was indicated that the Political Constitution of 1925 remained in force, although amended. However, the fact was that supreme legislative and constituent powers were currently vested in the Junta and executive powers in the President of the Junta, and the resulting situation was in itself a denial of some of the basic political rights set forth in the Covenant. In connexion with the restoration of political rights under article 25 of the Covenant, he wondered how far the Council of State and/or Commission for Constitutional Reform had progressed in drafting the new Political Constitution and also what programme for constitutional reform was envisaged.

63. With regard to the status of the Covenant within the existing domestic legal system of Chile, he wished to know whether the reference in the first paragraph on page 1 of Chile's report to "international treaties signed and ratified by the Government of Chile" meant that the provisions of the Covenant had become an integral part of Chile's domestic law, so that they might be invoked by the individual. Since

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(Sir Vincent Evans)

that paragraph indicated that such treaties belonged only to the second category of instruments constituting the Chilean legal order, that of legal rules, he wondered whether that meant that the provisions of the Covenant were subordinate within the Chilean legal order to rules of a constitutional character. Since the Governing Junta would appear to have authority to make laws that would prevail over those of the Covenant, he wished to know whether any consideration had been given to according the provisions of the Covenant itself the status of constitutional law.

64. With regard to the reference in the third paragraph on page 2 of Chile's report to Constitutional Act No. 3, he asked whether the necessary further legislation had been brought into force in order to make the provisions of the Act effective. He would also welcome comments from the representatives of Chile with regard to the broadly formulated provisions for the protection of the existing régime to which Act No. 3 was made subject in its article 11.

65. With regard to the derogations from normal civil and political rights described in Chile's initial report (CCPR/C/1/Add.25), although it was a matter for satisfaction that the general state of siege had been terminated, it was clear that under the state of emergency the Junta and the President continued to exercise exceptional powers that were not subject to the control of courts. Since the situation regarding the rights of the individual in Chile still appeared to be confused, he would welcome a summary and justification in that connexion from the representative of Chile.

66. With regard to article 4 of the Covenant, he wished to know, in connexion with Chile's comment regarding paragraph 3 of that article on page 20 of its initial report, whether the notification of termination of the stage of siege also signified the end of the derogations notified under article 4. It could not be claimed that such measures were still justified in the current improved situation in Chile. Of particular concern were the limitations imposed on the availability of remedies such as action for the enforcement of rights and habeas corpus.

67. With regard to Chile's comment on page 9 of its report concerning article 1, paragraph 1, of the Covenant, he said that, notwithstanding the references made in the third and fourth paragraphs on that page to articles 1 and 2 of the Political Constitution of 1925 and article 4 of Constitutional Act No. 2, the current régime in Chile could hardly claim to measure up to the standards of democratic and representative government required by the Covenant. Under the comments on article 2 of the Covenant on page 11 of the report it was indicated at the end of the first paragraph that in Chile there were no privileged individuals or groups. In that connexion, he wished to inquire what the position was with regard to the prohibition of discrimination on the ground of "political status". Even following termination of the state of siege, the jurisdiction of the courts to adjudicate on certain violations of human rights continued to be severely curtailed. Full restoration of the rights protected under article 2, paragraph 2, of the Covenant would be a major step forward.

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68. The fate of the hundreds of persons who had apparently disappeared after being detained by the security forces in Chile remained a matter of primary concern. He wondered, for instance, what was the outcome of the inquiry into the case of the bodies found in a lime kiln. He also wished to know what steps were being taken to investigate the continuing allegations of torture and inhuman treatment. In how many cases had charges actually been brought against those responsible and with what result? In that connexion, he observed that the amnesty declared on 18 April 1978 had resulted in the release not only of political prisoners but also of persons who had committed crimes during the period of the state of siege. Immunity had thus been conferred on persons who might otherwise have been charged with gross violations of human rights. While it was essential that persons guilty of such offences should have all the safeguards of due process of law, they must be brought to justice.

69. With regard to article 9 of the Covenant concerning deprivation of liberty, it appeared from the penultimate subparagraph on page 30 that under the state of emergency the President and the security forces had the power to arrest a person for up to five days without placing him at the disposal of the competent judge. That provision could be applied in an arbitrary manner. With regard to paragraphs 2 and 4 of article 9 concerning freedom of movement, he wished to know what the current situation was with respect to the many Chilean citizens who either had been banished or had fled from Chile and were apparently being denied the fundamental right to return to their country. He wondered how many such cases there actually were and what the justification was for the current circumstances in which those citizens found themselves.

70. With regard to article 14 of the Covenant laying down the requirements of due process of law, he wondered whether the provision of Constitutional Act No. 3 in the first paragraph on page 35 of Chile's report had been implemented by the enactment of the necessary law. Also, he would appreciate a further explanation of what seemed to be an unduly short period granted to the accused in which to reply to the charge against him, as referred to in the first line on page 37 of the report. It appeared, moreover, that under the state of emergency military courts continued to have jurisdiction to try civilians. In that connexion he wished to know whether the requirements of due process of law as defined in article 14 of the Covenant were duly observed in proceedings before the military courts.

The meeting rose at 6.10 p.m.

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