



UNITED NATIONS GENERAL ASSEMBLY



Distr.
GENERAL

A/10295
16 October 1975
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Thirtieth session
Agenda item 12

REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Protection of human rights in Chile

Report of the Secretary-General

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I. INTRODUCTION

1. In resolution 3219 (XXIX), which the General Assembly adopted at its 2278th plenary meeting, on 6 November 1974, the Assembly reaffirmed its responsibility under the Charter of the United Nations to promote and encourage respect for human rights and fundamental freedoms for all. It recalled that, in accordance with the Universal Declaration of Human Rights, 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. It also recalled its resolution 3059 (XXVIII) of 2 November 1973 by which, *inter alia*, it rejected any form of torture and other cruel, inhuman or degrading treatment or punishment. The General Assembly noted the deep concern expressed by the Economic and Social Council, the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the General Conference of the International Labour Organisation about reports from a wide variety of sources relating to gross and massive violations of human rights in Chile, particularly those involving a threat to human life and liberty and the appeals addressed by these bodies to the Chilean authorities to take all necessary steps to restore and safeguard basic human rights and fundamental freedoms. Having noted that, notwithstanding all those appeals, gross and massive violations of human rights, such as arbitrary arrest, torture and cruel, inhuman and degrading treatment of political prisoners and detainees, including former members of the Chilean Government and Parliament, continued to be reported, the Assembly expressed its deepest concern at the reports and reiterated its repudiation of all forms of torture and other cruel, inhuman or degrading treatment or punishment.

2. In paragraph 3 of resolution 3219 (XXIX) the General Assembly urged the Chilean authorities to respect fully the principles of the Universal Declaration of Human Rights and to take all necessary steps to restore and safeguard basic human rights and fundamental freedoms, particularly those involving a threat to human life and liberty, to release all persons who had been detained without charge or imprisoned solely for political reasons and to continue to grant safe conduct to those who desired it. In paragraph 4 the General Assembly endorsed the recommendation made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 8 (XXVII), that the Commission on Human Rights at its thirty-first session should study the reported violations of human rights in Chile, with particular reference to torture and cruel, inhuman or degrading treatment or punishment. In paragraph 5 the General Assembly requested the President of the twenty-ninth session of the General Assembly and the Secretary-General to assist in any way they might deem appropriate in the re-establishment of basic human rights and fundamental freedoms in Chile in the light of paragraph 3 of resolution 3219 (XXIX). In paragraph 6 the General Assembly requested the Secretary-General to submit a report to the Assembly at its thirtieth session on the action taken and progress achieved under paragraphs 3 to 5 of resolution 3219 (XXIX).

3. In a note to the General Assembly (A/10285), the Secretary-General reported on the action taken by the Commission on Human Rights in response to the recommendation

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of the Sub-Commission on Prevention of Discrimination and Protection of Minorities as endorsed by the General Assembly in paragraph 4 of its resolution 3219 (XXIX), that the Commission should study the reported violations of human rights in Chile. The progress report of the Ad Hoc Working Group on the Situation of Human Rights in Chile, established by the Commission on Human Rights by its resolution 8 (XXXI), which was transmitted to the Secretary-General by the Chairman-Rapporteur of the Ad Hoc Working Group on 4 September 1975, is annexed to that note, which constitutes a part of the present report. In this respect, on 4 July 1975, the Secretary-General was informed by the Permanent Representative of Chile that his Government had decided to suspend the visit of the Ad Hoc Working Group to Chile, thereby withdrawing its previous agreement to permit the Group to visit Chile in order to study the reported violations of human rights in that country. The Secretary-General regretted this decision, observing that it was not helpful in clarifying the situation and expressing the hope that the Chilean Government would review its decision in order to permit the Working Group to fulfil its mandate.

4. This report describes the action taken by the President of the twenty-ninth session of the General Assembly and the Secretary-General under paragraph 5 of General Assembly resolution 3219 (XXIX). It also includes an historical survey of the consideration given to the question of human rights in Chile by United Nations organs as well as by other intergovernmental and non-governmental organizations.

II. ACTION TAKEN UNDER PARAGRAPH 5 OF GENERAL
ASSEMBLY RESOLUTION 3219 (XXIX)

5. The Secretary-General, in consultation with the President of the twenty-ninth session of the General Assembly, has continued to exercise his good offices towards the re-establishment of basic human rights and fundamental freedoms in Chile. In this respect, following the adoption of resolution 3219 (XXIX) on 6 November 1974, the Secretary-General, or the Under-Secretary-General for Political and General Assembly Affairs on his behalf, held frequent meetings with the Permanent Representative of Chile to the United Nations. The Secretary-General has also met with the Minister for External Relations of Chile.

6. During these discussions it was urged that basic human rights and fundamental freedoms in Chile, including inter alia, full respect for the right of amparo (habeas corpus), which is provided for in the Constitution of the Republic of Chile, be restored and safeguarded. In addition, the attention of the Government of Chile was drawn to the names of individuals who had been reported to be held in detention without charge or solely for political reasons, with a view to securing their release or fair trial. Deep concern was also expressed to the Government of Chile about frequent and persistent allegations of violations of human rights which had been brought to the Secretary-General's attention. Those included reports of torture and other cruel or inhuman punishments, of the absence of information concerning a number of individuals whose whereabouts have been unknown for an extended period of time, of poor conditions in places of detention and of other reported denials of basic human rights.

7. Within the framework of paragraph 5 of resolution 3219 (XXIX), the Secretary-General, after consulting with the President of the twenty-ninth session of the General Assembly, requested the Under-Secretary-General for Political and General Assembly Affairs to visit Chile in response to an invitation from the Government of Chile. This visit took place between 23 and 28 February 1975.

8. During the course of his visit to Chile, the Under-Secretary-General was received by the President of the Republic of Chile and had several meetings with the Minister for External Relations. The Under-Secretary-General also met with other members of the Junta de Gobierno, with the President of the Supreme Court, with members of the Government, and with other public officials. During these discussions the Under-Secretary-General raised those matters which had been the subject of concern expressed during the debates at the twenty-ninth session of the General Assembly and which had resulted in the adoption of resolution 3219 (XXIX). The Chilean authorities denied that, under the Constitution, violations of human rights were presently occurring in Chile. The Government of Chile left open the possibility of announcing in the future measures which would give further expression to the Government's concern for the advancement and protection of human rights.

9. The Under-Secretary-General also had the opportunity during his stay in Chile to meet with a number of individuals not associated with the Government. He visited the detention camps of Tres Alamos and Ritoque for the purpose of meeting and

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speaking with individuals associated with the previous Government who were being held under detention as well as with other individuals who had expressed a desire to meet with him.

10. The Minister for External Relations of Chile, during his meeting with the Secretary-General in New York on 21 May 1975, submitted certain documents which included: an analysis of various decrees and regulations governing petitions to the President of the Republic of Chile from persons appealing for commutation of sentences imposed by the military tribunals and which also set out the procedures to be followed in changing a sentence of imprisonment to that of exile; the text of the agreement between the Government of Chile and the Intergovernmental Committee for European Migration concerning persons sentenced by military tribunals who had requested exile in lieu of imprisonment; a statement which had recently been made by the Minister of the Interior; the text of an amendment to article 15 of the Chilean Constitution by which competent authorities are empowered to detain suspects for offences against national security for up to five days; and the text of Decree No. 1009 concerning the legal procedures for the protection of the right to due process of persons detained for offences against national security.

11. In a communication of 16 September 1975, the Government of Chile brought to the attention of the Secretary-General information which stated, inter alia, that "during the last 12 months 483 persons who had been in preventive detention because of the danger they represented, in conformity with the legal characteristics of measures of deprivation of liberty associated with the state of siege, left the country. At the same time 189 requests for the commutation of the penalty of deprivation of liberty imposed by military courts into that of exile, that is to say, leaving the country, were granted". The communication further stated, inter alia, that "these figures would be larger but for the difficulties that have been encountered in finding countries which would agree to resettle these persons". The Secretary-General was also informed in a communication from the Government of Chile dated 18 September 1975, inter alia, that "under recently promulgated decrees of the Ministry of the Interior, a number of former Ministers of the deposed Government of so-called Popular Unity were exonerated from responsibility for contravening the rules of internal State security".

12. During discussions with the Chilean authorities, it was pointed out that exile of a citizen constituted the denial of a human right under article 9 of the Universal Declaration of Human Rights.

13. The Government of Chile has on several occasions provided the Secretary-General with information concerning human rights in Chile. In this respect, a communication dated 6 October 1975 is annexed to this report.

14. In light of the information which has been received, including the progress report of the Ad Hoc Working Group established by the Commission on Human Rights (A/10285, annex), the Secretary-General is unable to report that the objectives identified by the General Assembly in paragraph 3 of resolution 3219 (XXIX) have been achieved.

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III. CONSIDERATION OF THE QUESTION OF HUMAN RIGHTS IN CHILE BY UNITED NATIONS ORGANS AND OTHER INTERNATIONAL ORGANIZATIONS

A. United Nations organs

1. General Assembly (twenty-eighth session)

15. The concern for the situation of human rights in Chile following the events of 11 September 1973 was first expressed in plenary meetings of the General Assembly during the general debate which took place in September and October 1973 at the twenty-eighth session. Many delegations in Main Committees of the General Assembly at the twenty-eighth session, and particularly in the Third Committee, also expressed concern as to the reported violations of human rights in Chile, in particular with regard to detained persons, and certain speakers demanded that the United Nations should take action in restoring human rights in that country. 1/

2. Commission on Human Rights (thirtieth session)

16. The Commission on Human Rights, at its thirtieth session, which was held at United Nations Headquarters from 4 February to 8 March 1974, decided without a vote, at its 1279th meeting, on 1 March 1974, to authorize its Chairman to address a telegram to the Government of Chile 2/ on behalf of the Commission and of himself as Chairman, in which particular concern was expressed for the protection of persons whose lives were reported to be in imminent danger. Those persons included political, social and cultural figures such as former ministers, senators and heads and professors of universities. 3/ The Government of Chile was called upon to cease immediately any kind of violations of human rights committed contrary to the principles of the Charter of the United Nations and of other international instruments, including the International Covenants on Human Rights. Prior to the decision to address the telegram to the Government of Chile, a number of representatives expressed the view that immediate action by the Commission was called for to restore respect for human rights in Chile. 4/

17. The reply of the Government of Chile to the telegram sent to it on 1 March 1974 by the Chairman of the Commission on Human Rights (E/CN.4/1153) was received on 7 March 1974.

1/ See summary records of the Third Committee of the twenty-eighth session of the General Assembly (A/C.3/SR.1998 to 2001).

2/ See Official Records of the Economic and Social Council, Fifty-sixth Session, Supplement No. 5 (E/5464), chap. XIX, sect. B, decision 1.

3/ The names of Clodomiro Almeida, Luis Corvalán, Enrique Kírberg, Pedro Felipe Ramires and Anselmo Sule were cited in the telegram.

4/ See Official Records of the Economic and Social Council, Fifty-sixth Session, Supplement No. 5 (E/5464), paras. 87-97.

3. Economic and Social Council (fifty-sixth session)

18. During the consideration of the report of the thirtieth session of the Commission on Human Rights by the Social Committee of the Economic and Social Council at its fifty-sixth session (May 1974), 5/ a number of speakers expressed concern on the reported violations of human rights in Chile and commented upon the telegram addressed by the Commission on Human Rights to the Government of Chile. At the 749th meeting of the Social Committee, the representative of the United Kingdom of Great Britain and Northern Ireland, on behalf also of the Netherlands and Sweden, introduced a draft resolution entitled "Protection of human rights in Chile" (E/AC.7/L.672). This draft resolution, as orally amended by the representative of the Union of Soviet Socialist Republics at the 750th meeting, was adopted by the Committee by 41 votes to none, with two abstentions. The Economic and Social Council, at its fifty-sixth session, adopted resolution 1873 (LVI), entitled "Protection of human rights in Chile", in which it expressed serious concern about the reported violations of human rights in Chile, particularly those involving a threat to life and liberty, called upon the Government of Chile to take all necessary steps to restore and safeguard basic human rights and fundamental freedoms in Chile, particularly in those cases involving a threat to human life and liberty. The above-mentioned resolution was adopted without a vote at the 1899th meeting of the Council on 17 May 1974.

4. Sub-Commission on Prevention of Discrimination and Protection of Minorities (twenty-seventh session)

19. At its twenty-seventh session the Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its 711th meeting, on 21 August 1974, adopted, by 17 votes to none with 4 abstentions, resolution 8 (XXVII) 6/ concerning the situation of human rights in Chile under the item "The question of the human rights of persons subjected to any form of detention or imprisonment". In the resolution, the Sub-Commission recommended, inter alia, that the Commission on Human Rights, at its thirty-first session, should study the reported violations of human rights in Chile, with particular reference to torture and other cruel, inhuman or degrading treatment or punishment. The Sub-Commission requested the specialized agencies, other intergovernmental organizations, as well as non-governmental organizations in consultative status concerned, to submit to the Secretary-General for reference to the Commission on Human Rights recent and reliable information on torture and other cruel, inhuman or degrading treatment or punishment in Chile. It made another urgent appeal to the Government of Chile to take all necessary steps in order to restore and safeguard basic human rights and fundamental freedoms in Chile, particularly those involving a threat to human life and liberty. 7/

5/ See Official Records of the General Assembly, Twenty-ninth Session, Supplement No. 3 (A/9603), paras. 393-422.

6/ For the text of the resolution see section C of the appendix to annex I to the progress report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (A/10285, annex).

7/ See also E/CN.4/Sub.2/SR.688-699.

5. General Assembly (twenty-ninth session)

20. At its twenty-ninth session, the General Assembly at its 2278th plenary meeting, on 16 November 1974, adopted, on the recommendation of the Third Committee, 8/ by 90 votes to 8, with 26 abstentions, resolution 3219 (XXIX) entitled "Protection of human rights in Chile". In that resolution the General Assembly, inter alia, urged the Chilean authorities to respect fully the principles of the Universal Declaration of Human Rights, to take all necessary steps to restore and safeguard basic human rights and fundamental freedoms, particularly those involving a threat to life and liberty, to release all persons detained without charge or imprisoned solely for political reasons and to continue to grant safe conduct to those who desired it. The Assembly endorsed the recommendation made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 8 (XXVII), that the Commission on Human Rights, at its thirty-first session, study the reported violations of human rights in Chile, with particular reference to torture and cruel, inhuman or degrading treatment or punishment. It requested the President of the twenty-ninth session of the General Assembly and the Secretary-General to assist in any way they might deem appropriate in the re-establishment of basic human rights and fundamental freedoms in Chile and requested the Secretary-General to submit a report to the General Assembly at its thirtieth session on the action taken and the progress achieved under the above-mentioned operative paragraph of the resolution.

B. Specialized agencies

1. International Labour Organisation

21. Following the events of 11 September 1973, a number of complaints of alleged infringements of trade union rights by the "Junta de Gobierno" of Chile were lodged with the International Labour Office by various international trade union organizations. The complaints were first examined by the Committee on Freedom of Association of the Governing Body of the International Labour Organisation (ILO) in accordance with the procedure established since 1950 in agreement with the United Nations. At its session in November 1973, the Committee presented a number of preliminary conclusions and recommendations to the Governing Body. In February 1974, the Committee issued a further report on the case in which it recommended to the Governing Body to request the Government of Chile to give its consent to the case being referred to the Fact-Finding and Conciliation Commission on Freedom of Association. The Governing Body approved those recommendations at its one hundred and ninety-second session (February-March 1974) and the Government of Chile gave its consent in a letter, dated 9 May 1974, that the complaints against it might be referred to the Fact-Finding and Conciliation Commission on Freedom of Association. In view of the reply by the Government of Chile, the Director-General

8/ See Official Records of the General Assembly, Twenty-ninth Session, Annexes, agenda item 12, document A/9829, para. 36, draft resolution II.

presented to the Governing Body at its one hundred and ninety-third session proposals for the submission of the case to the Commission, including his suggestion for the appointment of a three-member panel of the Commission to consider the case of Chile. On 1 June 1974, the Governing Body unanimously approved that proposal and appointed, as members of the panel, Mr. José Luis Bustamante I. Rivero (Peru), Mr. Jacques Ducoux (France) and Mr. H. S. Kirkaldy (United Kingdom of Great Britain and Northern Ireland). At its fifty-ninth session (June 1974) the General Conference of the International Labour Organisation adopted a resolution in which, inter alia, the Governing Body was invited to instruct the Director-General to take with utmost urgency the steps necessary in order to send immediately the Fact-Finding and Conciliation Commission to Chile and to set up in accordance with article 26 of the Constitution of the ILO, a Commission of Inquiry to examine the observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

22. The Commission prepared an interim report on the basis of information it received and of a visit to Chile from 28 November to 19 December 1974. An interim report was submitted to the Governing Body at its one hundred and ninety-fifth session. A final report of both the Fact-Finding and Conciliation Commission on Freedom of Association concerning the case of Chile and the Commission appointed under article 26 of the Constitution to examine the observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), was submitted to the Governing Body at its one hundred and ninety-sixth session which, after its consideration, decided to transmit it to the General Conference of the International Labour Organisation at its sixtieth session, to the United Nations, to all member Governments of the ILO and to the Organizations of Employers and Workers. The Governing Body also asked the Director-General to submit to the November 1975 session of the Governing Body a full report of the action taken by Chile for the implementation of the recommendation of the Commission.

23. The General Conference of the International Labour Organisation, at its sixtieth session, after considering the reports of the Commissions, adopted on 24 June 1975, a resolution concerning human and trade union rights in Chile 9/ in which, inter alia, it urged the Chilean authorities to implement the recommendations of the Fact-Finding and Conciliation Commission on Freedom of Association and the Commission of Inquiry established pursuant to article 26 of the Constitution of the ILO with respect to human and trade union rights, to release trade union leaders and others in custody on trade union and political grounds, to put an end to torture and ill treatment, to do away with the Special Courts and decree a general amnesty, to repeal all enactments limiting the free functioning of trade unions, to respect fully the rights of trade union organizations, to repeal enactments allowing dismissal on grounds of political opinion, to review such previous dismissals and to supply regularly, to the Governing Body of the ILO, reports on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The General Conference also invited the Governing Body of the ILO

9/ Resolution I of the sixtieth session of the Conference.

to instruct the Director-General, inter alia, to inform the Government of Chile of the Conference's position on the matter, to take steps to request the Government of Chile to submit reports regularly on developments in this field, to follow the development of the trade union situation in Chile on a permanent basis and to submit reports to the Governing Body at its one hundred and ninety-eighth session and to the Conference at its sixty-first session.

2. United Nations Educational, Scientific and Cultural Organization

24. At its ninety-third session, held in September-October 1973, the Executive Board of the United Nations Educational, Scientific and Cultural Organization (UNESCO) considered certain communications concerning the situation in Chile. The Executive Board adopted decision 8.2 in which, inter alia, it decided to apply, in respect of complaints regarding the violation of human rights in Chile, a procedure similar to the one adopted in the United Nations under Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959. It also expressed its great concern at the events that have taken place in Chile in so far as they might affect the purposes and functions of UNESCO and decided to include the subject in the agenda of the 1974 spring session of the Executive Board. The Executive Board, at its ninety-fourth session, in May-June 1974, decided to defer discussion on the matter to its ninety-fifth session. At its ninety-fifth session, from 18 September to 25 November 1974, in decision 10.1, inter alia, the Executive Board invited the Director-General to submit to the Executive Board at its ninety-seventh session a report on the state of education, science, culture and information in Chile based on all relevant information received by him from authorized sources. The General Conference of UNESCO, at its eighteenth session, adopted resolution 11.31 ^{10/} in which, inter alia, it called for the immediate cessation of violations of human rights and fundamental freedoms in Chile, especially the restrictions on the right to education, culture and scientific development and on freedom of thought, conscience, expression, work and association proclaimed in articles 18, 19, 20, 26 and 27 of the Universal Declaration of Human Rights.

25. At its ninety-eighth session, the Executive Board adopted, on 18 September 1975, by 30 votes to none, with seven abstentions, a decision in which, inter alia, it noted with regret that the Ad Hoc Working Group of the Commission on Human Rights was not allowed to visit Chile, it called on the Chilean authorities to take all necessary measures to restore and safeguard the fundamental rights as well as to ensure the normal functioning of all universities, schools, scientific and cultural institutions and, finally, it expressed the wish, as stated in the report of the Committee on Conventions and Recommendations in Education (97 EX/36), that the Ad Hoc Working Group of the Commission on Human Rights might fully accomplish its work and requested that the Director-General of UNESCO be

^{10/} For the text of the resolution, see section E of the appendix to annex I to the progress report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (A/10285, annex).

amply informed of the results of the inquiry, that he take such measures as he should consider necessary and that he inform the Executive Board about those at its next session. 11/

C. Intergovernmental organizations

26. In paragraph 3 of resolution 8 (XXVII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Sub-Commission requested the specialized agencies, other intergovernmental organizations and non-governmental organizations in consultative status concerned to submit to the Secretary-General for reference to the Commission on Human Rights recent and reliable information on torture and other cruel, inhuman or degrading treatment or punishment in Chile. A report on the status of human rights in Chile which the Interamerican Commission on Human Rights had approved at its 425th meeting on 24 October 1974 was submitted to the Commission on Human Rights at its thirty-first session together with the answer to it by the Government of Chile. This report was based on a visit to Chile by the Chairman and members of the Interamerican Commission on Human Rights between 22 July and 2 August 1974 and on written and oral evidence submitted to the Commission.

D. Non-governmental organizations

27. A number of non-governmental organizations submitted information to the Commission on Human Rights at its thirty-first session in response to the request of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. 12/ The information sent by some of those organizations was based on visits of their representatives to that country since the change of régime on 11 September 1973. 13/

11/ Decision of the Executive Board of UNESCO (98 EX/Decisions 9.4, 9.5, 9.6) of 18 September 1975.

12/ A full list of documents submitted to the Commission on Human Rights by non-governmental organizations can be found in Official Records of the Economic and Social Council, Fifty-eighth Session, Supplement No. 4 (E/5635), para. 93 and annex V.

13/ International Commission of Jurists (E/CN.4/1166/Add.4 and Add.6); World Confederation of Organizations of the Teaching Profession (E/CN.4/1166/Add.4 and Add.11); Amnesty International (E/CN.4/1166/Add.5); International Committee of the Red Cross (E/CN.4/1166/Add.6).

ANNEX

Letter dated 6 October 1975 from the Permanent
Representative of Chile to the United Nations
addressed to the Secretary-General

/Original: Spanish/

During the past few months my Government has transmitted to you a series of documents containing information on the efforts being made by the Chilean authorities to normalize the conduct of civic, economic and administrative affairs in Chile. These documents demonstrate that action has been taken to give effect to the repeatedly expressed intention of developing a step-by-step process to end the state of emergency as soon as possible. This process, which was initiated by the Chilean authorities shortly after the insurrection of 11 September 1973 and has continued uninterrupted ever since, is reliable proof that what is being said or written about Chile is inspired by ill will or ignorance.

I have the pleasure of transmitting to you the following brief summary of some of the most important measures adopted by the Government of Chile in order to restore full normality in public affairs.

(A) ASYLEES AND REFUGEES

As soon as the Junta de Gobierno took over the responsibility of running the country, it had to cope with two matters which had international repercussions. First, it was apparent that a great many of the aliens who had been given political refuge in Chile had participated actively in current Chilean politics, thereby abusing their refugee status. From the outset, the Government promised that these persons would not be returned to their country of origin but would be permitted to leave Chile for the destination of their choice. This is what indeed happened. The authorities granted a total of 1,646 safe-conducts to refugees, who left Chile without any problem. Secondly, a large number of Chileans and aliens sought asylum in foreign embassies in Santiago. Many of these embassies belong to countries which are not parties to any convention on diplomatic asylum, while many embassies representing parties to conventions on asylum made very liberal use of that institution, even to the extent of granting asylum to persons who merely wished to leave the country as tourists. However, the Government of Chile, as a token of its friendship to the countries which had granted asylum to these people and in keeping with its earnest desire to restore the situation in Chile to normal, granted safe-conducts to all concerned, whether they were legally asylees or not and irrespective of the embassy in which asylum had been granted. Thus, 4,604 safe-conducts were granted to asylees and 2,169 to members of their families.

These events, which are without precedent in diplomatic history, prompted the United Nations High Commissioner for Refugees to express gratitude for the co-operation extended at all times by the Chilean authorities. I enclose herewith

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for your information, as an annex to this memorandum, a report prepared by the Ministry of Foreign Affairs which contains a list of the names of persons who left the country as asylees or refugees. a/

(B) STATE OF SIEGE

The following general information may enable you to understand better the institution known as the "state of siege".

(1) Background. The Chilean system of criminal justice, which has its basis in the Political Constitution of 1925 and comprises the Penal Code of 1874, the Code of Criminal Procedure of 1894, the Code of Military Justice of 1925 and other legal instruments, calls for criminal jurisdiction to be exercised by the various courts of the Republic.

While the ordinary (civil) courts try offences which are within their jurisdiction, the military courts are concerned with cases falling under military jurisdiction.

Under the Code of Military Justice, there are military courts operating under wartime procedures and military courts operating under peacetime procedures; similarly, the penalties for certain offences differ according to whether the country is at war or at peace.

In peacetime, military jurisdiction is exercised by the military and naval courts, which rule in the first instance, and the court-martial, which rules in the second instance. There are two courts-martial: the Court-Martial for the Navy, which consists of two Judges (Ministros) of the Court of Appeals of Valparaiso (an ordinary (civil) court of second instance), an actively serving or retired naval officer with the rank of admiral or captain and the Naval Judge-Advocate (barrister); and the Court Martial for all other military matters, which consists of two Judges (Ministros) of the Court of Appeals of Santiago (an ordinary (civil) court of second instance), a Judge-Advocate (barrister) of Carabineros, an Air Force Judge-Advocate (barrister) and an Army Judge-Advocate (barrister). The most senior judge of the Court of Appeals presides over both Courts-Martial. Military cases can also be tried by the Supreme Court (the highest instance in the Republic) either on appeal or by direct recourse (queja).

In time of war, cases are tried exclusively by the Council of War, composed of six officers and a judge-advocate (barrister), the latter of whom draws up the sentence, which is immediately communicated to the accused, an account of the entire proceedings being submitted to the Commanding General. The latter is advised and assisted by a judge-advocate (barrister) and has power to approve or modify the sentence.

a/ This document, which contains 152 pages, is available for examination in the secretariat of the Third Committee.

By Legislative Decree No. 3 of 11 September 1973, published in the Diario Oficial of 18 September 1973, the entire national territory was declared to be in a state of siege.

It should be noted that since it is the responsibility of the military courts to try offences under Act No. 17.798 of August 1972 on the Control of Arms - which was enacted during the administration of former President Allende and promulgated by the latter as a law of the Republic - such cases remained under military jurisdiction but were tried in the courts and under the procedures specified for wartime.

It should also be noted that most of the cases investigated by the military courts related to infringements of the Arms Control Act and that jurisdiction in these cases, as stated above, derives from a law enacted by the former administration.

(2) Effects of the state of siege

The Political Constitution of 1925 includes provisions authorizing the application of various exceptional measures when extraordinary circumstances arise. Thus, article 72, No. 17, second and third paragraphs, of the Basic Charter provides as follows: "The special powers of the President of the Republic are: No. 17. In the event of domestic disturbance, Congress shall have authority to declare one or more places to be in a state of siege, but if Congress is not in session the President may make such a declaration for a specified period of time. If, when Congress convenes, such period has not expired, the declaration made by the President shall be deemed to be a draft law.

"The declaration of a state of siege shall confer upon the President of the Republic only the authority to transfer persons from one department to another and to confine them in their own houses or in places other than jails, not intended for the confinement or imprisonment of ordinary criminals."

The main effects of the declaration of a state of siege are the following: (a) the President of the Republic has authority to arrest or transfer persons in accordance with the provisions of the above-mentioned article 72, No. 17, third paragraph; (b) the system of wartime military courts is instituted under the provisions of article 418 of the Code of Military Justice; (c) the jurisdiction of the ordinary courts ceases in so far as relates to the trial of offences against the internal security of the State and certain offences against public order.

(3) Alleviating the harshness of the state of siege

The Government, aware of the harsh effects of the state of siege, adopted certain measures to alleviate them.

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(a) It permitted the continued trial by the peacetime courts and in accordance with peacetime procedures - but under military jurisdiction - of cases still before those courts as of 11 September 1973.

(b) It established, under Legislative Decree No. 640 of 1974, four categories of state of siege, namely external or internal war, internal defence, internal security and ordinary domestic disturbance; under Legislative Decree No. 641 of 11 September 1974, it declared the national territory to be in a state of siege of the category of internal defence, which was of lesser severity than the state of war in effect during the first year of the Government.

The establishment of four categories of state of siege was specifically intended to alleviate the harsh effects of the state of siege as the country returned to normal.

(c) Under Legislative Decree No. 1009 of 1975, the harsh effects of the state of siege were further alleviated by requiring authorities having the power of detention to notify within 48 hours the closest relatives of those detained. The same Decree makes the unlawful treatment of detained persons subject to the penalties prescribed in article 150 of the Penal Code and article 330 of the Code of Military Justice, as appropriate. These new provisions of Chilean legislation establish an obligation and a responsibility which did not previously exist.

The respective categories of state of siege referred to in paragraph (b) above entail the following:

Internal or external war: Wartime military courts start to function, trying cases in accordance with wartime procedures and imposing wartime penalties.

Internal defence: The same rules of procedure, i.e. those of internal or external war, apply.

Internal security: Peacetime military courts function subject to certain exceptions, applying peacetime procedures and imposing peacetime penalties increased by one or two degrees of severity.

Ordinary domestic disturbance: The same rules of procedure as for the internal-security category of state of siege apply.

(4) New measures adopted by the Government and their implications

Under the recent Legislative Decree No. 1181, published in the Diario Oficial on 11 September 1975, the national territory was declared to be in a state of siege of the internal-security type, ending the state of internal defence which had been in effect until then.

(5) Effects and implications of this measure

(a) The jurisdiction of the wartime military courts (councils of war) ceases, and the peacetime military courts (military or naval judge, court-martial and Supreme Court) begin to function.

(b) Wartime procedures cease to apply, and peacetime procedures enter into force (the judge must within five days either release the prisoner or bring charges against him, in which case he can be released on bail).

(c) Peacetime penalties (which are much less severe than wartime penalties) become applicable but are increased by one or two degrees.

As will be seen from the foregoing, the change to a lesser category of state of siege clearly diminishes the effects of this emergency régime, and it should be emphasized that the ordinary courts regain their jurisdiction and penalties are reduced.

This measure represents an important step in the policy of a return to normality laid down by the Government of Chile.

(6) Other measures under the state of siege

The Chilean Government is also trying to release as quickly as possible all those persons detained under the State of Siege Act who have not committed exceptionally serious offences. Thus, there are fewer than 400 persons detained under the State of Siege Act at the present time.

In addition, Supreme Decree No. 540, published in the Diario Oficial of 10 May 1975, provided that prison terms could be commuted, on request, to banishment, which requires the person concerned to remain outside the country for the duration of his sentence. A Special Board was set up to study such requests. Of a total of 369 requests so far received, 324 have been acted upon favourably, 12 have been forwarded to the Pardon Board so that the individuals concerned may have their penalties remitted and be permitted to remain at liberty in Chile, and 20 cases are still under consideration.

(C) ESTABLISHMENT OF NATIONAL INSTITUTIONS

In order that you may see that the Chilean Government is giving effect to its intention to establish new institutions which will in the near future permit modern democratic procedures to operate in Chile, I wish to quote two paragraphs of the communication sent to you on 16 September by the Chilean Minister for Foreign Affairs:

"I am also to inform you that the Honourable Junta de Gobierno has decided, in exercise of its constitutional power, to enact before the end of

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the first quarter of 1976 three Constitutional Acts: the first concerning the fundamental basis of the new system of State institutions, the second concerning nationality and citizenship, and the third concerning constitutional rights and guarantees. They will represent the fruits of the valuable work which has been and is being done by the Commission of Jurists which was instructed to prepare a draft of a new political constitution of the State and which is composed of distinguished university teachers of varying ideological tendencies.

"I want to bring to your notice the forthcoming establishment of a Council of State, of an advisory character, membership of which will be offered to former Presidents of the Republic, one former President of the Supreme Court, one former Comptroller-General of the Republic, one former Commander-in-Chief of each branch of the armed forces and, finally, a group of citizens whose prestige, moral integrity and knowledge of a range of national problems will provide the Government with a representative cross-section of opinion within the Republic."

In addition to what has been said above, attention should be drawn to the new policies and programmes which the Government is implementing in such important fields as education, food and social welfare. I will not go into these matters here, but, if you wish, I shall be happy to provide you with any desired information on these and other subjects.

(Signed) Ismael HUERTA
Vice-Admiral
Ambassador, Permanent Representative
