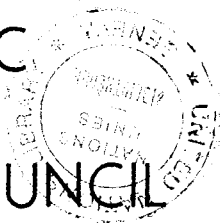


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Agenda item 5

STUDY OF REPORTED VIOLATIONS OF HUMAN RIGHTS IN CHILE, WITH
PARTICULAR REFERENCE TO TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Note by the Secretariat

By note verbale dated 22 February 1977, addressed to the Director of the Division of Human Rights, the Permanent Mission of Chile to the United Nations Office at Geneva transmitted for issuance as an official document of the Commission, the attached material, which constitutes the first part of the observations of the Government of Chile on the report of the Ad Hoc Working Group to inquire into the situation of human rights in Chile (E/CN.4/1221).

P A R T O N E

GENERAL COMMENTS ON THE REPORT

A. Summary of the position of Human Rights in Chile on February 1, 1977.

This summary supplements the contents of Document AC 3/31/6 and therefore covers the months of October, November and December 1976 and January 1977.

I
1) Detainees.

In the course of the latter months of 1976 the Government of Chile completed its programme of liberating detainees, releasing 302 persons.

This policy of liberation enabled all who had been detained under the terms of the state of siege, with the exception of 18 persons to remain within the national boundaries and resume their normal lives.

Of those remaining 18 persons, 16 left Chile on visas provided by other countries; Señor Luis Corvalán, was released by the Chilean Government which obtained in exchange the release of the Soviet writer Vladimir Bukovsky. The release of the only detainee left, Señor Jorge Montes, is still awaiting the Cuban Government's reply concerning the release of Huber Matos.

II.-Position of persons tried and detained by the Military Justice.

On December 1, 1976 there were 379 persons undergoing sentences of detention imposed by the Military Justice, and 90 persons are awaiting completion of their cases.

All the above persons are in ordinary prison establishments under the care and supervision on the one hand of the Judicial Authority through the Supreme Court, the Court of Appeals and the Criminal Courts where those establishments are located, and on the other hand of the Director General of Prisons, there being no other authority or institution possessing attribution over those prison establishments.

Redundant as it may seem, inasmuch as we have pointed out in all our reports and in all statements made by the Chilean Representative to the General Assembly and this Commission, the great majority of the persons who have been tried and sentenced are in that situation for having violated law Nº 17.798 governing the possession and use of weapons, which was promulgated by the previous Government and which calls for trial by Military Courts and not by the ordinary courts.

The Chilean Government cannot, and never will, admit that a person subjected to court action for illegal possession of arms or explosives could be regarded as a "political detainee" and not as a common delinquent. The Working Group has never taken note of that distinction but classifies them all under the category of "detainees", thereby ignoring that distinction which is so essential.

Iii. Pardons granted under the terms of Ministry of Justice
Decree Nº 504. Up to December 31, 1976.

Petitions received	1.405
Petitions reviewed	1.385
Petitions granted	1.136
Petitions rejected	127
Petitions referred to the Ordinary Pardons Commission	25
Petitions under consideration	17
Petitions awaiting signatures and verification	90

The various Reports by the Working Group fail to take into consideration the importance of the massive policy and only highlight a few of the cases where the Chilean Government, on fully justifiable grounds, could not agree to grant a pardon.

This manner of judging the facts by the Working Group illustrates the unsoundness of their conclusions. The Chilean Government's profound desire to set the public's mind at peace and eliminate rancorous feeling deserves better judgement on the part of the Working Group.

Does the Group know why some of the pardons were not granted ? (127 out of 1.395 reviewed).

Did they ask the Government of Chile for those reasons ?

The Chilean Government is convinced that the Working Group, by proceeding in this way instead of supporting that policy of reconciliation, is detracting from its merit in the framework of the Chilean situation.

IV.- Torture and abuse of power.

The Group is surpassing itself in literature and in its determination to cast oblivion over a fundamental fact which shows that at present the treatment of persons in Chile cannot be other than that ordained by moral and legal standards. That fact consists in there being no one detained in Chile for reasons of security and no special places of detention since there are no detainees under the terms of the state of siege. We can therefore state that all detained persons are being held within the normal prison system.

Even applying the most rigorous standards to judge Chile, no one can suggest the possible existence of deliberate

or systematic maltreatment, for that would presuppose the complicity, tolerance or failure in their duties on the part of the authorities and institutions holding power or authority over the life of those establishments of which some have been singled out.

Permission to visit those establishments and share in their life is available not only to the authorities mentioned above, but also to numerous long-established private Chilean societies. This is true of some of general nature such as those connected with the Roman Catholic Church and the Chilean Red Cross, as well as of others of local or specific nature such as societies for visiting and improving places of detention, trade unions, student societies, sporting groups &c..

It is our belief that witnesses heard by the Working Group are politically motivated, as we shall demonstrate later, and that documents such as improbable theoretical studies, based on judgements a priori and antecedents without foundation, are valueless. In the worst of suppositions, none of these can obviate the fundamental fact which the Group forgets : in Chile there are no detainees under the terms of the state of siege , so there are no detainees held in places controlled by the Executive Power.

V.-Missing persons.

Here we have to distinguish between three different situations :

a) The system adopted by the Working Group with regard to the problem of missing persons.

In this report, as in previous cases, the Working Group hands in lists of persons supposedly missing, aiming to put the Chilean Government, which is given a very few days to

reply, in a position of being unable to provide an answer. Document Nº AC 3/31/6 showed that in 1976 the Group sought information on 32 persons, and in its annual Report to the General Assembly it cited 225 names of persons whose rights had allegedly been violated.

From the time of the General Assembly up till now it has not enquired about a single person, yet it cites 350 names in its Report. This way of working, which we examined in detail when we came to consider relations between the Chilean Government and the ad hoc Working Group, (Doc.AC/3/31/6) seems to be inclining towards sensationalism and to be conducive to error, but does nothing to assist human rights in Chile.

b) Case of the recent 13 "missing persons".

After the liberation of all detainees thirteen persons have "disappeared", all members of the communist party according to documents distributed in Chile and abroad.

This denunciation of thirteen allegedly missing persons aimed at giving the impression that the Chilean Government had given up applying the state of siege in favour of detaining people without any legal basis and in places that were being kept secret.

But after a few weeks of enquiries, rapid and efficient action taken by the Courts revealed with documentary proof, as will be shown in detail in the chapter on "missing persons", that a number of them had left the country. This was later proved true when some of them entered a neighbouring country quite legally, where the Ministry of the Interior reported the fact in a communiqué given to the press.

This effort on the part of 13 communist leaders to produce an international political impact against the Chilean Government had the contrary effect of confirming quite clearly the truth of the allegations made by the Chilean Government, to wit that an unknown but substantial proportion of the missing persons had voluntarily gone under ground in compliance with the party's instructions.

c) List handed in by the President of the International Committee of the Red Cross. The method adopted here is diametrically opposed to that of the Working Party. A list of all denunciations received by the International Red Cross Committee since September 11, 1973 was handed in to the Government of Chile with a request for an investigation.

The President of the Republic ordered the investigation. Two months after it was opened the Chilean Government has just handed the first results to the President of the International Red Cross Committee. As might have been foreseen, missing persons were located living quietly in their homes while others and left the country of their own free will or as exiles.

At the same time the Chilean Government has requested the International Red Cross Committee its cooperation in the investigations carried on, with the assurance of the Government's firm intention of following them up with his help.

VI.- Position regarding media.

We are happy to observe that the Working Group consulted various Chilean newspapers and periodicals and even quotes their views and reports which contain criticisms and

contradictions of the Government's statements.

It is Chile's contention that the freedom of a country cannot be proved by statements from its rulers or the wording of its laws but only by what is in fact happening. Anyone who reads or listens to the media in Chile will at once realize how patent is the liberty of the press.

We need merely mention the fact that the Report of the Interamerican Commission on Human Rights was published in full in the Chilean newspapers; that the statement by the Commission's President to the General Assembly of the OAS in Santiago was reported by radio and television, as was Chile's intervention, or that the most relevant parts of the Working Group's Reports were published in Chile.

Press cuttings containing references to earlier Reports were sent to the Secretary General; but as the Working Group ignored them we discontinued sending press cuttings on later Reports.

All the foregoing shows that, despite Chile's current emergency, the country's guiding traditions shared by the military and civilians alike enable it to enjoy a liberty of thought to a degree which probably does not exist in many countries with democratic governments which are not in a similar situation of emergency.

How many governments would have the courage to publish in full Reports of an International Investigatory Commission on the position of human rights within their boundaries, or to allow it to be done when said Government considers the Report unjust, exaggerated and even libellous ?

The press in Chile reports every debate, opinion, argument, action by the Church, &c. concerning many of the measures taken by the Government in its present emergency.

B.- Chilean Government opinion of the Working Group Report.

I.- Our disagreement in the approach of the matter.

Any impartial observer reading the Report will be left with the impression that the Group is composed of persons whose aim is to show up all such legal norms as are detrimental to human rights, in their eyes, and to assemble all sorts of allegations of assumed violations of human right.

That policy led the Group to ignore completely those aspects of human right which are protected and completely assured with great efficiency by today's Chilean reality, contrary to many countries where those very aspects are continually endangered. In so saying we specifically mean order, public tranquillity, social calm and the inviolability of persons, which all lead to the absence of terrorism and violence.

This affirmation does not mean that the Chilean Government does not adhere, as it always has, to the basic moral principle that the end does not justify the means. To achieve that state of orderliness and calm it has therefore respected the principles of moral order which must govern the action of Governments, and will continue so to do.

Any Report on the position of Human Rights in a country should at least contain a chapter devoted to the subject of maintaining public order and tranquillity, social calm and the security of the people.

No reality can be evaluated unless it is viewed in its entirety. This is all the more true where a relationship may exist between restrictions with regard to human rights, to the extent that they are authorized, and the maintenance of social peace.

Furthermore, considering a specific social reality without evaluating the disturbing elements existing within that reality makes it impossible to formulate a precise and therefore true framework for it.

While such consideration undoubtedly does not characterize the Working Group in view of its investigatory nature, it should provide the Human Rights Commission with the elements of judgement which emerge from the facts if such consideration is to be achieved by its members and guide their decisions.

A typical example of that lack of objectivity and over-all views on the part of the Working Group has been its complete failure to take into consideration the repeated and specific charges formulated by the Chilean Government with regard to broadcasts from socialist countries. Every day and for several hours a day those broadcasts, all in Spanish, aim at interfering in Chile's internal politics and overthrowing the Government.

The gravity and effectiveness of those charges are clearly born out by the statement made by Mr. Luis Corvalán to the "Nouvel Observateur" on January 14, 1977 in which he declared textually : "As you are aware, the Soviets have put an extremely powerful broadcasting station at our disposal. Our broadcasts come through perfectly to almost every corner of Chile. Every political party in the Unidad Popular, comunists, socialists, MAPU, workers, peasants &c., has its share of time on the air; and I must emphasize that the Soviets exercise no control over our broadcasts. For Chileans it is really Radio Freedom, and against my own freedom they would have me give up this tremendous weapon ! Unacceptable !".

II.- Lack of true objectivity.

The information set out in the previous item demonstrates the Report's lack of over-all objectivity.

When the Working Group finds positive facts, it generally and with but a few important exceptions presents them as "mere extenuating circumstances" for the realities which the Group refers to in damning terms.

Below we give just a few examples which clearly show up the lack of objectivity and the absence of any impartial guidelines.

a) Chilean press opinion.

The Working Group systematically quotes the Chilean press as confirmation of its negative judgements on the Government; but it ignores the solid fact that the Chilean press makes repeated and important pronouncements against the Government.

The foregoing shows the existence of a substantially greater degree of political freedom and freedom of expression than the Report admits. The latter seeks to give the impression of a widespread climate of "intimidation".

Nevertheless the very newspapers which the Group quotes contain news and views which do not conform to its judgements. But it never quotes these.

Besides, those same media which report some event which the Group considers "suspicious", such as the discovery of unrecognizable bodies in various parts of the country, frequently report later that the victims have been indentified and sometimes that the authors of the crime have been found and arrested.

If the Group gave the complete facts reported in the media it would be seen that the cases concern common crimes, such as unfortunately exist in every country. Giving only part of the story is conducive to misapprehension and suggests the existence of a different and often sinister situation.

b) Quoting the opinions of officials.

One notes a similar lack of partiality in references to the opinions of certain public figures. For instance, when Señor Don Jorge Alessandri, the former President of the Republic and now President of the State Council, gave an off-the-record reply about a particular case, no mention was made of his opinions on the legitimacy of the present Government and the difficulty and impossibility of an early return to normal conditions. Such opinions were included in statements made by ex-President Alessandri, whose independence the Group admits, when he assumed the presidency of the State Council, and copies of which were made available to the Working Group by the Chilean Government (note NO 946 of July 30, 1976).

c) Lack of objectivity or other purposes.

In the case of the deplorable murderous attacks and attempts on the lives of General Prats, Deputy Leighton and ex-Chancellor Letelier, it was all reported in sibylline and often misleading terms, as we will mention in the appropriate item.

All this is quite apart from the fact that its very inclusion in a "Report on the Position of Human Rights in Chile" constitutes a lack of objectivity and an insult to the Chilean Government.

The investigation into these three cases, which the Chilean Government was the first to deplore and to demand a thorough enquiry has failed to raise even the shadow of a doubt with regard to possible participation of Chilean officials.

d) Lack of objectivity with regard to the Judicial Authorities.

The Working Group systematically criticises the Chilean judicial authorities, and in some paragraphs it goes as far as disqualifying it. On the other hand it fails to do justice to the following features which characterize Chile's judicial authorities: their undisputed reputation which is recognized well beyond the frontiers of Chile; their independence of judgement and voting derived from their structure and their past, as well as from the professional qualifications and high moral values of their members.

That independence, conceptually denied by the Group, is admitted and used by that same Group when it comes to quoting extensively from the opinion of a Court Minister in a case of expulsion from Chile of two Chilean citizens, simply because his opinion happened to agree with the Group's.

e) Lack of objectivity in considering testimony.

The Group repeatedly emphasizes its intention of being objective. But the truth is that it unfortunately falls systematically into grave error when evaluating testimony.

Indeed :

1.- It gives importance to statements made by individual witnesses and includes them in its Report while omitting any mention of information continually provided to

it by the Chilean Government, such as references to the socialist broadcasts, the opinions of the President of the State Council already mentioned in this introduction, and other facts too numerous to be included here.

2.- It highlights opinions of people who are strictly political and biased. For example, in its critique of university education in Chile it quotes Professor Claude Frioux, now Rector of the University of Vincennes in Paris, a self-confessed active communist whose ideas and attitudes as a university official have been repeatedly and bitterly criticized in France. We regret that the Working Group did not check Mr. Frioux's credibility and political leanings as a man who declared that "The Sorbonne is a museum. Vincennes is the only live university." (Paris Match 18.I.75).

3.- On a number of occasions it also quotes as a "reliable source" the publications of "Chile Democrático", a centre of Chilean "resistance" abroad, and of other similar associations. The Group cannot but recognize that their very purpose disqualifies these organizations' opinions as reliable sources of information regarding the situation in Chile.

4.- Nor does the Group bother to go into the credibility of witnesses appearing before it, as for instance the testimony of Doña Gladys Díaz to which they attribute great importance.

This is a particularly serious case because the Chilean Government had earlier pointed out to it as an example of a disappearance contrived with the aid of false identity.

Señora Díaz, as will be shown in the appropriate chapter, was detained under the false name of María Graciela Bustamante Lagos, whilst the disappearance of Señora Gladys Díaz was reported to the International Organizations and appeals were made to the courts with the evident object of putting the Government in a difficult political situation.

The Government repeatedly denied in the courts having detained Señora Gladys Díaz until the whole plot was revealed when it was discovered that she had produced false identity papers when she was detained.

After she left Chile, she told the "Express" that her husband had been tortured and died. (The "Express" Nº 1328 of December 20 - 26, 1976).

Her ex-husband, with whom her marriage had been dissolved, informed the press in Chile that he had never been detained.

III.- Chile and the Pact of Civil and Political Rights.

The Working Group approached the problem from three facets:

1º - Declaration of the Supreme Court of Justice to the effect that the Pact had not been promulgated as a Law of the Republic and could therefore not serve as a legal precedent to uphold the repeal of Art. 2 of Decree Law Nº 81 of 1973. That means that they did not have to be published in the Diario Oficial (Official Gazette) since they only follow the same procedure as a Law to the effects of approval by the Congress. That remained the position up till Decree Law Nº 247 of December 31, 1973, which declared the promulgation and publication of the

treaties as Laws of the Republic. So the Pact of Civil and Political Rights was not published as it had been signed and ratified prior to Decree Law Nº 247 of December 31, 1973.

On the other hand, the declaration of the Supreme Court did not constitute a fundamental judgement on the matter, but the affirmation of the principle that laws are altered by laws. In effect, it is the Chilean State which has to study whether its legislation complies or not with the Pact of Civil and Political Rights, and it is Sovereign for implementing in its own legislation those human rights which it has recognized and which it is obliged to respect by virtue of the moral principles which inspire it and the International Treaties which it has signed.

The problem gave rise to considerable debate in the country, in which jurists and editorial commentators from the media participated. A group of Chilean lawyers asked the Supreme Court for a ruling on the subject, but it ruled that the subject was not within the sphere of its competence.

The problem posed is too ample to permit of an extensive analysis in these comments, but it is proper to make the following points on the subject:

a) the previous Government, which signed and ratified the Pacts of Civil and Political Rights, did not deem it necessary to proceed to its publication in the Diario Oficial (Official Gazette); the present Government has not found, despite its investigations, the grounds justifying the emission of that publication;

b) the situation regarding International Treaties seems clear from December 31, 1973 onwards; but undoubtedly juridical problems with regard to the past continue to exist. The problems do not refer to the application of the formalities set out in Decree Law Nº 247 to the Pact of Civil and Political Rights, as we shall examine at a later stage, but concern the precedent which this can signify for other International Treaties signed and ratified before December 31, 1973 and which are in a similar position;

d) the theme which we are discussing with respect to the Pacts of Civil and Political Rights is merely theoretical because no contradiction exists between these and the Chilean legislation.

With regard to the specific case concerning expulsion and the right to enter one's own country, Articles 12 Nº 3 and 4 prohibit "arbitrary acts", and Art. 2 of Decree Law 81 requires a "well founded" decree for expulsion, and in accordance with Art. 3 prohibition of returning to the country may only be imposed if the denial is "well founded".

Thus the Chilean legislation does not leave those actions to the arbitrary judgement of officialdom.

On the other hand, the Courts of Justice have pronounced their competence to analyze and consider the foundations of the Expulsion Decree. The Supreme Court pronounced its decision on August 25, 1976 textually as follows:

"Second: that recognition of the present "recurso de amparo" includes the faculty to consider the foundations of the Expulsion Decree, because constituting one of its requisites, its study, as has been undertaken, is indispensable for determining its properness (Document AC 3/31/6 Add. 1).

Thus the "arbitrary act" forbidden by the Pacts does not exist under Chilean legislation which even gives the Judicial Power competence to protect citizens from "arbitrary" use of the powers of the Executive Power.

20 - Statement of the Chilean Representative at the Third Commission to the effect that the Working Group has no competence with regard to the forementioned Pact.

The quotation is unfortunately incomplete inasmuch as what the Chilean Representative at the Third Commission said was as follows: "Why, who can investigate in the Pact the actions of countries? Only a member country of the Pact, and the Working Group is not a country and therefore not a member of the Pact".

The Chilean Representative enlarged on the form of operation of the Pact of Civil and Political Rights, and concluded:

"Mr. Chairman, I carefully studied the proceedings of this Commission when Art. 4 of the Pact of Civil and Political Rights was discussed, and the entire Commission agreed that Governments were sovereign to declare states of emergency, and the only request made was that the sentence "which was officially declared" be included. First thing. Secondly, it established the obligation of communicating that fact to the Secretary General for him in turn to communicate it to the member countries of the Pact, as Mr. Schreiber said yesterday that we had done. And

thirdly, there is a Committee in the Pact which is the only one that can complain against action by a country with respect to human rights; it is not only a member country of the Pact but a country which has made a declaration of Art. 41 and submits to the competence of the Committee, against another country which has likewise made a declaration of Art. 41 and likewise submitted to the competence of the Committee".

The text quoted demonstrates that the Chilean Government specifically and promptly denied the Working Party's competence to judge whether or not Chile abides by the provisions of the forementioned Pact.

30 - The Working Group undertakes an analysis of Chile's new constitutional provisions, and at one point states that they "hardly" comply with the Pact of Civil and Political Rights.

We do not believe that it is possible to embark on a debate of this kind, because it would require ascertaining carefully and specifically the alleged contradictions between the Chilean legislation and the Pact of Civil and Political Rights, which is exclusively a matter for the Government of Chile.

For the rest, as we have already pointed out, the Group does not have competence for this task: in the first place because nobody has called for said juridical analysis, in the second place because it has no attribute within the Pact of Civil and Political Rights, being totally extraneous to them, and finally because implementing human rights is a matter pertaining to the internal jurisdiction of States.

Any case of violation of human rights guaranteed by the Universal Declaration of the Rights of Man comes within the

competence of the United Nations agencies by virtue of the Charter. But utmost care must be given to respecting the international principle which lays down that the form of implementing the rights of man is of the exclusive internal jurisdiction of States.

This is the Chilean Government's position within the Pact of Civil and Political Rights which it has signed and ratified and which it honours and will continue to honour.

III.- Our concordance with the Working Group.

After mentioning the fact of the liberation of the persons detained under the terms of the state of siege, the Working Group states textually: "The Group is of the opinion that, although these last decisions to liberate the detainees and the recent events set out in the present Report constitute positive measures in the light of the repeated appeals made by the competent organs of the United Nations, yet they cannot of themselves count as a complete restoration of human rights in Chile".

The Chilean Government agrees with the Group that the measures adopted in the course of 1976 and lately the liberation of detainees do not signify a complete restoration of human rights in Chile. Nevertheless, those measures do signify an important step forward in that field. Indeed, the emergency through which the country is passing has not yet permitted a complete restoration of all human rights, some of which are still restricted. Among these are freedom of assembly, freedom of political action and complete participation in the management of public affairs.

The Chilean Government notes with pleasure that the Group has stated:

"The Group likewise welcomes the hopes which have been roused
"in some sectors of opinion in Chile by these releases. In
"that respect, it is proper to cite as example what the auxi-
"liary bishops of Santiago said, which was contained in the part
"of the speech by the Delegate of Chile to the Third Commission
"of the United Nations General Assembly on December 23, 1976,
"under the heading "The Chilean Church". The final paragraph
"of that section contains a quotation of the statement issued
"by the bishops, who interpret the news of the release of the
"detainees as auguring a return to Chile's democratic traditions
"in the following terms:

" "We also interpret this news as a sign of hope.
" The hope that we are heading towards the recovery of our most
"genuine civic traditions, order within liberty, the search for
"a consensus, respect for the dignity of every man and preferen-
"tial treatment of those who most need help".

The Chilean Government considers that the recogni-
tion of the reality is a positive sign from the Report of the
Working Group and lends ground for the hope that the work of
the Group will end by finding concomitance of opinion with the
Government of Chile, although its start was scarcely auspicious.