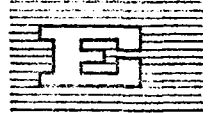


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COMMISSION ON HUMAN RIGHTS  
Thirty-first session  
Agenda item 7

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

Letter dated 10 February 1975 from the Permanent  
Representative of Chile to the United Nations  
Office at Geneva, addressed to the Director of  
the Division of Human Rights

GE.75-2346

Dear Sir,

May I request you to issue, as a working document submitted by the observer for Chile at the thirty-first session of the Commission on Human Rights, the attached note, to which are attached as annexes two documents concerning the examination of the case of Chile by the Inter-American Commission on Human Rights (CIDH).

To facilitate the reproduction of the above documents, and in order to ensure their distribution to members of the Commission before the date fixed for the consideration of agenda item 7, these annexes are transmitted in English and French translations.

Yours faithfully,

ABELARDO SILVA-DAVIDSON

Ambassador  
Permanent Representative of  
Chile to the International  
Organizations

NOTE FROM THE DELEGATION OF CHILE CONCERNING  
THE REPORT BY THE INTER-AMERICAN COMMISSION  
ON HUMAN RIGHTS OF THE ORGANIZATION OF  
AMERICAN STATES

"It is natural that, no matter how great the care taken in rationally, evaluating the evidence, the Commission may have fallen into error. However, one can be absolutely certain that the Commission has not been motivated by prejudice. Because the Commission knows the risks that are inherent in its task, it applauds the procedural rules under which the Permanent Council must examine its reports, before submitting them to the General Assembly. In the Permanent Council, the countries concerned have the opportunity to make any observation they deem relevant, before the reports are given the publicity they receive when presented to the Assembly. This provides an opportunity to introduce any amendments that may be adequately justified." (Final paragraph of the report by the Inter-American Commission on Human Rights (CIDH).)

Unfortunately the report was given publicity before being submitted to the General Assembly of the OAS and before amendments which the Government concerned might have considered appropriate had been introduced into it.

The Government of Chile made the general reply already known to members of the Commission on Human Rights. But two of the documents which the Chilean delegation considers indispensable to a full knowledge of the matter were not included, and these are accordingly annexed to this note.

- (1) Letter dated 26 October 1974 from Professor Manuel Bianchi, member of the Inter-American Commission on Human Rights, to Dr. Andrés Aguilar, Chairman of the Commission

The letter contains various comments concerning the form in which the draft report on Chile was prepared:

- (a) It was printed without the logical revision of its final text, with the result that when the session terminated, none of those present had been able to read it in its entirety. Obviously, this left no opportunity for objections or statements concerning the text to be formulated.
  - (b) Attention is drawn to the omission, in violation of the rules contained in the Statute and the Regulations, of numerous letters concerning the status of pending complaints and steps taken by Professor Bianchi at the request of the Commission itself.
  - (c) Also omitted were the replies made by the Government of Chile to the notes from the Commission concerning complaints relating to particular cases or the general status of human rights in Chile.
  - (d) The absence is noted of any mention of the farewell visit paid by the Commission to the Minister for Foreign Affairs, Admiral Carvajal, during which he and senior advisers reiterated that the Government of Chile continued to be ready to collaborate in everything entailed in the strictest observance of human rights. Also omitted is any mention of the gratitude expressed by Dr. Dunshee de Abranches, on behalf of the Commission, for all the facilities that had been extended, and for those that were offered at the time.
  - (e) It is regretted that the report gives excessively brief coverage to the interviews with Mr. Daniel S. Blanchard, representative of the United Nations High Commissioner for Refugees in Latin America, and Mr. Serge Nessi, representative of the International Red Cross, and his assistants Mr. Roger Santschy and Mr. Bruno Doppler.
  - (f) In conclusion, attention is drawn to the failure to comply with the provisions of the Statute and Regulations concerning the requirement that accusations made to the Commission must contain:
    - (i) The name, address and signature of the accusers and complainants;
    - (ii) The description of the fact or facts reported, and the name or names of victims of the presumed violations of human rights, it being permitted to omit the names of the accusers from communications sent to the Governments affected by such accusations.
- (2) Report by the Commission for Constitutional Reform, composed of seven university professors and a woman member of the General Council of the Lawyers' Association, which is studying the Drafting of a new Constitution

The Commission for Constitutional Reform, which had knowledge of the above-mentioned report, adds the following:

- (a) That it is impossible to assess the abnormal situation existing in the country, a fact which the report itself admits, and the resultant restrictions on basic guarantees, without knowledge or understanding of the underlying causes. In this

regard it points out the basic characteristics which marked the Allende Government, and which show that it was a Government without respect for the Constitution or the law, a Government which violated human rights, failed to comply with the rulings of the Judiciary and refused to recognize the prerogatives of the National Congress. In this connexion it refers to the moral, political, and economic chaos of the previous Government and concludes, in this part of its report, that if the Commission on Human Rights is competent to judge the situation regarding human rights in Chile, it must also be competent to assess the causes for the restrictions. It expresses its astonishment that such an assessment has been omitted.

(b) It takes exception to the assertion that the Commission for Constitutional Reform has no deadline for completing its work, pointing out that any such deadline is a matter for the discretion of the Commission itself, and that a time-limit would not be in keeping with the independence and freedom of action with which the Commission is performing its functions. The said Commission states that this independence is reinforced by the fact that its members, and those of the sub-commissions appointed by it, receive no emoluments, privileges or prerogatives of any kind.

(c) It categorically denies that "the crime of opinion" exists in Chile, and draws attention, in this connexion, to the principles governing this matter.

(d) In connexion with the destruction of the electoral rosters, it shows that 10 per cent of the votes were falsified, in circumstances in which the major political decisions in Chile over the last few years were taken by a much narrower margin. The Commission expresses its astonishment that the CIDH should be unaware that in Chile the validity of the electoral registers has expired several times and that previously they were only valid for a limited duration (here reference is made to the relevant laws and dates).

It is explained finally that a sub-commission has been appointed to study a system that will safeguard the country from fraud of every description, particularly on the part of the Executive itself. The words used by General Carlos Prats (Minister of the Interior in the Allende Government) on the occasion of the last parliamentary election of March 1973 are quoted: "The Chilean electoral system will not withstand another election" (press conference of 8 March 1973).

The Commission shows the impossibility of purging a register which is 27 years old, and expresses its preference for a more efficient method, more in keeping with modern techniques, namely, a single National register for all legal purposes, including electoral purposes.

(e) In conclusion, it reproduces statements by the Chairman of the Lawyers' Association, Mr. Alejandro Silva Bascuñán, who is a member of the Commission for Constitutional Reform, referring to his discussion with CIDH members, which are not mentioned in the report and which give the lie to assertions regarding the exercise of the legal profession in Chile.

#### SITUATION CONCERNING THE REPORT BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS IN THE OAS

(a) On 4 December 1974, the Permanent Council of the Organization of American States received the "Report on the Status of Human Rights in Chile by the Inter-American Commission on Human Rights". At the same time, during its meeting on the same day, the Council received observations from the Government of Chile concerning the report.

The Permanent Council agreed to convey to the CIDH its desire that a special session should be held as soon as possible, and in any event at a date sufficiently in advance of the Fifth General Assembly of the OAS, for the purpose of considering and taking action on the observations of the Government of Chile. The Permanent Council also resolved "to submit the report on the status of human rights in Chile by the CIDH, for consideration by the fifth regular session of the General Assembly together with the observations of the Government of Chile."

The Council resolved in addition that "if after a lapse of time the CIDH has not convened a session or has not found an opportunity to consider the observations transmitted to it by the Council, namely, the observations made by the Government of Chile, the representative of Chile shall be entitled to ask for an additional meeting, to be held before the fifth regular session of the General Assembly, for further consideration of the whole matter". (OEA/Ser G-CP/Acta.145/74 (transcripción), 4 December 1974).

(b) The CIDH did not hold another special session. The Permanent Council of the OAS took note of this fact at its meeting on 22 January 1975 and received further comments from the Government of Chile regarding the CIDH report. The Permanent Council agreed at the same meeting to bring the new developments before the General Assembly of the Organization so that the latter could deal with "the report on Chile and annexed documents at the same time as it discusses the annual report by the Commission, which is one of the items already on the Assembly's agenda". (OEA/Ser.G-CP/Acta.151/75, 22 January 1975).

Dr. Andrés Aguilar

President, Interamerican Commission for Human Rights

Caracas, VENEZUELA

Washington, D.C. 26 October 1974

Dear Sir,

In the summary records of the 425th Session held in Washington on 24 October, on page 4, the following paragraph appears under No. 5 :

"During the session, Professor Manuel Bianchi submitted to the chair a modifying text in connection with the Draft Report on Chile (doc. II-33).

The President informed Professor Bianchi that he could not give currency to such a text, in the light of the fact that the note did not comply with the minimum requirements called for in communications or "notes verbales" sent to the Commission by the Missions accredited to the O.A.S."

I am struck by the fact that the Summary records do not show what my immediate reply was, to wit :

"Since it has been announced that tomorrow, the 25th, the signed text of the note or notes from the Minister of Foreign Affairs (Almirante Carvajal) will be received, receipt of such notes will have to be stated".

Nevertheless, the Commission did not accept my suggestion and decided that since the rapporteur of the Draft Report on Chile (Dr. Rubén Carrié) had left for Buenos Aires, it would not be possible to allow further time, and the sessions would end without fail at noon on 25 October.

This was how it happened that the Draft Report on Chile was printed without the logical revision of its final text, since just as the sessions were terminating, we had it in hand, without any of us having read it in its entirety.

Since, in addition, it was stated textually in that same Draft Report, on page 4, that :

"Because the Commission knows what the risks are in the performance of its tasks, the rule of procedure according to which the Permanent Council must examine its reports before they are submitted to the General Assembly is to be followed. In the Permanent Council, the States concerned have the opportunity to bring out such observations as they may consider pertinent, before such reports are given the publicity resulting from their submission to the Assembly. This makes it possible to introduce the amendments appearing to be sufficiently justified".

Thus, apart from this quotation from the Draft Report and the numerous contradictions I find between the Draft Report for the 33rd session drawn up by the Secretariat of the Commission (Doc. 15) and the Report on the situation of human rights in Chile (Doc. 21), I take into account the omission of various letters (all numbered) that I sent from Santiago at the end of August, during September and early in October of this year (1974) concerning the status of pending accusations and other steps I took at the request of the Commission.

Referring to the latter, I must state that the texts of such letters and their annexes were made known to the Commission during its sessions held in Washington this month, but that none were given the treatment required by the Statutes and the Regulations.

With respect to the replies made by the Government of Chile to the notes from the Commission concerning denouncements of particular cases or on the general situation of human rights in Chile, their texts were also generally omitted as to the situation as a whole or with reference to particular situations.

The only one appearing in its full text is found on pages 174 and 175 of the Report on the Situation of Human Rights in Chile; but on the page immediately following (176), there is a sentence which says: "In the course of this report, the Commission has had the opportunity to analyze and determine its position with regard to the matters referred to in said note".

This statement denies value to the Chilean note, when it declares that the position of the Commission is already determined, and, furthermore, it makes no reference to the annex of the reply made by the Minister of Foreign Affairs, where a satisfactory answer is given to the specific cases Nos. 1750, 1850, 1856, 1857, 1859, 1860, 1858 and 1965, where information was requested on the fate of 34 persons.

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Another note from the Government of Chile which I am surprised not to find mentioned or included as a whole in the Draft Report of the Commission is the one signed by the Minister of Foreign Affairs, Admiral Patricio Carvajal, dated 2 August 1974 and bearing the number 13102, written in reply to the communication of 29 July 1974 signed by the Chairman of the Commission, Dr. Jimenez de Aréchaga.

I am attaching, as an annex, the full text of the Chilean document, from which I excerpt the following paragraphs :

In regard to what is stated under Point 3, this having been asserted repeatedly by the Ministers of the Interior and of National Defence, extreme measures have been taken to avoid the occurrence of any excesses. On the other hand, as I have stated on previous occasions, our penal jurisdiction qualifies such acts as criminal offenses, and the person affected or anyone else can set in motion the legal machinery to bring about an appropriate punishment. I should also be grateful if you could inform me as to the existence of specific cases you may encounter, so that the proper measures may be taken". (page 1).

"In regard to your statement under Point 6, the free access of lawyers has never been denied, and even in trials in time of war, article 184 of the Code of Military Justice provides that : "He (the Lawyer for the defense) may also communicate with the accused, and no order to hold (the prisoner) incomunicado can prevent him from doing so". This provision is in force and is complied with, as are all the other relevant provisions". (Page 2, paragraph 3).

The above-mentioned note ends with the following paragraph:

"I wish once again to reiterate my request that you report any measure or action against the fundamental rights of human beings, as soon as they are brought to your attention, since the civil and military authorities in my country, in keeping with their tradition, will not allow the commission of acts similar to those which obliged them to take charge of the functions of government in order to protect the human rights of the immense majority of the citizens". (Page 3).

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On 3 June 1974, the Inter-American Commission of Human Rights asked the Government of Chile for information in addition to what was contained in a note of 27 March. The supplementary data were submitted to the Commission on 26 June and are as follows :

- 1.- Luis Carlos de Almeida.- Brazilian. Given asylum in the Swedish Embassy. Travelled to Stockholm on 16 November 1973.
- 2.- Roberto Metzer Thomas.- Brazilian.- Was expelled from the country and travelled to Sweden on 7 November 1974, with the help of C.I.M.E.
- 3.- Antonio José Barros.- Brazilian.- Expelled from the country and went to Switzerland on 3 January 1974, with the help of C.I.M.E.
- 4.- Antonio Moreno.- Bolivian.- Was expelled from the country and left with the help of C.I.M.E. on 4 November.
- 5.- Luis Velez.- Bolivian.- Was expelled from the country and left with the help of C.I.M.E. on 4 November 1973.
- 6.- Carlos Toranzos.- Bolivian.- Was given asylum by the Mexican Embassy and travelled to Mexico City with a safe-conduct issued by the Chilean Gov't.
- 7.- Julio Baraibar.- Uruguayan. Was expelled from the country and travelled to Stockholm on 30 October 1973, with the help of the Swedish Embassy.
- 8.- Miguel Angel Ortiz Suarez. Uruguayan. Was expelled from the country and travelled to Stockholm on 30 October 1973 with the help of the Swedish Embassy.
- 9.- Doctor Marquez Rogalino. Travelled to Ecuador the first week of October.
- 10.- Doctor Rafael de León. Guatemalan. Expelled from the country, travelled with the help of C.I.M.E. to the Federal Republic of Germany on 10. January 1974.
- 11.- Luis Alvarado.- Chilean. Was given asylum by the Mexican Embassy and travelled to Mexico City on 13 October 1973.
- 12.- Jorge Sabogal.- Colombian. Expelled from the country. With the help of C.I.M.E., travelled to Colombia on 21 December 1973.

13.- Samuel Pasik.- Argentinian. Expelled from the country. Travelled to Buenos Aires on 30 November 1973.

14.- Ignacio Maschiva.- Bolivian. Expelled from the country. Travelled to Stockholm on 11 November 1973, with the help of C.I.M.E.

15.- Raul Irena Estrada.- Mexican. Was expelled from the country. Travelled to Sweden on 11 November 1973, with the help of C.I.M.E.

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The same plight as that of the note of the Government of Chile referred to above also befell the note (No. 13953) dated 16 August 1974, in reply to one of the Commission - concerning case 1861 - dated 3 August 1974 which refers to the "rapid and unrestricted medical service for the detainees who need it". (The annex includes a copy of the text of Note No. 13953 signed by the Minister of Foreign Affairs, Admiral Carvajal).

Nor is there in the report sent to the Permanent Council any mention of the farewell visit that the Commission (headed by the Vice-President, Dr. Dunshee de Abranches, with the member of the Commission, Dr. Woodward, the Executive Secretary, Dr. Reque, and the undersigned) paid to the Minister of Foreign Affairs, Admiral Carvajal, on the morning of 2 August. Also present were the chief officer of SENDE, Colonel Espinoza, the head of the Confidential Office of the Chancellery, Captain Rojas, the Chief of the General Department of the Ministry, Carlos Valenzuela (Ambassador), the Chief of the Department of International Politics, Ambassador Enrique Bernstein, and the Legal Advisor Professor Luis Winter.

Because they had previously returned to their respective countries, the Chairman of the Commission, Sr. Jimenez de Arechaga, and Dr. Genaro Carrio were not present.

During the conversation, it was reiterated to the Commission, both by the Minister of Foreign Affairs and by his advisors, that the Government of Chile was always ready to collaborate in everything that represented the strictest observance of human rights. To this effect, he added that the presence of the Chief of SENDE and of the Confidential Office of the Chancellery would serve to ensure that all the communications from the Commission would be followed up with all due urgency, and would be included in the plan which the Government was in the process of developing with the collaboration of the International Office for Refugees of the United Nations and that of the International Red Cross, which have placed special representatives in Chile for this purpose.

Captain Rojas offered to remit to Dr. Woodward complete data on any matters that might interest him in particular, and Colonel Espinoza asked me to visit him in his office in the Congress Building, in order to enable those who were imprisoned for political offenses to obtain an early release or safe-conduct to go to the countries indicated by the High Commissioner for Refugees. On behalf of the Commission, Dr. Dunshee de Abranches expressed sincere gratitude for all the facilities that were extended and those that were promised, this being again stated in the release to the press made by the Vice-Chairman upon leaving la Moneda.

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As for the detention premises that could not be visited by the Commission, the Minister of Foreign Affairs replied, to a note of 1 August and delivered in Santiago on the same day, with the Document 13954 of 16 August, which, beginning with the second paragraph, states the following:

"I wish first of all to point out to the President (Chairman), Dr. Jiménez de Aréchaga, the pleasure it gives me to note that the facilities afforded to the Commission are acknowledged, and at the same time I wish to inform him that identical freedom of action has been granted to virtually all the institutions that have visited us, these latter not always having reported what they really saw and verified for themselves.

"In connection with the detention premises that they could not visit because of their having been declared military zones, this Ministry was wholly unaware of the Commission's intention to visit them, this being the reason why there was no opportunity to make the appropriate arrangements. On the other hand, there are military enclosures in my country, and establishments or premises are not declared to be 'Military zones' unless they really have the characteristics appropriate to an enclosure of that sort.

"Finally, I wish to point out that I am informed that the problem only arose with respect to two establishments and that, for one of them, the authorization to visit it had been obtained by the Commission from the Ministry of Defence, in order that Don Manuel Bianchi could visit the premises as soon as other members had arrived". (The full text of Note No. 13954 of 16 August 1974, signed by the Minister Carvajal, is appended hereto).

No notice was taken of this note by the Commission, despite the fact that I referred to it when discussing the list of detention premises that could not be visited.

. . . . .

My letter No. 31 of 7 October to the Executive Secretary of the Commission so that he would make it known to the members of the latter, was not included in the report dated 25 October 1974 sent to the President of the Council of American States. Since this document was not brought forward during our recent sessions in Washington, I reproduce its entire text below:

"I am informed by the office of Colonel Espinosa that the following cases, as of now, have been decided in principle along the lines indicated.

1.- Juan Rubén Capra Arellano.- Age 37.- Artist painter - Freed.  
2.- Leoncio Provoste Mardones - Age 36.- Imprisoned 22 September 1973. Held in the Public Prison - Freed.

3.- Braulio Barría Ruiz. Age 28. Jailed in Chacabuco, where Dr. Woodward visited him.- Freed.

4.- Carlos Orlando Ayrres Soto.- age 56, and his son Carlos Ayrres Moreno, age 18, imprisoned in Chacabuco, where Dr. Woodward talked with them. They will be released in a few days, but his daughter, Luz de la Nieves Ayrres Moreno, age 25, at present in Tres Alamos, will not be set free, for reasons that I shall explain to the Commission in Washington.

5.- Luis Felipe Mujica Toro.- Age 25.-Engineer. Imprisoned in Tres Alamos. Will be released next week.

6.- Carlos Alberto Lobos Soto - Age 25 - Held in Chacabuco. Will be released next week.

7.- René Castro Ruiz. - Age 31. Sculptor. Married to an American woman. Held in Chacabuco since 1973. Will soon be authorized to rejoin his wife and 1-year-old son in the United States.

8.- Dr. Carlos Hugo Zamorano Aguilera - Former Director of the hospital at Linares. Imprisoned in Chacabuco. Through the U.N. Commission for Refugees, I have drawn up an authorization for him to go to France.

9.- Juan Samuel Muñoz Gutierrez.- Age 30. Held in Valparaíso in the Public Prison. Arrangements were made with the Danish Embassy and the High Commission for Refugees for him to go to Copenhagen. The safe-conduct will be issued to him next week.

10.- Juan Chacón Olivares - Age 29. Veterinary doctor. Imprisoned 15 July last. Following arrangements made in the Ministry of the Interior, I am advised today, 7 October, that CENDE has prepared the order for his release.

11.- Roberto Ceballos Cornejo- Age 48. Jailed on 30 January and information concerning him was obtained when he was transferred to the Estadio Chile on 28 February. At present in Tres Alamos. I am told that he will soon be released, and I will so notify his wife (Mrs. Josefina Manso de Ceballos).

12.- Maximo Alejandro Antonioletti.- Age 31. Business engineer. Imprisoned in Chacabuco, where he was visited by Dr. Woodward. He will be taken to Tres Alamos (Santiago) and, according to information I have been given, he is on the list of those to be released.

13.- Manuel Fredy García Velasquez.- Age 24. Law student. Held since 8 January 1974. Has been hospitalized in the Penitentiary, and I was informed last week that he will be authorized to obtain medical treatment at the home of his parents, for which he will soon be accorded a decree for house arrest.

14.- Laura Eugenia Rodríguez Fernández del Río. Held in Tres Alamos since 1 May 1974. Suffers from internal tumours and requires an operation. I am informed that she will soon be released so that her family can take charge of her medical treatment.

15.- Juan Chacón Olivares. Age 29. Married. Veterinary doctor. Held since 15 July 1974, and CENDE just informed me four days ago that his release has been signed. I notified his wife of that fact.

16.- Jorge Washington Concha Cortés. Age 27. Held in Tres Alamos since 11 June. I am told he is on the list for early release. I informed his family.

17.- Osvaldo Guillermo Alvarado Pérez. Held incommunicado in the city of Valdivia since 5 October 1973. I took steps with the U.N. Committee for Refugees, which put his name on their lists. The Swedish Embassy issued a certificate stating that he will be accepted in that country.

With regard to the detainees held in Ritoque, who were visited by the entire Commission, I reported during the meetings we have just held in Washington that eight of those taken to Isla Dawson had been released, and I added that safe-conducts would be issued for a number of others, among them being the former Minister of Foreign Affairs, Orlando Letelier and the young Orlando Puccio Huidobro, who both flew to Caracas by airplane before I left Santiago.

Finally, in my letter No. 32 of 7 October 1974, I informed the Commission of the following:

"Further to my letter of the 4th of this month (No. 28) concerning the release of the greater part of the detainees in Chile, may I add that I am taking with me to Washington the names of all the persons for whom the requests I made in the name of the Inter-American Commission for Human Rights were followed up and, in addition, the names of those whose status is being examined with a view to release or the issuance of a safe-conduct so that they may travel to a foreign country.

"The Government of Chile has declared that the first group will be released within one month at the most. As for those who are to be given safe-conducts to go abroad, their cases are being examined jointly with the United Nations Commission for Refugees and the International Red Cross.

"Finally, the Minister of the Interior stated today that all the authorizations, both for those who will be released and those who will go to other countries will be issued by mid-December."

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I do not wish to over-extend this letter, and I shall only make reference here to certain amendments I proposed to the records of our sessions, which, for the greater part, were not accepted; to the Draft Report of the 33rd Session as drafted by the Secretariat of the Commission (doc. 15); to the recording system used in the questioning of the detainees, and to the falsehoods and exaggerations contained in these statements.

The Draft Report of the 33rd Session (doc. 15), drawn up by the Secretariat of the Commission, gives an account of the interview with the representative of the High Commissioner for Refugees in Latin America of the United Nations, Mr. Daniel S. Blanchard, who is in charge of the United Nations Office for Refugees, in the following words:

"a) That the United Nations recognizes that the Government of Chile had collaborated efficaciously and in accordance with its international obligations to solve the problem of its refugees brought about as a consequence of the events occurring on and after 11 September 1973.

b) That the Government of Chile has respected the various places of refuge established by the United Nations.

c) That as a result of the action of its office, it has already succeeded in relocating about three thousand families outside Chile, there being left only some hundred-odd persons for whom steps were being taken to find them a place to which they could move.

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e) That the United Nations were implementing a plan for the re-unification of families that had been separated in consequence of the situation that had arisen in the country. In general, that plan would allow families to go abroad if the head of the family had already left Chile. The United Nations would defray the travel expenses when there was no person or entity disposed to do so.."

In the Report on the Situation of Human Rights in Chile (doc. 21), the interview of the Commission with the representative of the High Commissioner for Refugees is related in a short paragraph on page 68.

The representatives of the International Red Cross were to inform the Commission by the intermediary of the General Delegate for Latin America and the Caribbean, Mr. Serge Nessi, and his assistants, Messrs. Roger Santschy and Bruno Doppler. Ambassador Robert F. Woodward attended the interview on behalf of the Commission, and he put on record the fact that the persons who visited him informed him that General Bonilla - during the time he was Minister of the Interior - had told them that Chile would comply with Article 3 of the Geneva Conventions. In addition, it was recalled that the Government of Chile had been the first government in South America to ratify the Geneva Conventions.

It was also reported that the International Red Cross had obtained written authorization from the Government of Chile on 25 September 1973 to visit the places of detention. Thanks to this authorization, seventeen visits to the Estadio Nacional were made possible during the months of September, October and November 1973.

In the course of the Commission's visit to Chile in October 1974, the Red Cross visited each place of detention twice a month. As a result of these visits, prisoners were identified, an index form or card was prepared for each of them, with copies thereof forwarded to the Central Archive in Geneva.

He added that, during these periodic visits, the Red Cross distributed blankets (10,000), mattresses, medicines, powdered milk and food in general. The distribution of these items was made in collaboration with the Chilean Red Cross and certain charitable institutions.

The final paragraph says:

"From the end of January 1974 and up to the time of the interview - it has been reported - the International Red Cross had supplied material assistance to the members of the families of the detainees when it was a matter of emergency. Such assistance consisted, in general, of food, blankets, medicine and clothing. In addition, centres for distribution had been set up, the principal one being in Santiago. The Red Cross had the co-operation of the Social Assistance Service and the Section for Social Assistance of SENDET. At the time of the interview, the International Red Cross was giving assistance to approximately 3,000 families (4 to 5 members in each family) and hoped to maintain and even increase this aid during the remainder of the year 1974".

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On page 75 of the "Report on the Situation of Human Rights in Chile" Chapter V begins. It is entitled "Detention establishments and testimony of detainees.- Tortures". In its last paragraph, it states that "everything said in this chapter reflects the findings made and, in some cases, the complaints received by the Commission at the time of its visit to the respective establishments, and hence does not in any way exclude the possibility of the circumstances having changed subsequently to these visits".

Attention is drawn to the fact that in Point 3 of this same chapter it is said that in the greater part of the cases, "the names of the persons questioned have been omitted" at their own explicit request, and that, at the same time, omission has also been made of "data which would permit easy identification of the persons making the statements".

The Statute and the Regulations of the Inter-American Commission on Human Rights sets out in very precise terms that accusations made to the Commission must be signed by persons, groups of persons or institutions. These communications must contain: a) the name, address and signature of the accusers and complainants; b) the description of the fact or facts reported and the name or names of the victims of the presumed violation or violations of human rights.

The Regulations state that the names of the accusers may be omitted in communications sent to the Governments affected by the said accusations.

In spite of these very precise provisions in the Regulations, most of the accusations made to the Commission during its visit in Chile from 22 July to 2 August 1974 do not contain the name or names of the one or more victims of the alleged violations of human rights.

On pages 80, 81 and 82, mention is made of the facts alleged by a large number of those detained in "Tres Alamos", "eliminating names and other data which would facilitate the identification of the individuals".

The same thing occurs with reference to the detainees interviewed in "Capuchinos" (a prison in Santiago), a list of whose (statements) appears on pages 83, 84, 85, 86 and 87 of the same report, without a single name being recorded.

With regard to the establishment called "El Buen Pastor", a place of detention for women, the list of the persons questioned is given on pages 89, 90, 91, 92, 93, 94 and 95 of the report referred to, without any information that could enable the Government of Chile to make a precise reply to the alleged accusations.

Finally, and so as not to extend these references unduly, in the establishment of Ritoque, a recorder was used when questioning the detainees, but the names of those questioned were eliminated, with the exception of only one among them. The text of the recordings is found on pages 98 to 120 of the report, and they refer most particularly to the climate of Isla Dawson, to the time during which they were held on the island and, especially, to the mistreatments or tortures to which they were subjected.

On page 95, in paragraph 33, it is stated textually:

"Isla Dawson is a particularly inhospitable place, heavily buffeted by hurricane-strength winds from the south and also by snow and hail. The temperature is often many degrees below zero on the Centigrade scale. The prisoners told the Commission that they had been transferred there without being allowed to take with them any other clothing than what they were wearing when arrested. They added, further, that the place where they were lodged lacked the necessary installations to provide decent shelter to anyone in conditions of comfort and hygiene".

When reference was made to Isla Dawson during a session of the Commission, I requested that the record thereof indicate that the detainees transferred to the Magellan region were taken there at the end of October, that is to say, in early spring, and those who were still there (a number had already been released) were taken back to the capital city at the beginning of March, three weeks before the end of summer. I added that from the very first they had been visited by the representatives of the International Red Cross, who provided them with food and clothing and arranged for them to correspond with their families. The building in which the detainees were lodged was an edifice constructed more than ten years ago for the training of Navy personnel garrisoned in positions in Antarctica and on the islands south of the Strait of Magellan and is therefore equipped with all the necessary elements to cope with the rigours of the months of autumn and winter.

These phrases were left out of the Draft Report sent to the Permanent Council.

According to the tape recording quoted on page 119 of the Report, the statements of one of the detainees interviewed in Ritoque was as follows :

"Very briefly, I wish to make a concrete denunciation concerning persons who disappeared and were assassinated in the Palacio de la Moneda on the 11th day of September. I wish to specify that there was fighting in the Moneda, since the Moneda was bombed from the air and bombarded from a distance, and the army forces only entered it when those inside had surrendered. There were scarcely more than 50 persons in the Moneda. No more than 14 came out alive, forming a group gathered in the Ministry of Foreign Affairs, which was undamaged, another group which came out to hold a parley, under the instructions of the President of the Republic, and some physicians who ~~found themselves~~ wearing their white smocks. The people who remained were killed subsequently. Those belonging to the Moneda, in the Moneda itself, saw no one injured or killed except Ex-President Allende and the journalist Augusto Olivares.

A group of about 40 persons came out, having surrendered, and these people were taken to the Tacna Regiment, and, since then, nothing has been heard from them. Most of them appear to be dead".

In the Report of Dr. Luis Reque dated 21 October 1973 are contained the observations made "in situ" by the Executive Secretary of the Commission between the 12th and 17th days of October 1973, and in this report it is shown that during his stay in Chile the clashes between snipers and the military forces still continued. The Executive Secretary could also verify the damages wrought in La Moneda in all its quarters, as well as to the buildings of the Ministries around it, and particularly in the Ministry of Foreign Affairs, which could only go back to work on 16 September with a reduced staff, since enormous damage was done on the three floors facing Avenida Bernardo O'Higgins.

The same recorded statement maintains that "A group of about 40 persons came out of the Moneda, having surrendered," and since then nothing has been heard from them, since "most of them appear to be dead".

Official documents published photographs of the group, following a white flag held up by a woman. The names of each member of this group were published, none of them was executed, a number of them are still in Ritoque, and at least four of them have been freed.

Even though there are many other statements that do not coincide with reality, I wish to conclude this chapter by quoting the recording transcribed on page 116, not only because of its assertions of a purely political nature having no relation to human rights, but chiefly because they contain expressions referred to by Art. 39, paragraph a) of the Regulations of the Commission, which requires that accusations made "in disrespectful or offensive terms" be filed.

I consider it also necessary to bear in mind that "Plan Z", which many deponents qualify as false, has been published in facsimile, under the letterheads of public departments and with authorized signatures of the U.P., in official documents of the present Government and, particularly, in the "White Book".

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In connection with the system of recordings made by the Commission in Ritoque and other detention sites, I stated to the Commission in Santiago, at the very start, that authorization to use such a system should have been sought from the Government, since it has never before been used by the Commission for Human Rights or any other international investigatory Commission. I added that such recordings could be prejudicial to the work of the Inter-American Commission as concerns its basic aim, which was to obtain for

political prisoners the treatment prescribed by the International Conventions dealing therewith.

In fact, many of the persons who allowed their statements to be recorded regretted having done so subsequently, and asked that the complete texts not be used and less be hinted as to who had utilized the recording apparatus.

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With regard to the general recommendations contained on pages 170, 171 and 172, omission is made of the exceptions taken to the voting on some of the paragraphs of said recommendations by Drs. Fabino Fraga and Robert Woodward out of consideration that they impinged on the right to non-intervention in the domestic legislation of States.

As for myself, I have asked that the records show that I would abstain from voting both with respect to the Chapter on Conclusions and also with respect to the one entitled Recommendations.

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Up to now, I have not received copies of the Records of the last three sessions, in which I suppose there will already have been noted my astonishment at having been assigned in Santiago to draft the Chapter of the Report on "Freedom of Information", without having taken into account the work I was drafting on the subject.

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All these reflections will not militate against my desire to continue concerning myself with the situation of the political prisoners in Chile, and I shall continue to keep the Executive Secretary amply informed on the subject, as well as on the measures that the Government of Chile will continue to put forth so as to enable its institutions to resume completely normal functioning.

Yours very sincerely,

Manuel Bianchi  
Member of the Interamerican Commission  
on Human Rights.

ANNEX II

REMARKS THAT THE COMMISSION FOR CONSTITUTIONAL REFORM OF CHILE WISHES  
TO MAKE ON THE REPORT ISSUED BY THE INTERAMERICAN COMMISSION ON  
HUMAN RIGHTS.-

The Commission for Constitutional Reform of Chile (CCRCH) has taken due note of the Report issued by the Interamerican Commission on Human Rights (ICHR) on the situation of human rights in Chile.

In said Report the ICHR specifically refers, in Chapter III, Paragraph A).- Letter c).- to the visit it paid to this Commission on July 25, 1974 and to other matters directly related to the task of drafting a new Fundamental Charter as entrusted to this Commission by the Chilean Government.

The CCRCH feels it is its duty to mention these matters and mention also certain omissions in said Report, serious and far reaching in nature, which have led the ICHR into substantial errors in appreciating Chilean reality and determining the way in which it should be judged.

This Commission feels, furthermore, that such omissions and errors are of such a magnitude that if the ICHR had avoided them and made a fair assessment of the fundamental and decisive factors of Chilean reality - something which, inexplicably, was not taken into consideration - its conclusions would, perforce, have been very different.

The CCRCH feels it must point out these essential shortcomings of the Report and simultaneously provide background information on matters within its purview which will contribute to shaping a clearer and more complete idea of the Chilean Government's position on fundamental rights and its concern for the full restoration of renewed and strengthened democratic institutions.

. . . . .

Santiago, December 23, 1974

To the  
Minister for Foreign Affairs

Admiral Sr. Patricio Carvajal Prado

Your note Nº 22.003 dated 18th. of December states that the report issued by the Commission on Human Rights of the Organization of American States on the Chilean situation refers, in a number of points, to matters which are the responsibility of this Commission for Constitutional Reform of Chile and, in order to supply as much background information as possible in the reply to be given by the Chilean Government, requests that this Commission give its opinion, in the shortest possible time, on the points which concern it and on which it may wish to comment, keeping in mind above mentioned reply when doing so.

In response to your request I now have the pleasure of attaching the document containing the remarks the CCRCH wishes to make on said aspects of the Report issued by the ICHR.

In view of the serious and important omission and errors found in the Report of the ICHR on matters pertaining to the task of this Commission, we feel it is highly advisable, as suggested by you in your letter, that our remarks be appended to the reply to be given by the Chilean Government, so that they can be made known to the ICHR in plenary and to the coming General Assembly of the Organization.

Enrique Ortúzar Escobar

President

Commission for Constitutional  
Reform of Chile

Rafael Eyzaguirre  
Secretary

The following are the remarks of the Commission for Constitutional Reform of Chile:-

I - THE INTERAMERICAN COMMISSION ON HUMAN RIGHTS, WHEN VIEWING THE PRESENT SITUATION, COMPLETELY IGNORES THE EVENTS IN CHILE PRIOR TO SEPTEMBER 11, 1973.-

There is no doubt that this constitutes the basic error in the Report of the ICHR.

It is the CCRCH's duty to point this out for, as acknowledged in the Report itself, during the plenary meeting held by the Commission with the ICHR, its President made an extensive statement describing the situation lived by the country before September 11, 1973, date of the military "Pronunciamiento"; the characteristics of our legal order in the present emergency, and the main lines of the new Constitution that is contemplated.

He acted thus, thoughtfully and responsibly, for it is impossible to judge the abnormal situation now experienced by the country - as recognized by the Report itself - and the resulting restrictions to fundamental guarantees, without a full knowledge and understanding of the causes that led to it.

To avoid serious misjudgments in the analysis of a social, political or any other type of phenomenon, and to grasp its full scope and magnitude, it is absolutely necessary that consideration be given to the background events that led to such a situation.

Therefore, an examination of the thorough upheaval that has taken place in Chile, if it is to be complete and fair, must take into account the fundamental factors which unleashed it.

The direct relationship between cause and effect tells us that it is not possible to judge the effects of an event without previously analyzing its causes. It is also obvious that the effects will vary according to the nature and the gravity of the causes.

In Chile's specific case, the existing situation of emergency, of abnormal conditions and of restrictions to certain guarantees which is affecting the country will be better or worse depending on the nature and gravity of the causes and circumstances which preceded it and the danger with which they threatened the Nation.

The purpose of the statement that the ICHR had the opportunity to hear during its Plenary meeting with the CCRCH - and completely ignored in its Report - was, in part, precisely to depict the extreme seriousness of the Chilean situation before the 11th. of September, 1974. Without its knowledge, it becomes impossible to assess and judge the present situation.

If the ICHR had taken this statement into account, it could have in mind the following facts that determine today's reality:-

- a).- Señor Allende sought, from the very beginning of his Administration, to impose his marxist-leninist scheme on the country, within the framework of a republican, constitutional, democratic and representative system;
- b).- With this purpose in mind, Señor Allende usurped or ignored the power of the other branches of Government;
- c).- The government of Señor Allende systematically violated the Constitution and the laws of the land and trampled human rights most grievously, all of which led the General Comptroller's Office - the agency in Chile entrusted with the control of the legality of the acts of the Executive Branch - to keep the Supreme Court of Justice constantly informed on the illegality of its Decrees and Resolutions and to declare the breakdown of legality in our country, and also drove Congress to declare that Señor Allende's government was being exercised outside the limits of legality;
- d).- The marxist regime destroyed the country's economy. Under it,

according to official statistics, inflation reached the figure of 500% - but in fact it went over 1.000% - and this, added to scarcities of food, pharmaceutical products and, in general, basic necessities of the population, put Chilean households, especially the poorer ones, in a most anguishing and afflictive situation. This circumstance was put to good use by the Communist Party which, with the complicity of the Government, started a "black market" that brought it lavish profits;

- e).- The previous government also destroyed the peaceful co-existence enjoyed until then by all Chileans by creating an atmosphere of violence, crime, terrorism and political assassination, all of which resulted in the known death of at least one hundred persons, from the most modest of citizens to that of an ex Vice President of the Republic;
- f).- Permitted the creation of an unconstitutional movement called "People's Power" (Poder Popular), which was armed and composed of extremists, mainly from abroad, and supplied with Russian, Czechoslovak and Cuban arms brought illegally into the country and partly stocked clandestinely in the very Presidential residence. Señor Allende's intention was to strike the final blow with this irregular army of more than 30.000 members and fulfill his purpose of establishing a communist dictatorship in our country, Chile would have thus become a subjected country and lost forever not only its democracy and freedom but also its sovereignty, and
- g).- The permanent uncertainty and lack of security that the population lived in; the deep moral, political, social and economic chaos; the collapse of institutionality; a crisis in coexistence and the serious hazard to both internal and external security became all so serious that they awoke civilian resistance

and the legitimate right of a people to rebellion and to free themselves with the assistance of their armed forces.

It is therefore impossible for the CCRCH, composed of jurists from the widest possible range of democratic trends, to find an explanation for the way in which the ICHR completely dismisses the statement made by its President and in which he gave the background necessary for judging the current reality in Chile.

Such a statement would have allowed the ICHR to come to the following conclusions:-

- 1).- The present government is, under law, a legitimate one , a result of the right to rebellion of a people who saw its survival as a free and sovereign nation seriously threatened by international communism, and
- 2).- the causes of the complete revolution Chile has undergone go so deep, are so serious and are of such a nature that they explain and justify the abnormal situation and emergency now affecting the country, as well as the restrictions due to said situation and which the government has had to impose on some fundamental rights and guarantees.

The Report of the ICHR tries to justify this grave omission maintaining that it cannot "... make considerations on the internal politics of Chile ... " or on the " ... legality or illegality, justice or injustice of the previous regime, for such judgments are outside its competence." (Pages 61 and 166 of the Report)

As men of law and with all due respect we beg to disagree with this statement.

If the ICHR has the competence to judge the present and abnormal situation existing in Chile and the possible restrictions on human rights that may be found - and on this the Report is, contrary to what is stated, a complete analysis of the internal policies of

of the present Government - it is evident that it must also be competent to analyze the causes for such an abnormality, for the measure and extent to which such restrictions of fundamental rights are justified or not will depend on the depth, nature, seriousness and validity of such causes.

It has been seen how in Chile its institutions, democracy, freedom, the economy and the peaceful coexistence of its inhabitants were destroyed by the marxist regime and how it seriously endangered the internal and external security of the country.

The threat posed by these dangers is not gone and a premature liberalization would immediately be used by the enemies of democracy and freedom.

Abroad, Radios Moscow and La Habana daily incite to subversion in Chile in a permanent and open way; public collections are taken up in various parts of the world to obtain funds for the purchase of arms and to support subversion; acts of sabotage are planned against the chilean economy and even against its most vital exports; there is, finally, an entire international conspiracy inspired by communism to isolate and aggress Chile.

Inside the country, the enemy is on the watch. Every day new arsenals or arms of Russian, Czechoslovak and Cuban origin are discovered and it is estimated that marxists elements still conserve clandestinely approximately 50% of their firing power; the press is permanently reporting assaults and attacks to, and clashes with, the Armed and Police Forces.

This is the stark reality that our Nation must face!

How can it be possible, then, to judge the situation in Chile without putting it into such a context and taking into account the causes and circumstances that determine the abnormal situation our country is experiencing and, without a thorough analysis of these

facts, their projections and possible validity?

The extent and nature of the present emergency now affecting our Homeland, its continuation and the restrictions to fundamental rights it requires depend and are a direct function of the nature and gravity of the reasons behind it.

All this becomes especially relevant when reading the conclusion the ICHR has come to on Page 166 and which, in its corresponding section, states " ... the Commission has arrived at the firm conviction that sometimes, by acts of its government through official measures, and other times, through its agents (it is not possible to say in the case of the latter that the acts of such agents are committed in pursuance of orders received from their superiors) in acts and omissions of its present government, very serious offenses have been committed in Chile against the fundamental human rights proclaimed in international documents subscribed to by this country".

In other words, it would seem to the ICHR Report that human rights are affected in our country either through official acts of the government or by those of its agents and, since it expressly acknowledges in the report that " ... it is not possible to say in the latter case that the acts of such agents are committed in pursuance of orders received from their superiors ... " it must therefore be concluded that the only case of offenses against human rights that can be attributed to the Government of Chile would be those resulting from official acts.

But these acts are explained, justified and will be legitimate to the extent that the emergency is justified and that they are in accordance with the laws of the country.

The ICHR Report, however, neglects to analyze the extent to which the emergency is justified, precisely because it has not taken into consideration the nature, depth, scope and validity of the causes behind it; nor does it say that the official acts prompted by the emergency situation are contrary to our legal order.

How then is it possible to come to the conclusions that human rights are affected by official acts of the Chilean Government?

It is a well known fact that national laws of all countries in the world comprise exceptional provisions for emergency situations allowing the suspensions of certain fundamental guarantees in the name of a higher collective interest.

The Chilean Government has made legitimate use of such exceptional legislation as found in the Constitution of 1925 and in a number of legal provisions enacted many years ago.

If restrictions of human rights are the result of official acts of the Chilean Government, due to circumstances surrounding the obvious and necessary emergency in the country, and if these acts are within the law, it seems to us that the Government cannot be held responsible as declared by the Report of the ICHR. It is the ICHR Report itself who should have come to such a conclusion.

On the other hand, concerning the possible acts of disregard for human rights that the agents of the Chilean Government would be guilty of, the report should not have limited itself to saying that " ... it is not possible to say in the latter case that the acts of such agents are committed in pursuance of orders received from their superiors" and should have added, expressly for the record, that when the Government has had cognizance of such situations it has used its powers to sanction the guilty parties and avoid a repetition of such acts.

To sum up, the CCRCH feels that the Report of the ICHR makes the very serious mistake of judging the situation of abnormality and restriction of certain fundamental rights in Chile without analysing and assessing the nature and seriousness of the causes that have brought it on and which are related to the events which developed in the country before September 11, 1973.

A certified copy of the statement made before the ICHR by the President of the CCRCH during their meeting of July 25, 1974 is attached to this document so that ~~this~~ omission may be corrected.

II - DEADLINE FOR THE SUBMISSION OF A REPORT BY THE COMMISSION FOR  
CONSTITUTIONAL REFORM OF CHILE.-

The Report of the ICHR states, on page 61, Nº 7, that the Commission has not been given a deadline for the completion of its task.

A matter which should be stressed here is that one of the first acts of the Government Junta was to appoint this Commission and entrust it with the drafting of a new political constitution for the State, something which reveals that, from the very beginning, the present government's purpose has been to reestablish democratic institutions in our country, but they are to be renewed ones, and most certainly purged of the flaws that ailed them over so many years and which culminated with the advent of marxism in Chile.

The members of the CCRCH are professors of Law from the main universities in the country who, as has been said, represent its various democratic trends. They are assisted in the task of drafting the fundamental complementary laws of the new Constitution by approximately sixty more professors and highly trained specialists.

In such circumstances and in view of the complexity of the subject and the responsibility of the jurists who have been entrusted with such a highly important task, the Government Junta felt it was not in order for them to give the Commission a deadline for the accomplishment of its work.

On the other hand, such an imposition would not have been at all consistent with the freedom and independence this Commission is enjoying in the discharge of its duties, and this is confirmed

by the fact that it has never received any insinuation whatsoever from the Government on how to proceed. A freedom and independence which see themselves strengthened by the circumstance that its members and those of the respective sub-committees are doing their work on an ad honorem basis and without enjoying any privileges or prerogatives whatsoever.

The Commission wishes to accomplish the mission that has been entrusted to it in the amplest and most democratic possible way and to this purpose has listened to the views of not only outstanding professors of Constitutional Law from our universities but also to those of representatives or spokesmen from the main activities and organizations in the country, such as the Confederación de Colegios Profesionales de Chile (Federation of Professional Associations of Chile), Confederación Unica de Profesionales de Chile (Federation of Professionals of Chile), Confederación de la Producción y del Comercio (Federation of Manufacturers and Tradesmen), Asociacion Nacional de Empleados Fiscales (National Association of Civil Servants), Confederación de Camioneros de Chile (Federation of Truckdrivers of Chile), Confederación de Provincias Agrarias Unidas (Federation of United Farming Provinces ), Confederación Agrícola "Libertad" (Agricultural Federation "Libertad"), Sindicato de Mineros de "El Teniente" (Miners' Union of El Teniente), Confederación de Empleados Particulares de Chile (Federation of Office Employees of Chile), representatives of trade unions, unions and farmers, representatives of the young, women and in general of all bodies with a social basis. It is worthwhile mentioning here that the representatives of all the above mentioned entities were all elected to their offices before the 11th. of September 1973. This cycle of hearings directed at eliciting the thoughts of a complete cross cut of the country's population came to a close with a hearing of the enlightened opinions

of the Board of Rectors of Chilean universities and representatives of the country's Supreme Court of Justice.

The Report of the ICHR quotes and stresses some paragraphs of substance in the document issued by this Commission on November 26, 1973 which include the fundamental points that will inspire the new Fundamental Charter. All of them are based on authentic representative democracy. But the Report fails to take account of the important fact that said memorandum was approved in full by the entire Government Junta of Chile and that it has subsequently received the largest possible support - unanimous, it could be said - of all sections of the citizenry through their representatives, when heard by the Commission.

It is also necessary to remember that after the ICHR's visit to Chile, the CCRCH, on the first anniversary of its creation on November 24, 1974, addressed itself to the nation in a press conference given by its President to foreign and national journalists alike and gave an account of the progress made so far, which consists of the drafting of four chapters for the new Constitution. This appears as a significant advance when it is recalled that the Constitution of 1925 has ten Chapters in all.

All this shows that the statement made in the ICHR Report to the effect that the CCRCH has no deadline for the completion of its work is entirely irrelevant. The more so if it is remembered that there exists a legal order in Chile, stemming from the Constitution of 1925, still in force except where it has been modified as a consequence of emergency that the country is undergoing, and from laws of the Republic which are still in force.

This legal order does of course declare the full independence of the Judiciary, which has been and is in Chile the watchful guardian of human rights. Furthermore, its independence has been

publicly and repeatedly asserted by the President of the Supreme Court of Justice, Señor Enrique Urrutia Manzano.

III - FREEDOM OF INFORMATION AND THE "OFFENSE OF HOLDING OPINIONS

CONTRARY TO STATE DOCTRINES"

The report of the ICHR speaks in its Chapter XI, Page 151 and following ones, of freedom of information in Chile and refers to what it has called "the offense of holding opinions contrary to State doctrines".

Although these matters have been dealt with in the Chilean Government's reply, the CCRCH feels it is advisable to convey its thoughts on the subject to the ICHR, for these thoughts are the ones that will inspire the new constitutional norms and legal principles to be enacted on the subject.

a).- Freedom of Information.-

The new constitutional order will fully guarantee freedom of information even in those matters concerning any type of discrimination affecting the operation or financing of the means for social communication.

The Commission has felt the matter is of such importance that it has appointed a sub-committee of experts, members of which are professors of Constitutional and Penal Law, the Presidents of the Journalists' Associations of Chile and of the National Broadcasters's Associations as well as representatives of the written press and television.

This sub-committee has drafted a report which has been approved by the CCRCH and where the principles and general bases that will inspire the constitutional norms and legal regulation of all means for social communication can be found.

Succinctly, its objective can be described as to the shaping of a democratic conscience, stressing the cultural, human and historic values of the nation. The opinion of the CCRCH is that freedom of expression without prior censorship - the stipulation

notwithstanding that those who commit offenses or abuses remain subject to sanctions as established by law - is a principle that must expressly be consecrated as a basic constitutional guarantee. Freedom of expression is seen not only in the sense of every man's right to express his opinion freely but also to the informed truthfully, objectively and promptly.

b).- The "offense of holding opinions contrary to State doctrines".  
The reply of the Chilean Government states that "holding opinions contrary to State doctrine" is not an offense in our country since nobody is punished for upholding an ideology. Proof of this is that there is still an important number of persons holding jobs in the country's administration who profess marxist ideology but who, however, have been allowed to keep their positions.

What the new Fundamental Charter will say, however, is that political parties who, because of their doctrine or the conduct of their members, are opposed to the democratic regime or to the fundamental principles of the lawful state will be declared contrary to the Constitution and to Law.

This principle can be found in Article 21 of the Constitution of the Federal Republic of Germany and in the Constitutions of other democratic countries.

Regarding this matter and so that the ICHR may have a better idea of the thoughts of this CCRCH we find it advisable to quote below the relevant part of the statement made by its President to the press conference held upon completing its first year of work which we have mentioned earlier.

The President said:-

"The new Constitution will create a modern, dynamic State under Law, with a Government that will be democratic, republican and representative. We are aware that democracy in the world today is in crisis, even

in the great countries that were its cradle. It is our duty to find new formulas for the expression of democracy enabling it thus to respond to present day needs and ensure<sup>the</sup>/ample participation of the organized community<sup>and</sup>/ the social and economic development of the country, based on its own effort and on the advances of technology and science.

Chile, after its bitter experience, will not again commit the naive sin of giving the enemy the tools with which to destroy democracy. The idea that democracy must permit everything is a fallacy and a pitfall set by international communism and into which unfortunately many democrats fall. He who truly loves democracy and the sovereignty of his Homeland does not allow the one to be destroyed and the other to be alienated. Those who do not respect democracy's rules, ignore the dignity of man and his fundamental rights cannot possibly participate in the democratic game.

Illegal associations formed to attack certain patrimonial rights are punished in all Codes of the world. Their danger is even more serious if created for no less a purpose than to go against the essential rights of the individual, of greater value than the right property.

The marxist parties and any other totalitarian **organization** shall consequently be declared outside the Constitution and the Law, for the new Charter shall declare that parties who, because of their doctrines or the conduct of their members, are opposed to the democratic regime or the fundamental principles of the lawful state will be contrary to the Constitution and the Law.

In exchange, the new fundamental text will allow for ample

expression of the democratic mainstreams in the country and will give special importance to the intermediate bodies in society, such as professional and technicians' associations, trade unions,

women's and youth organizations, etc., all of which have an undisputed right to participate in the important decision making processes that decide the fate of their country.

We understand that deep changes must come about in the regime of political parties so that they may play the important role they are entitled to without incurring in the bad practices of the past that resulted in so much harm to the Nation.

In the future the political parties will only concern themselves with the highest and supreme interests of the nation. The new Constitution will bury sectarianism, politicking and demagogy for all times. It will also contain norms to avoid the unnecessary proliferation of political parties and avoid their becoming active in fields outside those that are of their exclusive competence.

#### IV - DESTRUCTION OF ELECTORAL ROSTERS

In Chapter XII of its Report the ICHR refers to this matter and qualifies as " ... an act of tremendous gravity ... " the decision taken by the Government of Chile to declare all electoral rosters void.

After a very cursory analysis of only some of the more superficial aspects of the very serious electoral fraud perpetrated by the Unidad Popular during the congressional elections held in 1973 the ICHR comes to the conclusion that " ... it is not conceivable that in this day and age, with the technical means available, if a choice must be made between eliminating fraudulent registrations from voters lists, of which they are not more than 5%, and totally destroying such lists, the latter method should have been preferred."

The CCRCH, having created a sub-committee of experts for the very purpose of studying - inter alia - the new system for electoral registration, is compelled to refer to this Chapter of the ICHR Report and its very emphatic but mistaken conclusions. In doing so it only

wishes to establish the truth of what has happened in our country and show that because of the nature and circumstances surrounding the electoral fraud, the elimination process was not applicable and the only possible solution was the destruction of the rosters and to start: new ones.

As an initial item for background information it is good to remember that a few days after the last general election held on March 4, 1973 for the reelection of all the members of the Camara de Diputados (House of Representatives) and of half of the Senate, the Minister of the Interior of Señor Allende's government, General Carlos Prats, stated that " ... the chilean eletoral system will not resist another election." A statement which was repeated by all the information and communication media. (El Mercurio, March 8, 1973).

This statement simply recognized that the need to reform electoral legislation was something that could no longer be put off.

The congressional election we have spoken of showed that legislation on voter registration was completely inadequate both because it allowed the officers and partisans of the Unidad Popular Government to stage a spectacular fraud and because of its obsolete method, which may have been adequate at the time it was formulated but was no longer so. Law Nº 14.583 on voter registration has been in force since the year 1925, a period of fifty years, with no change in its structure.

The legislators of the time provided for a system whereby the electoral rosters would be of limited duration. Thus, a time limit was set for them of nine years, so that they could be sorted out and cleaned periodically over reasonable periods of time and thus kept updated with the eliminations of persons deceased,<sup>those</sup>/who had lost the right to vote as a consequence of judicial decision, and, also, with the detection of duplicate registrations.

Decree Law Nº 343 of March 17, 1925 regulated the electoral

registration system for the first time, requiring that the citizen show his identity card upon registering. This legislation did not change in substance. The only change brought to it in subsequent years had, as its only practical purpose, the effect of extending the validity of the rosters. Thus it was that they were first extended from nine to ten years, then to twelve and finally to twenty. (Laws № 4.554, 7.756 and 12.922).-

Only in 1946 was a general new registration called, under above mentioned legal provisions, which entailed a complete renewal of all registers. The registers still valid in 1973 went therefore all the way back to the year 1946. 27 years had elapsed since the time they were started.

A number of efforts were made to go back to the sound initial criteria giving those registers a limited duration, but the opposite happened, because of legislative inertia, and the absurd was reached when Law №. 14.853 of May 1962 declared them to be permanently valid.

This permanent validity of a system which was already obsolete and conceived at a time when registers were kept by hand would inevitably lead to chaos in the electoral registration system in view of the gradual and natural increase in the number of voters and the lack of adequate technical means to control the identity of individuals, a basic element in registration.

A few figures for the increases in registered voters should suffice:- in the year 1957 there were 1.284.159 registered voters in rosters which were still valid, for, as we have said, the only renewal took place in 1946. In 1973 registered voters came to 4.512.559 and in the sixteen years between these dates no change had been introduced in the mechanisms for voter registration.

Now, as for the specific charges made by the ICHR that it would have been simpler to eliminate fraud from the registers rather

than to destroy them, it is necessary to point out that it was absolutely impossible to do so since it implied looking into each and every case, re-identifying each individual, noting the address and checking the fingerprints of four and a half million voters. This procedure would have taken a very long time, much more than the time needed for the establishment of a totally new register.

To do this by electronic means would have required information that does not exist and which, in addition, would have to be absolutely reliable. Who was to supply the list of government printed identity cards given out fraudulently and which permitted individuals to register two or more times? For the most serious cases of fraud were not impersonations of persons dead or absent but rather the thousand of cases of voters registered with false identity cards given out by the marxist employees of the Registro Civil e Identificación. How can a computer system be asked to eliminate the persons who exist only by virtue of false documents? The duplication of identities was amply demonstrated, the most representative case being that of Miguel Enríquez, head of the MIR (Movimiento de Izquierda Revolucionaria - Revolutionary Leftist Movement), who had eighteen identity cards with different identities. Undoubtedly this subterfuge allowed him to vote a number of times. It has been demonstrated beyond a doubt that persons with false identity cards cannot be detected by any computer system, for the information required to investigate such a circumstance, as we have said, does not exist. The only and quickest way was to void the electoral registers and start new ones with a reliable system that can guarantee that the identification procedure is conducted in a serious manner. This is precisely what is being sought with the Rol Unico Nacional (Single National Register).

The frauds committed during the last congressional election

demonstrated by means of serious and thorough studies covered 300.000 registrations out of a total of slightly more than 3 million votes cast. In other words, the fraud came to 10% of the votes and not 5% as stated in the ICHR document. This is a significant mistake. What is more, this 10% of fraudulent registrations was not distributed over all of Chile evenly. It was scientifically and deliberately distributed in the five provincial electoral districts which had to elect Senators and where the Unidad Popular had to obtain the representation it needed to keep the third of **Senate votes** required by the Constitution to block any move to depose Señor Allende. This fraud, though of magnitude, was mainly strategic and conducted with the help of outside experts.

The increase in the national number of voters between the time of the presidential election of 1970 and the one for Congress in 1973 was of approximately 20%. However, in those provinces that had to elect senators and were therefore going to be decisive for the third of the votes in the Senate that were **constitutionally** necessary to stop a move to depose Señor Allende, the increase in registrations came to 40%. This clearly shows the important effect of the fraud in such provinces. It is also advisable to point out -for it confirms all the above - that, in statistical terms, the persons registered between 1970 and 1973 should have been in a large majority illiterates and persons between 18 and 21 as a result of the recent constitutional amendment giving such persons the right to vote. However, a statistical technical study conducted on this matter with a sampling of 20%, which is quite extraordinary since in statistics work is done usually with a 3% sample, showed that the overwhelming majority of voters registered in the last three years were not illiterates or persons between 18 and 21 but persons who could read and write and of more than 21 years of age.

This illustrates the extraordinary magnitude of the electoral fraud perpetrated by the marxist regime of the Unidad Popular and explains the new Government's view of the indispensable need to start a new register, since it was absolutely impossible, in view of the characteristics and varieties of forms of the fraud, to undertake the task of cleaning out the old registers.

In this matter, then, the Report of the ICHR is completely mistaken in its conclusions.

V - MEETINGS WITH CHILEAN LAWYERS

Chapter III, Paragraph B).- Letter b).- Nº 15 (page 65) of the ICHR Report refers to this heading and says that " ... two extended meetings held with Chilean lawyers were very enlightening .." and that during them the lawyers gave the ICHR a detailed account of the " .. obstacles, sometimes unsurmountable, opposed to their professional work when it came to defending persons arrested or on trial, or simply to try and get in touch with them to decide whether they could or not act on their behalf". The Report goes on to say that these statements, in the opinion of the ICHR, all agreed in that " ... the possibilities to act in the defense of the fundamental rights of the persons were substantially limited ... "

It is difficult to find an explanation of how the Report of the ICHR can mention these two meetings with Chilean lawyers and at the same time omit even a passing mention of the two meetings some of its members, on behalf of the ICHR, held with the President of the Colegio de Abogados de Chile (Chilean Bar Association), Professor Alejandro Silva Bascuñán.

The above mentioned Chilean jurist is a member of the CCRCH and has expressed his astonishment at finding such an omission when reading the Report.

Señor Silva Bascuñán has stated to the CCRCH that during the two meetings he had informed the representatives of the ICHR that some isolated cases of possible obstacles put to Chilean lawyers in their defense of arrested persons had been reported to the Association and that he, as its President, had brought such situations to the knowledge of the authorities and that his requests for correction of such situations had been met immediately with a favourable attitude.

Since, in this instance, the ICHR is making charges in connection with Chilean lawyers and because of the very special circumstance of having omitted the opinion of the President of the Colegio de Abogados de Chile and a member of this Commission, it has been felt that it is the duty of the CCRCH to make this a matter of record.

Santiago, December 1974

Enrique Ortúzar Escobar  
President, CCRCH

Rafael Eyzaguirre  
Secretary