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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Letter dated 23 November 1979 from the Permanent
Representative of Chile to the United Nations
addressed to the Secretary-General

I have the honour to transmit to you the attached document entitled "Considerations of the Government of Chile on the examination of the present situation of human rights in the country". I should be grateful if you would have this document circulated as an official document of the General Assembly at its thirty-fourth session, under agenda item 12.

(Signed) Sergio DIEZ URZUA
Ambassador
Permanent Representative

CONSIDERATIONS OF THE GOVERNMENT OF CHILE ON THE EXAMINATION
OF THE PRESENT SITUATION OF HUMAN RIGHTS IN THE COUNTRY

I. PRESENT SITUATION OF HUMAN RIGHTS IN THE COUNTRY

(September 1978-November 1979)

1. There are no accusations of executions, disappearances or abductions.
2. No death sentence has been handed down.
3. The only accusation of torture of which the courts of justice have been seized is one submitted by the Government itself (Ministry of the Interior), pursuant to which proceedings have been instituted, and suspects identified, in respect of the crime of ill-treatment followed by death (case of Alvarez Santibañez).
4. All cases of persons who have allegedly disappeared are brought before the courts of justice, which by law are the only bodies empowered to investigate them. The respective judges, high-ranking members of the bench, have express instructions from the Supreme Court to make exhaustive investigations of each such case. The Executive Power, for its part, co-operates fully with the Courts in the action taken by the latter, and accordingly respects their decisions. Thanks to these measures, such cases are gradually being clarified. The national press reports in detail on the course and development of the proceedings.
5. There are no political prisoners, that is, persons deprived of liberty, at the disposal of the Executive Power.
6. The recurso de amparo (Habeas Corpus) is fully in effect.
7. In those cases in which excesses on the part of members of the Armed Forces and the Forces of Order have been established, the relevant proceedings have been instituted, sentences handed down and penalties applied. The press has reported on these situations.
8. No one has been expelled from the country.
9. Persons whose right to return to the country has been temporarily suspended may apply for re-entry and if their application is unjustifiably denied they may make use of the recurso de amparo. The Supreme Court of Justice recognized this in a recent judgement, accepting such a recurso (July 1979).
10. In the labour field, the rights of association, collective bargaining and election of trade union leaders and the right to strike have been restored. The Governing Body of ILO on 15 November 1979 endorsed the Report of the Committee on Trade Union Freedom, which, inter alia, described the decree-laws on trade unions and collective bargaining as "an important first step in the application of the recommendations of the Investigation and Conciliation Commission".

11. With respect to education, including university education, elections for student leaders have been restored and the new university law, which should enter into force at the beginning of 1980, will confirm the academic freedom of the universities and their Rectors will again be appointed on the proposal of the universities themselves.

12. It should be emphasized that, with regard to the United Nations specialized agencies having specific competence in the field of human rights, UNESCO has received no accusation against Chile concerning human rights within the whole broad range of subjects with which it deals, and ILO has just endorsed the Report referred to in paragraph 10 to the effect that the new labour legislation is an important first step in the application of the recommendations of the Investigation and Conciliation Commission.

13. The regional body, the Organization of American States, has stated in a resolution adopted at its most recent General Assembly, held at La Paz, Bolivia, in October 1979, that in Chile restrictions on human rights persist and has urged the Government to intensify its efforts to normalize the situation.

14. In the light of the foregoing, it is entirely inappropriate to maintain that the human rights situation in Chile has in no way improved.

II. CONSIDERATIONS WITH RESPECT TO THE PROCEDURE WHICH IT IS SOUGHT TO APPLY TO CHILE UNDER RESOLUTION 11 (XXXV) OF THE COMMISSION ON HUMAN RIGHTS

1. Chile has always recognized that the United Nations has competence with respect to the promotion and protection of human rights on the basis of general and universally applicable procedures and of respect, inter alia, for the principles of the legal equality of States, sovereignty and co-operation which are embodied in the Charter of the United Nations.

2. However, and by way of exception, it agreed in 1975 to the establishment of an Ad Hoc Working Group which would, after a visit to its territory, issue a final report, after which that Group would cease to exist, as specifically stated in resolution 8 (XXXI) of the Commission on Human Rights, by which it was established.

3. The visit in question finally took place in July 1978, after intensive negotiations which made it possible for an agreement to be reached between the Government of Chile and the Ad Hoc Working Group, an agreement which took into account on a minimum basis the procedural requirements which Chile had been insisting on since 1975. At the conclusion of the visit the Ad Hoc Working Group expressly indicated that the Government of Chile had granted it all the facilities which it required for the complete fulfilment of its mandate. The Government of Chile scrupulously fulfilled the obligations it had undertaken, whereas the same cannot be said of the Ad Hoc Working Group, for it gave little or no weight to the background information made available to it by the Government of Chile and failed to indicate that it did not find a pattern of mass and institutionalized violations of fundamental rights, which was the basic objective of its mandate; thus the report suffered from an obvious imbalance, which justifies us in calling it unfair.

4. However, despite the fact that Chile fulfilled its undertaking, the Ad Hoc Working Group, composed of Mr. Allana, Mr. Benites, Mr. Ermacora, Mr. Dieye and Mrs. Kamara, has only officially ceased to exist. The fact is that, through resolutions of the General Assembly and the Commission on Human Rights, it continued its activities with respect to Chile under various designations: Mr. Dieye was appointed Special Rapporteur, Mr. Ermacora was appointed as an expert to study the situation of persons who may have disappeared, Mr. Allana, Mr. Benites (who subsequently resigned) and Mrs. Kamara were appointed Chairman and Trustees respectively of a United Nations Trust Fund for Chile. In other words, instead of the Ad Hoc Working Group ceasing to exist, two new ad casum procedures and one special procedure were introduced, all three of them exclusively for Chile, involving the same persons who had formed the original Ad Hoc Working Group and following the same procedure.

5. Chile, since May 1975, has consistently been calling for respect for the Charter of the United Nations, in particular for the principles of the legal equality of States and of the sovereignty of States duly harmonized with the principle of co-operation; in other words, the application of procedures of a universal character, which are contemplated in the norms prevailing in the activities of the United Nations. Consequently, it has always been guided by legal rather than political norms.

6. The ad hoc procedures which are being applied to Chile, on the other hand, are so lacking in seriousness that they do not even respect themselves, as is demonstrated by what has happened in connexion with the experts appointed to study the cases of persons who have allegedly disappeared.

In resolution 11 (XXXV) of the Commission on Human Rights the Chairman was authorized to appoint as experts in their individual capacity Mr. Felix Ermacora and Mr. Waleed M. Sadi to study, in conformity with the modalities set forth in resolution 8 (XXXI) of the Commission of 27 February 1975, the situation referred to in the preceding paragraph.

Consequently, in accordance with the modalities referred to in resolution 8 (XXXI), the number of experts appointed was two, and therefore the relevant report should of necessity have been signed by both of them, regardless of whether they were in agreement with each other. In the event, only Mr. Ermacora undertook the task and he alone signed the report, with the result that the resolution in question was clearly violated.

7. By virtue of the foregoing, Chile has a legitimate right to demand that it be treated in accordance with law, that is, in accordance with norms of universal validity which reflect the principles of the legal equality of States, their sovereignty, and co-operation. Both its true situation with regard to the matter of human rights, stubbornly disregarded by the ad hoc bodies, and the unjust treatment to which it has been subjected until now fully justify its position.

8. Chile, furthermore, calls for fulfilment of the undertaking to which the Government of Chile and the United Nations committed themselves as indicated in

resolution 8 (XXXI) of the Commission on Human Rights, to the effect that the Ad Hoc Working Group, after making its visit to Chile and submitting its report to the General Assembly, would "cease to exist". Strict compliance with resolution 8 (XXXI) of the Commission on Human Rights requires that the General Assembly should cause the Ad Hoc Working Group to cease to exist de jure and de facto. Only then will it be possible for Chile to renew its co-operation with the United Nations in the matter of human rights.
