

## PART TWO

### Chapter One: Political Context

This chapter consists of two sections, both dealing with ideas and events in the political life of the nation which the Commission believes are related to its task.

The first section discusses the situation leading up to September 11, 1973. It is not the role of the Commission to take a stand on the events that took place on that date and immediately thereafter, that is, on whether they were justified or not, or whether there was or was not some other way out of the conflict that led to those events. There can be, and indeed are, various opinions on these issues, and quite legitimately so.

The state of the country at that time can be fittingly described as one of acute crisis in our national life. That crisis led to the destruction or deterioration of numerous points of consensus among Chileans on a series of institutions, traditions, and shared assumptions concerning social and political coexistence, which served to safeguard respect for human rights. Hence it is absolutely essential that we understand the crisis of 1973, both in order to understand how the subsequent human rights violations we were charged to investigate came about and to prevent their recurrence. In no way, however, is this examination of the crisis to be understood as implying that the 1973 crisis might justify or excuse such violations in the least.

Our study of the crisis will deal basically with its immediate causes, especially with those of a political and ideological nature. The Commission is well aware that the crisis had deeper social and economic roots, but to explore them any further than simply mentioning them would have meant going beyond its task and beyond the direct object of the present chapter. Nevertheless, we must point out that the ultimate source of the crisis is to be sought in the struggle between different and opposed social interests throughout the present century within the context of representative government. However, clashes over doctrines and attitudes which have a bearing—directly or indirectly, but almost immediately—on the issue of human rights take place in the realm of politics and ideology.

With regard to the second section, it is almost unnecessary to point out that the events of September 11, 1973 brought about a profound change in the country's political system—in principles, structures, and institutions, as well as in both pro government and opposition ideologies—and in its individual and collective actors.

The basic features of the change remained in place until 1988, for although the Constitution went into effect in 1980, it established an eight-year transition period over which it would fully enter into effect. This period was governed by a number of transitory articles which generally and indeed in many specific features are a faithful reflection of the 1973-1980 system.

The issue of concern to the Commission, which is discussed in the second section of

this chapter, is how the political system between 1973 and 1988 could be conducive to the serious human rights violations that are the subject of this report. It is not our role to take a stand on other positive or negative features of that regime, nor on its accomplishments or failures. On these matters there can be, and indeed are, legitimate disagreements.

#### *A. Situation in Chile leading up to September 11, 1973*

The 1973 crisis may be generally described as one of sharp polarization in the political positions of the civil sphere into two sides-government and opposition. Neither side was able (and probably did not want) to arrive at a compromise with the other, and there were sectors on both sides that believed armed confrontation was preferable to any sort of negotiation.

This is not to say that all Chileans were so polarized, nor that there were not to be found on both sides those who favored negotiation over confrontation. Nevertheless, there seems to be no doubt that whatever may have been the reasons, polarization became the dominant feature of political language and interaction, and the more violent sectors in that polarization gradually came to the fore.

##### 1. Origins of polarization

As has been pointed out already, the ultimate source of this crisis is naturally very complex and is open to a number of interpretations. It is not the role of the Commission to judge such interpretations or delve further into them, but it should point out those factors which it believes were most important in generating the polarization and crisis, and hence its painful and usually unnecessary consequences as well.

a. Starting in the 1950s, Chile, like many in countries in Latin America, witnessed the insertion of its domestic politics into the superpower struggle, the so-called "Cold War," which, given the impetus of the contending interests and ideologies around the world, by its very nature entailed a polarization. Chile felt the impact of the Cold War, perhaps only slightly at first, but very forcefully in the 1960s with the Cuban Revolution, which sought to resolve the problems which it believed to be common to all Latin America as a result of military dictatorships and serious economic and social inequities. As will be observed below, the Cuban Revolution overflowed the borders of its own country and became a chapter in the "Cold War," pitting Cuban-Soviet "insurgency" against North American "counterinsurgency"-each with its local allies-throughout Latin America. The result was an extreme polarization, in which the two superpowers were actively intervening in the political life of the various Latin American countries. Our country was no exception, nor was any sector in our national political life entirely free of such influences.

b. Almost simultaneously, this polarization received a second impulse

when parties and movements became heavily ideological under the influence of worldwide intellectual trends. A sign of that ideologizing was the fact that parties and movements to a greater or lesser extent proposed complete models for society, and they were unwilling to admit any but the most minimal modifications, postponements, or negotiations of those models. Since, however, these movements and parties did not actually have enough political power to impose such models, the practical result of their becoming more ideologized was a heightened polarization.

c. Nevertheless, political life continued to make its way within at least an apparent shared adherence to the democratic rules of the game. Most of the population supported democracy, despite the numerous and varied issues in dispute. Over the course of the 1960s this adherence began to wane.

In certain political sectors the notion that force was the primary and indeed only way either to change or maintain-as the case might be-the favored model was gaining ground. By the same token, these same sectors criticized and lost faith in democratic procedures, namely the electoral route to power, and in its institutions, such as parliamentary rule. Such tendencies were to be found on both the "left" and the "right," as they were conventionally called.

For some sectors of the left, embracing a policy of armed struggle was largely related to the Cuban Revolution, which made the "armed path" paramount in the struggle to take power. Indeed, one of its most outstanding figures, Ernesto Guevara, whose ideological influence and personal following was enormous throughout Latin America, declared and argued that armed struggle was the only path. In his view, any other routes, such as democratic or electoral ones, political proselytizing, organizing to pressure for change, parliamentary approaches and so forth, were merely complements of armed struggle; otherwise they were sheer illusion.

The first Chilean political group to accept Guevara's ideas was the MIR (Revolutionary Left Movement) which was founded in 1965 and in 1968 went underground. It carried out armed actions from underground and was working toward taking power through insurrection. It did not join the Popular Unity, and it underestimated the 1970 electoral campaign which was to end with the victory of the Popular Unity.

Significant sectors within the Popular Unity held to the same ideology as that of the MIR or similar to it. Certainly the Socialist party officially adopted it at the Congress of Chill n (1967) and reaffirmed it in the Congress of La Serena (1971) when it was in power as part of the

Popular Unity. The majority elected to the Central Committee and the General Secretary firmly believed that armed conflict was inevitable.

It is true that for more than thirty years the Socialist party had been fully involved in democratic politics. Moreover, even after 1967 there were strong tendencies within it in this direction. It is also true that its members were far less engaged in political violence than were those of the MIR. Yet it is also true that the political language and actions of the party brought it closer to the latter than to the old Socialist party. The official wing of MAPU (United Popular Action Movement) and the Christian Left gradually took similar positions during the 1970-73 period.

The picture would be neither complete nor fair if we failed to note that on the left and particularly in the Popular Unity there were other sectors that rejected the armed path either on principle or in view of the political and social conditions at that time (the "objective conditions"). Such was the case of the Communist party, the Worker and Peasant MAPU, most of the Radical party, and President Allende personally, whose "peaceful way" or "Chilean way," a new kind of Marxism-Leninism, as he saw it, absolutely ruled out the use of violence. However, during the later stages of the crisis (1970-1973), these sectors found themselves pushed aside, overwhelmed, and sometimes seduced and drawn in by those who argued that armed conflict was inevitable.

Likewise some groups on the right either officially or in their actual behavior supported the use of weapons as a way of resolving the crisis, at least toward the end. One of these, the so-called "Tacna" group, which published a newspaper under that title, openly advocated a military coup. The same was true, in practice if not in theory, of leaders and activists of the Fatherland and Liberty Nationalist Movement, who were involved in the failed effort at a military uprising called the "tanquetazo" [abortive tank attack on La Moneda] on June 29, 1973. Later that year they were still preparing for a further attempt when the events of September 11 occurred. The remaining sectors of the right were not involved in any similar military action, including the decisive one. Nevertheless, within the right-although not all of it-there was always a mindset favorable to resolving certain problems (those of a social nature, for example, or the problem of communism) by means of force. Moreover, an incident such as the so-called "Schneider plot" in 1970 [murder of army commander-in-chief General René Schneider intended to provoke a coup and prevent Allende from taking office] and the post-September 11 behavior of most right-wing leaders seem to indicate that a considerable proportion of them and of their followers likewise favored a violent solution, at least in the final moments of the 1970-1973 crisis. To a lesser extent the same can be said of centrist sectors.

Whatever the relative weight of these confrontational groups within the right and the center, they became increasingly important in the final period, as was the case on the left. We should also mention the regrettably unsuccessful efforts made by more moderate sectors to encourage compromise between the government and opposition, such as contacts sponsored by the Catholic church.

## 2. Final phase of polarization and crisis

Starting in 1970 such phenomena took a sharp and violent turn, partly out of their own natural thrust-it was logical that those who argued that armed conflict was necessary would tend to provoke it or at least not flee from it-and partly due to new factors, all of which were related to the Popular Unity's rise to power and government.

1. The Cuban Revolution and the "Cold War" again contributed indirectly to hastening our crisis. In that context the victory of the Popular Unity and President Allende in 1970 was regarded as the triumph of one of the contending superpowers, the USSR, and as a defeat for, and threat to, the other, the United States. Hence the United States immediately planned and engaged in a twofold policy of intervention in Chile's internal affairs: in October 1970 to prevent Salvador Allende from coming into power (the so-called "track one"), and when that failed, to destabilize the new government economically ("track two").

2. These developments are directly related to the devastating economic crisis Chile underwent starting in 1972, which was an integral and very important part of the broader crisis culminating in 1973. The economic crisis brought unprecedented levels of inflation, the breakdown of production and acute shortages of basic goods, a disastrous situation in foreign trade, and a gradual paralyzing of the whole economy.

It is not the Commission's role to analyze these events, but we will note that the economic crisis involved an interplay of factors of economic management, and others of a more political and social nature. These latter included the poor performance of companies and lands under state ownership or in the process of being taken by the government, the United States pressure already mentioned ("track two"), which was aggravated by the dispute between the two countries over the nationalization of copper, and the strikes organized by the opposition, especially in October 1972.

Whatever the reasons for the economic crisis, it seems beyond question that it played a key role in bringing about the situation that led to the events of 1973.

3. Although, as we have noted, the opposition political parties were not so clearly on the side of the "armed path" as were some sectors of the government, they used their political bodies (parties and the congress) and social organizations (business and professional associations) to try to force the Popular Unity to negotiate, postpone, or give up its model of society, forcing it to choose between doing so or facing an ungovernable country.

"Armed path" and "ungovernability" thus came to symbolize mutually exclusive notions of society; neither could prevail over the other democratically, and yet neither was willing to negotiate with its adversary and thus open the way to a peaceful solution.

4. Nevertheless, the political emotions of that period do not constitute a sufficient explanation for the fact that business, occupational, and professional organizations as well as opposition parties-the grassroots more than the leadership-came to such a point of extreme rebellion: strikes intended to make the country ungovernable. Moreover, these sectors felt abandoned by the mechanisms of the state whose purpose was to protect their rights. They felt that these institutions, the National Congress, the General Comptroller's Office, and the judiciary, were entirely unable to halt the violation of those rights.

Was that truly the case? The Commission would like to point to some circumstances that could seem to justify such fears. Such circumstances expanded and intensified after 1970:

\* There were repeated violations of property rights in the form of "takeovers" (illegal occupations) of rural, urban, and industrial properties. In most of these cases the owners received no help in recovering their ownership nor were the perpetrators punished. Administrative authorities very often failed to comply with court orders of restitution.

\* In these "takeovers" and "recoveries" (the owners' violent reoccupation of properties that had been usurped) it became common to see the armed strength of private citizens replace the public police forces and to do so with impunity. The official forces found themselves administratively blocked from acting during the "takeovers" and tended to take a deliberately passive stance toward "recoveries."

\* The events just described became more and more frequent throughout the 1970-1973 period, creating an overall picture of disorder in which the rights of private citizens and the specific function of the police were ignored.

\* These developments often led to bloodshed affecting both sides: killings, serious wounds, and suicide, as well as kidnappings and ill treatment. Such crimes were handled politically, however, rather than in the court system. Indeed at least one such case, the murder of a MIR student by a Communist student on the campus of the University of Concepción, was publicly declared to be a political problem rather than a criminal one and in fact no sanction was applied.

\* In the process of nationalization or of the establishment of the "social area" of the economy (in farming, industry, and large-scale trade) the Popular Unity, lacking the legislation required and the parliamentary strength that would have enabled it to make it a law, used existing legislation to the fullest, distorting the meaning of the text and even going beyond it. Those affected regarded this as an abuse and a way of getting around the will of the majority of the electorate and of the Congress.

\* The government claimed that this situation was simply the fruit of resistance to change by entrenched interests.

The Commission understands that all these points can be interpreted in diverse and contradictory ways. It also understands that no side had a monopoly on violence, and that violence flared up because the extent of polarization already underway encouraged each individual to believe he or she was overstepping the bounds of the legal framework only in response to, and defense against, someone else who had already done so. In practice, however, the cumulative effect of these circumstances was that all sectors directly harmed by the prevailing disorder and illegality came up with a common and unvarying explanation: that the administration was not protecting their rights and that when these rights were violated they could not find support in the police, the judiciary, the General Comptroller's Office, and so forth. They concluded that the only defense was self-defense, and thus spread the idea of irregular pressure on the government (strikes) and likewise the idea of irregular armed groups in both city and countryside to defend the ownership of properties and companies and their own personal security. Such ideas unquestionably sank deep roots in small and medium property owners in rural areas and the cities, and also in modest business people in industry, trade, transportation, and so forth and in professional associations. However, such private opposition militias were inevitably seen as leading to a coup, and so they sparked the formation of pro-government paramilitary groups. Moreover, extreme groups of any sort do not need a reason or pretext for becoming armed, and so the fever to do so spread throughout Chile.

5. Finally, in describing the final phase of the 1970-1973 crisis, we cannot ignore the role of the media. Some media, especially certain

widely read newspapers on both sides, went to incredible lengths to destroy the reputations of their adversaries, and to that end they were willing to make use of all weapons. Since on both sides political enemies were being presented as contemptible, it seemed just, if not necessary, to wipe them out physically, and on a number of occasions there were open calls for that to happen.

All these factors taken together, before and after 1970, led to a climate that by 1973 was objectively favorable to civil war. Both the climate and such a war entailed accepting the possibility and perhaps the inevitability that innocent adversaries would be subjected to physical and moral suffering. Such was seemingly the price to be paid for what in that climate of civil war was assumed to be at stake: a model of society which each side claimed was the only one acceptable; the preservation of basic and inalienable rights; life itself. "It's us or them"; "Kill or be killed"; "The cancer has to be rooted out"; "You can't make an omelette without breaking a few eggs." Such common expressions at that time reflected deep feelings which could do nothing to aid peaceful coexistence. Instead they were paving the way for fear which engenders hatred and hence brutality and death.

As September 11, 1973 drew near, these fruits were already being harvested. Every new bomb set off, every political murder or armed clash for political or social reasons resulting in death and injury had a twofold effect: it further exacerbated the climate of civil war and it made violence and death ever more routine. Consequently the moral dikes of society gave way, and the path was opened to further and greater excesses.

### 3. Role of the armed forces and the policy

Until they stepped in decisively in September 1973, the armed forces and police, notwithstanding the ideologies and arguments that were stirring in their ranks, stayed out of the crisis and remained within the role of professionalism, discipline, obedience to the civilian power and political neutrality assigned to them in the Constitution. Nevertheless, the very exacerbation of the crisis—slowly but surely, continually and increasingly—drew them away from this role. We list some of the basic reasons why that was the case.

In addition to these causes, it is quite likely that the ideological current present within the ranks of the armed forces and police which we are about to discuss was impelling them toward taking power. An authoritarian regime would be useful to this tendency, in order to pursue its distorted notions of counterinsurgency and national security. Circumstances favored the officers who subscribed to that doctrine and were unfavorable to those, probably the majority, who would have preferred to continue in the traditional and constitutional role of military



institutions.

Such reasons were:

\* The intensification of the crisis brought the dispute raging within civilian circles into the midst of the officers, threatening to divide them just as civilian circles were now divided, and thereby to split the armed forces and police.

It was only such a division that could transform the "climate" of civil war into actual war. It is widely accepted that civil war does not break out as long as it is only civilians who are clashing with one another, since they do not have the weapons needed if a simple armed confrontation is to escalate to the level of a war. In order for that to happen, substantial sectors of armed forces and security forces, that is, professional soldiers, must be present on each side, and hence the military and security forces have to split. They therefore had to consider the possibility that their failure to act might entail a greater evil, civil war, as a result of their own division.

By hindsight, it is easy to point out the alternative route: to have remained both united and within the bounds of the Constitution. Nor can the practical feasibility of that alternative be simply ruled out. At that moment, however, the top leaders had to weigh the consequences of failure and whether the lower and mid-level officers could have maintained a unity that the civilian world had shown itself unable to maintain.

\* The magnitude of the crisis and particularly the possibility of civil war, which revealed the country to be weakened and divided, was whetting foreign appetites [a reference to longstanding territorial claims by Argentina and Peru]. The very security of the country that the army and police are specifically enjoined to protect was in jeopardy. Over the next few years and until the end of the decade, it became unquestionably clear that the possibility of conflict with neighboring countries was not merely hypothetical.

\* The "armed path" and "ungovernability" furthermore meant, as was demonstrated every day, an ongoing and increasing disturbance of public order, internal security, and the functioning of the economy in its most fundamental aspects, such as basic food supply. The armed forces and security forces regarded much of this—indeed all of it, when viewed within a very broad notion of national security—as their responsibility.

\* The "armed path" and "ungovernability" led to a proliferation of

paramilitary groups, as we have already mentioned. These tended to be presented, or to present themselves loudly, as having many members, and being well equipped and well trained, and quite effective. The armed forces and security forces could not verify such claims and out of prudence had to accept them as true.

By hindsight, it seems clear that these groups did not have the military capability they claimed, but of course that could not be taken for granted before September 11, 1973. It is possible that by infiltrating these groups military, naval, and other intelligence bodies could have come to a more realistic assessment of the danger they represented, but other information suggests that would not have been the case.

Moreover, besides claiming to be ready for military struggle, some of these groups criticized the armed forces and police forces directly; they urged that they be dissolved or radically changed; they declared that they planned to infiltrate them or even that they had already done so; they urged lower ranking officers and troops to disobey orders.

Certainly they were doing so in a context in which it was assumed that a military conspiracy was already underway. This is simply one more indication that in a crisis as broad as ours in 1973 the fact that both sides may be partly correct only stokes the fires of contention and leads to the self-fulfillment of each side's gloomy prophecies, even though a good portion of the population does not sympathize with such extreme positions. In any case it would have been illusory to expect that the armed forces and security forces could see in these circumstances anything but a threat to break their monopoly on weapons and their internal unity, once more conjuring up the specter of division and civil war.

\* We must also recall that our armed forces and police forces had a continual and longstanding tradition of anticommunism, dating practically back to the Russian Revolution. This anticommunism was deliberately reinforced for the sake of the "Cold War" in the training the United States systematically provided to Latin American officers in its own country and in Panama within the framework of inter-American bodies and treaties. After the Cuban Revolution, military anticommunism was directed at the extreme left political groups which looked to that Revolution for inspiration. These were the very groups that seized and spread in Chile an ideology of armed struggle; of showing repugnance for the armed forces and security forces by identifying them with the bourgeoisie and the oppressive state; of proclaiming that they were to be destroyed or transformed through revolution; of boasting that they intended to infiltrate them or indeed had already done so; and of calling officers and troops to mutiny.

\* Moreover, it is important to keep in mind that for complex reasons that cannot be developed here, the armed forces and security forces were isolated from the rest of society. It is therefore likely that the proposals and invitations from the revolutionary left that we have just mentioned and the information about uprisings, and about weapons being gathered and hidden and so forth, prompted in them an anger and a fear that such isolation only intensified.

\* Finally, as the crisis gained momentum, many civilians were more and more insistently calling on the armed forces and security forces to intervene, even though to do so would have been unconstitutional. Obviously that call came primarily from the opposition and assumed all kinds of forms, both open and covert, and even insinuations that such forces were cowardly for not acting. Such exaggerations aside, we should recall that even within the more moderate opposition and among political figures with a long and distinguished tradition of democracy, one commonly heard the notion that the country needed a brief but authoritarian military "interregnum" in order to reorganize its political life. Furthermore, neither the Popular Unity government nor President Allende (except the Socialist party and groups related to it) were opposed to a political and institutional intervention by the armed forces on their own behalf. Their position could hardly be reconciled with the Constitution, no matter what norms or precautions might be adopted.

Thus

\* With the support of the opposition, the Chamber of Deputies approved the well-known solemn agreement of August 23, 1973, which served notice that unless the government stopped committing its alleged constitutional and legal violations, the military ministers would resign their posts.

\* On two occasions (October 1972 and August 1973) the government, and indeed the president himself, issued an invitation to important representatives of the four branches of the armed forces and security forces to join the cabinet. On the second occasion, the fact that the four ministers were the four commanders-in-chief of those branches left no doubt of the president's intention, namely that they should join the government and institutionally share the administration of the country. The implications were not lost on the Socialist leaders and on the extreme left which harshly criticized the head of state. Some of them said that such a ministry would amount to an implicit "soft coup."

\* In 1970 the Congress had passed a Weapons Control Law that offered the military institutions very sweeping and even dangerous

powers to search public and private places, independently of civilian authorities.

\* Nevertheless, it cannot be said that these various factors which led the armed forces to intervene in September 1973, but which were largely not their doing, were the only causes of that intervention. No doubt for most of those forces they were the only reasons. However, the subsequent events to which we now turn leave no doubt that there was also an ideological tendency within the armed forces and security forces. Alongside some rather vague and simple notions about how the country should be organized politically, socially, and economically, that tendency emphasized an extreme and mistaken idea of antisubversive war for the sake of national security.

#### *B. The 1973–1990 political framework and human rights*

On September 11, 1973, a "military regime," as even its creators were quick to call it, came into being in Chile. Its juridical structure is the topic of the next chapter. Here we will look at its collective actors, the ideologies from which they took their inspiration, the political structures (or structures related to politics) they set up, and the impact of all of these matters on human rights.

##### 4. The armed forces and police as collective actors in politics

The government junta, which represented the armed forces and police as institutions, first took over the executive power (Decree No. 1) and then the constituent and legislative powers (Decree Law No. 128). The judiciary formally retained its legal functions and independence, but that appearance hid a very different reality because: a) most members of the Supreme Court sympathized with the new regime, and b) it was almost idle to supervise the legality of those who could change it at will even in constitutional matters. This latter circumstance became clear in the rapid legal reforms which tended to dissuade the courts from really examining anything related to the freedom of persons.

The fate of the other monitoring agencies in the country on September 11, 1973, was similar to that of the judicial branch. The General Comptroller's Office was retained at first simply in order to register laws and later to play its traditional role. It shared, however, the same crucial defect as that of the courts, namely, that those "controlled" could change at will the rule they were being accused of not observing. In actuality, the Comptroller General's Office never had problems with the military regime, and the only time its highest official rejected a ruling of vital importance to the military (the 1978 "national consultation")<sup>10</sup> that highest

---

<sup>10</sup> National Consultation of 1978: The military government held a plebiscite to reject the United Nations General Assembly resolution of December 16, 1977, which condemned Chile for its

official was quickly persuaded to resign. Congress had been closed and dissolved at the very moment the junta assumed power (Decree Law No. 27). Finally the media (press, radio, and TV channels) were subjected to a very thorough censorship which later became self-censorship. No new media could be created without the express approval of the government.

Thus the military regime, that is, the armed forces and police as political actors, came into being with extremely broad powers, such as had been unknown in Chile except during those periods when they themselves had played a similar, albeit lesser, role: 1924-1925 and 1927-1931.<sup>11</sup> In exercising this power, the armed forces had the obvious advantages of the unity that they had just shown in their political and military action, and their top-down command structure, which enabled them to move quickly, decisively, and firmly. Finally, the armed forces and police forces enjoyed a good deal of public support. That support came from their convinced and enthusiastic supporters, from those who believed there was "no other way out," and from those who had no clear ideas of their own but wanted to "live in peace," free of the shocks and hardships of the final days of the regime that had been overthrown.

However, as they became a "political regime," the armed forces and police were also beset with serious internal contradictions, which prior to September 1973 had not been so obvious or important:

1. They were not clear on just what their course of political action was to be. It had been one thing to overthrow a regime they saw as inviable; replacing it was something else. Everyone, or almost everyone, had agreed on the former, but the latter prompted different questions and different kinds of answers. What was the aim of the military regime?: to rapidly restore Chilean democracy, to carry out a deep restoration, or to establish a new democracy in Chile, as defined in various ways? One clear sign of such doubts was the initial justification given for September 11. The overthrown regime was criticized for violating the constitution; and yet there was talk of an entirely different country, one whose Chilean identity was to be restored.

2. All of this was connected to how long the military regime was to last, a topic much discussed by top military officers. Some saw the period as

---

violation of human rights, and to endorse President Pinochet. The government stated that the referendum was supported by 75 percent of the voters; however, it was discounted by most of the center and left-wing political sectors.

<sup>11</sup> 1924-1925 and 1927-1931: In 1924 the Chilean military toppled the civilian government of Arturo Alessandri. During the latter period, military officer Carlos Ibañez assumed power and acted in an authoritarian manner similar to that of Portales a century earlier. Ibañez showed little tolerance for liberalism and subordinated the National Congress.

short, quite short (two, three, or four years); others saw it as medium term; for others it should be as long as necessary, and as required by the deep changes that had to be carried out ("goals, not deadlines"); yet others saw the military regime as permanent, and regarded it as a planned and definitive involvement of the armed forces and police in governmental and administrative functions.

3. Nor was it clear who was to represent the military in the new regime. Would all branches of the military be equally represented? Or would the most powerful and oldest branch, the army, dominate? Would collective government in the form of the junta continue, or would it move toward one-person rule? If the latter was to be the case, would it rotate among the various branches of the military and the police, or remain fixed?

4. Finally, the officers differed widely in their political ideas. Some had never been concerned about "these matters," and looked upon politics and politicians with a mixture of mistrust, distance, and impatience. Among such officers there was a good deal of inclination toward authoritarianism and nationalism, vaguely referred to as the Portales creed,<sup>12</sup> often very imprecisely expressed. Others sympathized with the right, or with the centrist Radicals and Christian Democrats. There were even some who harbored Socialist ideas, although they were almost never connected to the Chilean political parties that upheld such ideas. No doubt a very large portion still subscribed to the norms of non-involvement in politics as contained in the so-called "Schneider doctrine," named after the former commander-in-chief, but they were not influential at that moment, given the situation of the nation and of the military before and after September 11.

Within this confusing ideological panorama, however, there was one group in the military, basically made up of army officers, which acted in secret and had to intention of seeking the spotlight. This group made its presence felt through its actions rather than its words-although the members of the group often denied those actions. It was remarkably coherent in ideology and action, and had a decisive impact on human rights.

This group was reflected in the "colonels' committee" which functioned in the Military Academy for a few weeks after September 11, 1973, in the "DINA Commission" (November 1973), and in DINA itself, which was formally created in June 1974. When the DINA was abolished in 1977 the group lost power and influence, but not entirely. We cannot say,

---

<sup>12</sup> Portales creed: Diego Portales was a decisive figure in establishing a strong, centralized presidential state. His influential thinking followed the chaos and anarchy of the post-independence period. The "Portalian State" was institutionalized in the Constitution of 1833.

however, that it was only this group that subscribed to this underlying ideology, since other sectors of the armed forces and police also subscribed to it before and after 1973.

What was the ideology from which this group drew inspiration? We can only deduce it from their behavior and from the influence they received from outside the country, since it was never formulated theoretically, or at least no such formulations have come to light thus far.

To begin with, let us note that some believe this ideology derives to some degree from the war of decolonization in Algeria but that it took definitive shape as a result of the Cuban Revolution and of the call to extend this revolution throughout Latin America. The main exponent of that call was Ernesto Guevara, who said that it should be extended by establishing guerrilla focos, ["pockets," literally foci] which were to be highly trained in political doctrine as well as military matters. These focos were to be established in rural areas. Followers of Guevara, especially Brazilians and Uruguayans, added that such focos could also be urban. Actually some were of the first type (such as that of Guevara himself in Bolivia) and others were of the second (those of Marighella in Brazil and of Sendic and the Tupamaros in Uruguay).

Word concerning such focos, and their actual appearance on the scene, together with the idea that they were designed and planned for all of Latin America-which was generally true-led a number of governments, and especially that of the United States, to start a counterinsurgency drive. Just like the focos, such counterinsurgency was both local in nature in each country and centralized through a degree of coordination between all Latin American countries. The United States took charge of the overall coordination, and to that end it took advantage of the fact that generations of officers from the various Latin American countries were passing through its military training schools year after year.

Counterinsurgency was certainly a technique, that of armed struggle against the urban or rural enemy guerrilla fighter. Underlying it, however, there seems to have been hidden an implicit doctrine or philosophy, one that was not necessarily shared by all the instructors, let alone all the students, although events prove that it influenced many of the latter.

Within that counterinsurgency doctrine or philosophy, the following points are relevant to the topic of human rights:

- \* Guerrilla warfare is not a minor matter as its name implies [guerrilla = diminutive of guerra, "war"] but is a genuine war;

- \* This war is not just that of each country against its own insurgents,

but is likewise a continental war led from Cuba, and more remotely from the USSR, aimed at destroying the institutions of the free world and the West, and making all of Latin America a satellite of the Soviet empire;

\* This genuine war, guerrilla warfare, is also hypocritical because it is undeclared and where necessary is even explicitly disavowed; moreover the governments that promote it deny that they are in any way responsible for it;

\* Guerrillas show no respect for any laws of war nor of morality: they kill treacherously, kill prisoners, torture and hurt innocent people through terrorism, and senselessly and uselessly destroy productive property, and so forth;

\* Governments must understand how dangerous the guerrillas are and respond to that danger by means of counterinsurgency on the continental as well as the local level.

\* Counterinsurgency must confront guerrilla warfare with its own methods lest it place itself at a disadvantage, for the fundamental values of the nation, the state, society, and so forth are at stake.

Counterinsurgency doctrine was to one degree or another reflected in the information and practice received in training sessions for antiguerrilla warfare, such as the secret nature of operations; "interrogation techniques"; education in "special" forms of fighting and killing and in how to lay ambushes; and "survival" training sessions, which often included actions that were cruel or degrading to one's own dignity. All this gradually accustomed the students to the fact that ethical limits were receding and diminishing, sometimes to the vanishing point. Paradoxically, however, counterinsurgency had been devised to save the very ethic which its actions-intended to respond to purported similar actions by the guerrillas-denied. Hence two new justifications were employed to round out the doctrine. One was the notion that the counterinsurgent, the one combatting the guerrillas, was a kind of hero who was sacrificing not only his physical life, if necessary, but his moral integrity so that others might enjoy that integrity and the benefits provided by a free society.

The other justification was a distorted concept of national security, which as a supreme value was regarded as being above ethics. This amounted to a revival of what used to be called *raison d'etat*: once again in extreme cases (which government authorities could themselves appraise) the rights of individuals could be violated by reason of an alleged general interest.



Armies, police, and security forces in a number of Latin American countries were engaged in this kind of counterinsurgency during roughly the same period. Thus it is clear that such counterinsurgency campaigns had a common origin. Moreover, connections between the various counterinsurgency operations were unusually strong, and they had organizations and operations in common. The details, insofar as they related to the DINA, will be found in Part Three, Chapter Two ("Overview 1974-August 1977") of this report.

5. The armed forces, the security forces, and the DINA group  
By the "DINA Group" we mean the group of army majors and colonels that began operating in the Military Academy on September 11, 1973 (and perhaps previously in embryonic form in the Military Engineers Regiment in Tejas Verdes). The group later became the DINA Commission, which in turn became the DINA itself, as has already been stated and will be studied in greater detail in Part Three, Chapter Two.

From the outset this group demonstrated a great deal of cohesion and boldness on the part of some of its more outstanding members, as will be clear further on when we look at the journeys a high level military delegation made up and down the country in September and October 1973, leaving in their wake a high number of merciless clandestine executions that were utterly illegitimate and unjustified.

Such are the general features of this group; they are the same as those of all extreme or perverted counterinsurgency programs throughout Latin America, whose origins it shares. Before considering the DINA's relationship with the rest of the armed forces, we would do well to pose a question previously raised: did the DINA Group have any particular features of its own, and did it have a political doctrine?

This twofold question may be answered as follows:

\* The DINA Group showed the ability, as proven by its subsequent history, to both circumscribe its activity and carry it to extreme limits. It circumscribed that action insofar as it set for itself the basic task of eliminating what it regarded as the ultraleft, particularly the MIR and other groups or persons connected to it. Having thus designated the "enemy," the group set out to utterly destroy it, identifying, locating, and killing its leadership teams, or members regarded as especially dangerous;

\* Insofar as can be determined, the group does not seem to have held any significant political doctrine except for a particularly virulent anticommunism (which in turn links it to counterinsurgency continent-wide). As will be noted later, the Commission was able to document facts pointing to a link between the DINA and right-wing groups from

other countries who were true terrorists, but there is no indication that the DINA saw it as anything more than an expedient working relationship that served its own goals.

We now turn to the question of relationships between the armed forces and police and the DINA group.

It was the armed forces who were in the best position to neutralize the DINA, both because it belonged to the armed forces and because those forces themselves were or constituted the regime, as we have explained above. They did not do so, however. Why was that the case?

One possible answer would be that the armed forces agreed with the group, and went along with the doctrine and practices of the most extreme forms of counterinsurgency. Although, as we have seen, such an outlook was shared by others besides the DINA group, the Commission knows that a good number of officials did not agree with the group, its activities, or its justifications, at least in 1973 and 1974, and expressed their disagreement to their superiors on a number of occasions both orally and in writing. Nevertheless, the group prevailed for a number of reasons:

1. The group was very skilled in keeping matters secret, in compartmentalization, and in disinformation techniques. Hence it may be that a large number of officers, especially in the middle and lower ranks, was unaware or had only a partial knowledge of the problem and its magnitude.

2. There probably were some officers who, without approving of the group, thought the ultraleft was only getting "what it deserved." They perhaps believed that leftist activists were being killed in real armed clashes, although admittedly in such clashes the DINA group's compliance with the law, including the laws of war, left much to be desired. It should be kept in mind that the social isolation of the officers made them more vulnerable to disinformation or partisan versions of events.

3. The self-justification used by the armed forces and the police that they were "at war" was also quite important during the first few months, and perhaps until the end of 1974. Besides "hypocritical and ongoing war" as presented in counterinsurgency doctrine, the propaganda of the contending civilian sides prior to September 11, 1973, had convinced the military and police (for it was continually being repeated) that opposing powerful and well-trained armies, well-supplied with weapons, were ready for combat. For months after September 11, the armed forces and police were immersed in their own climate and mindset resulting from

this supposed war. This mindset and climate and the way they (wrongly) downplayed "excesses" could have contributed to the consolidation of the DINA group as a "necessary evil."

4. We should also mention the fear that confronting the existence of this group and its increasing violation of fundamental rights would hurt the reputation of their own institution. Worse yet, it would damage Chile's "image," at a time when its military action had met with no internal resistance but was encountering a stormy and negative reception outside the country (for various reasons which would need lengthy analysis, one of which was, however, precisely a concern for human rights).

5. The Commission has discovered that the officers, who were presumably "at war" with extremists, lacked an adequate knowledge of the laws and morality of war for dealing with matters such as the treatment of prisoners, torture, interrogation, executions, war tribunals, and so forth. The indications are that such issues were insufficiently studied at that time. That lack of knowledge may also explain why the DINA group's activity and human rights as a whole did not receive enough attention.

6. Another fear that may have played a role in consolidating the group and assuring its impunity was the very efficient way it maneuvered within the branches of the military and especially the army, halting or cutting short the professional careers of those who stood in their way (whom they called "soft"). At the same time, top officers who were "soft" were abruptly summoned, accused, relieved of their commands, suffered abuse, and even saw their careers destroyed. For months, especially in the provinces, intelligence officials acquired a power disproportionate to, and independent of, their rank, enabling them to supersede even higher ranking officers in their own units. Finally, we should not forget that at this point career promotions depended exclusively on one's superior officers, since there was no civilian authority in place which could play the role the Senate once played in such matters.

These observations are not meant to excuse the armed forces and the police for the fact that what we have called the DINA group continued to operate within them, nor to blame them for it. Rather the Commission has tried to make this fact understandable as part of the study of human rights violations it was mandated to conduct.

6. The top-down nature of political rule  
We must likewise note that the armed forces and police as a collective group soon ceased to be directly in charge of the junta when political rule passed into the hands of top military leadership (and specifically of

the army, whose condition as *primus inter pares* was given legal status) and when both bodies were unified in a single institution.

The idea of a presidency of the junta rotating between the commanders-in-chief, which was being openly discussed during the first three weeks after September 11, 1973, was dropped. An order of rank was established, with the result that the commander-in-chief of the army became head of the junta. He was given the title of Supreme Head of the Nation (Decree Law No. 527) which was subsequently replaced by the more traditional President of the Republic (Decree Law No. 806). Actually however, what emerged was a new institution endowed with powers unprecedented in Chile: the President of the Republic/Commander-in-chief. The person holding this position not only ruled and administered the country but also presided over the government junta, and hence without him no laws could be passed nor could the constitution be amended; he also commanded the entire army. The use of states of emergency during practically the whole period of military rule further deepened and extended such power.

Once again the Commission's task is neither to criticize nor praise such developments and laws. It does, however, want to point out that what was supposed to be the regime of the armed forces and police escaped from the collective control of these institutions and even from the control of their top leaders. Instead it became rigidly centralized around the president/commander-in-chief. By the time this process was complete at the end of 1974, only that president/commander-in-chief could have neutralized the DINA group (and that was not done until a specific measure at a later date, as will be indicated below). Certainly these collective bodies went their way and did not express the least interest in controlling the DINA group. Thus Decree Law No. 521, which created DINA as an independent public agency, made it depend directly on the junta, but in practice the junta did not exert any such control. Actually the DINA was directly under the presidency of the republic, perhaps on the basis of Decree Law No. 527 and the powers it granted the presidency. Moreover, even though the DINA was in place, other branches of the armed forces and police organized or maintained their own agencies for repression. While there may have been some rivalry between these agencies and the DINA, in their spirit they were indistinguishable. This issue is taken up elsewhere.

#### 7. Civilians as political actors under military rule

With the single exception to be noted below, the September 11, 1973 military action took place without the aid or even the knowledge of any civilian group, whether organized or semiorganized. Indeed before September 11 only a very few civilians were needed to provide the kind of help that would entail such prior knowledge; those required were

generally not political leaders but communications experts, journalists, and so forth.

After the events of September 11, the very presence of the DINA group and its growing influence inevitably and almost immediately created a contradiction. On the one hand, the regime was calling the nation to come together and to join in a common effort at rebuilding the country and advancing development, an effort from which no one was to be excluded. Naturally this invitation was appealing to many people, even to disenchanted supporters of the previous government. At the same time and secretly, the DINA group's activity was an absolute negation of the unity to which all Chileans were being called. However, since that activity was secret and since in principle there was no freedom of information and such freedom would continue to be very limited, awareness of this contradiction spread only very slowly. Hence within civilian circles the many changes of opinion on military rule were likewise slow in developing.

The armed forces and police had a low opinion of political parties of any sort and thus, as will be seen more fully in the next chapter, those of the Popular Unity were disbanded immediately (Decree Law No. 77) and the others were suspended (Decree Law No. 78, which stated that they were "in recess"). In 1977 this suspension also turned into a dissolution (Decree Law No. 1697). Political party activity was banned, and penalties for violations were even specified.

Of the pre-September 1973 parties, those belonging to the Popular Unity and others like-minded (such as the MIR) managed to survive underground but just barely, not so much because of the legal prohibition, but because of the repression unleashed against them by the security agencies, as noted in this report. Other parties simply disappeared.

The situation of the parties that had fought against the now-overthrown regime which were united in the CODE (Democratic Confederation) and other like-minded groups which were first suspended (1973) and then dissolved (1977) was as follows:

\* From the outset the National party understood the "recess" as a disbanding and it disappeared. The Fatherland and Liberty Nationalistic Movement took the same position. Thus the organized right vanished. Many of its former leading figures served in the military regime as ministers, diplomats, high officials, economic advisors, and so forth; they did so, however, as individuals and did not maintain their former organizational connections either publicly or privately. A smaller number gradually distanced themselves from the regime and ended up in the

opposition. Members of extremist groups joined the repressive agencies or worked with them.

\* The Christian Democrat party, on the other hand, accepted neither the recess nor the subsequent disbanding and continued to operate in a semiunderground existence, which was tolerated, sometimes more openly, sometimes with more restrictions. While a small number of top and midlevel leaders cooperated with the military regime just like the former right-wing leaders, and consequently resigned from the party, the party itself moved more and more into opposition. There were a number of reasons for this development, especially the official confirmation that the military regime was going to last a long time and that it would severely restrict the exercise of democracy; human rights problems also played a role.

The remaining former parties, whether underground or semiunderground, had no place within the regime to express their human rights concerns. This explains why, through no fault of their own of course, they managed to develop a better campaign around human rights outside the country than within Chile itself.

Meanwhile, other civilians who supported the regime sought to influence it politically. The most important among them were younger (under forty years old), belonged to the upper class or upper-middle class, and were professional people who were very well trained in their particular disciplines. Most of them had been involved in the "associational"<sup>13</sup> struggles that had taken place in the universities during the tumultuous "reform" starting in 1967. Their differing ideologies flowed together around these points:

\* A first wave was very strictly Catholic in background and took its inspiration from authoritarian traditions from both Chile (Portales) and Spain. This group was also assisted by some older nationalistic civilians. This first wave produced the Declaration of Principles of the Chilean Government (October 1973), an ambitious document which sought to lay down the doctrinal foundations for the actions of the military regime.

While that declaration accepted and announced that power was certainly to arise out of a "universal, free, secret, and well-informed vote,"

---

<sup>13</sup> "Associational" struggle: This student movement, referred to as gremialista, which literally means "guild," was well established in the Catholic University in the late 1960s. Initially it rejected the politicization of "intermediate bodies" such as professional associations, unions, and student organizations. Closely associated with the Pinochet government, the group was headed by Jaime Gózman, and in the late 1980s the Union Democrática Independiente (UDI) political party was founded. The UDI is now generally characterized as being right-wing.

at the same time it called for a state based on the principles of Portales; the formation of a civilian/military movement; a democracy more in substance than in form; and armed forces and police who were to safeguard national security understood in very broad terms and even beyond the military regime itself. According to the declaration, this was not to be merely an administrative hiatus between two political party governments. Rather by means of a "deep and prolonged action" it was to rebuild Chile morally, institutionally, and materially, and to "change the attitude of Chileans." Hence these forces did not specify a fixed period for the junta to remain in power. Finally, it is worth noting that the Declaration was presented as irreformable, thus accentuating its foundational character.

The Declaration could not attain its objectives, however, if the president/ commander-in-chief, who stood at the center and had a monopoly hold on power, did not really adopt it, as he in fact failed to do. It is not our task to determine why and, indeed, it may no longer be possible to do so. Nevertheless, this "first wave" continued to collaborate with the regime, although it severed its ties with the nationalistic figures, who either left the government or continued to serve it but without any real influence.

\* The "second wave" had actually entered into contact with the military before the first group. It was made up of young people very similar to those of the "first wave" but with some features of its own: they were economists who had done postgraduate work in prominent universities in the United States and were liberal or neoliberal both in their discipline and in their idea of society and of human nature.

Before September 11, 1973, these professional people either contacted the navy or were contacted by it, and they prepared a complete economic plan which could only be put into effect from a position of power. After September 11 and under navy sponsorship they gained some-but not all-government positions crucial for managing the economy. They began to spread and defend the ideas behind their plan within the regime, although they sometimes encountered considerable opposition and difficulty.

Their moment of triumph came when the president/commander-in-chief adopted their plan and imposed it against all those who resisted, granting its authors the power, support, and time they said they needed to apply it. There was one very murky moment during the economic crisis of 1981 when some of the most representative figures in this "second wave" resigned their key posts. Nevertheless, their successors, who shared their basic ideas and with whom they had always made up a like-minded and disciplined body, rode out the storm and managed to

preserve these ideas in the Chilean economy.

A decisive factor, we repeat, in the long continuity of the economic line has been the fact that the president/commander-in-chief, contrary to what he had done with the "Declaration of Principles," fully accepted the plan of the economists.

\* At this point the "first" and "second" waves of civilians working with the military regime had come together around the new economic ideas whose influence had been broadened to include related areas such as health care, social security, labor law, and even relatively unconnected areas, such as education, professional associations, and TV channels. Certainly the sector we call the "first wave" had evolved to the point of adopting the economists' ideas and expanding them into the notion of a "free society," in which the role of the state would be as small and that of private initiative as large as possible.

Moreover, the now united group had put all its energy into the preparation of a complete new constitution, abandoning the method of "acts" (which is described in greater detail in the next chapter). This method was very much in tune with the spirit of the "Declaration of Principles" in the sense that constitutional norms were to be introduced gradually and would be tested in practice and by observing how they worked, so as to lead to a constitution guaranteed to work. However, in 1980 a completely new and untested constitution was presented to the voters in the plebiscite. Its features retained little or nothing of the 1974 "Declaration of Principles"; they were traditional liberal and democratic principles, albeit with a strongly authoritarian slant. They set a date for the military regime to end, however, and enshrined in the Constitution economic freedom, the primacy of private initiative, and the diminishing of the state's role.

Again, it was absolutely necessary that the president/commander-in-chief make the plan his own. The fact that he did so may indicate that he thought he would have sixteen more years in which to rule and consolidate his position.

It is not the Commission's role, let us repeat, to make value judgements on these developments. It has described them as a framework for understanding the role of the civilians who were politically connected to the military government vis-à-vis the issue of human rights and the DINA group. They were no doubt somehow aware of the problem and of how harmful the group was, but in general they did not have the means to deal effectively with the situation, and so they thought it would do more harm than good for them to cease supporting the military regime. Moreover, given the degree of disinformation, it is possible that at some



moments they may have sincerely (though incorrectly) believed that human rights violations had ended, or that they were declining to such an extent that they would soon no longer constitute any threat. Other civilians argued that their responsibilities were technical rather than political, and that concern for human rights was a matter for those holding political responsibilities. Some furthermore asserted that it was better and more productive to work silently through persuasion on a case by case basis rather than drawing attention publicly and so breaking off communication with the regime. Finally some denied that there were any violations at all and regarded them as propaganda, or contrariwise invoked the heated arguments of the pre-September 11 period which we have already examined to "justify" any violation (although to be sure they were often unaware of the true situation).

The Commission simply notes that these different and quite dissimilar aspects of civilian activity with regard to human rights did not bring about any significant positive effect noticeable today, except the rescue of a few dozen people who were being persecuted. These actions were certainly worthwhile, but they were minimal compared to all those who were executed, disappeared, and so forth.

An equally laudable yet wholly unsuccessful effort was that of some jurists who supported the military regime. Aware of its weakness in the area of human rights, they tried to provide constitutional protection for the rights of the person which were then being violated. Such an effort was made on three occasions, more elaborately each time: in the "Declaration of Principles" (1973), in the Constitutional Acts (1976), and in the new Constitution (1980). However these norms proved impotent against all the forces thwarting them: the whole web of repressive legislation, which was as crafty as these standards; the ongoing states of emergency; judicial apathy; and the boldness, secretiveness, and systematic disinformation practiced by the DINA group and its like-minded followers.

In closing let us note that the political activity of those civilians who supported the regime, whether on behalf of human rights or anything else, was stymied from the outset: despite their ties of generation, ideas, and friendship, they were powerless to form an organization that could promote such action by uniting, coordinating, and representing them. Whatever label might have been given to such an organization, in practice it would have been a party, and the regime simply did not trust any parties that might be formed, even those that might be set up to support it. This was yet another circumstance favoring the activity of the DINA group and human rights violations.

## 8. Political framework after the disbanding of the DINA

The downfall of the DINA group and of the DINA itself began with the murder of Orlando Letelier and Ronnie Moffit in 1976 in Washington, D.C., a crime discussed later in this report. When it became clear that the DINA had been involved in the crime, and the United States government sought the extradition of some of its main leaders, top level officials of the regime began to comprehend the power and audacity of the group and of the secret organization. Although previously they may not have been aware of the matter or given it much thought, they now saw the immense harm it might cause, not so much to its victims as to the regime and to the country. Thus the regime's civilian supporters drew up a design and obtained the required approval of the president/commander-in-chief for what was intended to be a real chance to bring about a substantive improvement in human rights observance-although in practice that effort was frustrated.

The DINA was dissolved and replaced by the CNI (National Center for Information) (Decree Laws Nos. 1876 and 1878 of 1977), which was put under the supervision of a top army officer who had opposed the DINA group. The group never returned to what it had been. Moreover, the human rights situation, both quantitatively and qualitatively, never regressed to its state when the DINA was controlled by what we have called the DINA group. Indeed, during the 1977-1979 period many people thought that the situation was on its way to substantial improvement.

Starting with what was known as the COVEMA (Avengers of the Martyrs Squadron, 1980), which this report analyzes further on, repressive activity flared up again, not as systematically nor with as large a number of victims but uninterruptedly and punctuated with shocking incidents. To close this section we note some further possible reasons for this development, some based on evidence and others on conjecture.

\* Many of the key men of the disbanded DINA occupied important positions in the new CNI (National Information Center) and thus the supposedly expelled group continued to be very influential;

\* While the DINA was very disciplined, the CNI seems to have resisted such discipline, possibly as a result of what has been said before. This lack of discipline is believed to have facilitated "independent" operations, the emergence of satellite groups and so forth, resulting in activities that were out of control.

\* The fact that the CNI now answered to the Ministry of Defense rather than the Interior Ministry meant that it was not under the control of those sectors of the government that were more sensitive to the potential political impact of human rights violations.

\* The persistent neglect and inefficiency of the police and security services in clarifying human rights violations encouraged their continuation and increase; o Finally, it should be noted that some of the political adversaries of the regime, primarily the Communist party and the MIR, reinitiated insurrectionary activity and both selective and indiscriminate terrorism.

The Communist party (probably as a result of pressure by activist members and leaders who were underground in Chile and in opposition to its veteran representatives, all of whom were of course in exile) gave up its policy of seeking to reach power through peaceful means, and opted to use violence against the military regime. This policy was sketched out in several official documents beginning as early as 1980. It was explained in 1982 on the grounds of the party's need to have an organic and independent military power and organization, which was to be made up of Communists: this force, however, was not to be made up entirely of Communists, nor were all Communists to be members, although it was to remain under the political and military direction of the party. The following year this decision seems to have led to the formation of the FPMR (Manuel Rodríguez Patriotic Front) whose deadly actions are described elsewhere. Nonetheless, the party has never acknowledged that it directs or controls the FPMR. The FPMR reached its high point in 1986 when it carried out two very elaborate but failed operations: the smuggling of an arsenal of weapons hidden in Carrizal Bajo and the assassination attempt against the president. The Communist party gave up the insurrectionary strategy in 1987, provoking a split in the FPMR into two factions, a so-called "autonomous" faction persisted with the same strategy, while the other abandoned it.

As of 1978 the MIR, whose cadres had suffered frightful casualties at the hands of the DINA, tried to resort again to its classic armed path, with "Operation Return" from Cuba. Its various efforts once more ended in defeat, especially in the guerrilla infiltration in the southern area of Neltume, described elsewhere, where many MIR members were killed in violation of their human rights. Their armed actions and acts of terrorism also led to loss of life, as described in this report. From 1986 onwards the MIR underwent a process of internal divisions over the very question of whether or not to continue the "armed path."

During the 1980s other less important violent groups opposed to the regime, such as the MAPU Lautaro, which split from MAPU around 1983, were active. Such groups infiltrated the "national protests" (considered in a special section in this report) trying to lead them to violence so as to bring the country and the regime, they said, to the point of "ungovernability."

The actions of the FPMR, MIR, and the other groups we have described led government officials to pressure the CNI to "get results" through repression, thus causing new human rights violations. At the same time, the old DINA group was insisting that the CNI was "ineffective" in comparison with its own horrifying history of wiping out insurrectionary and terrorist efforts and organizations.

Many of the reasons we have listed are largely conjectural, we repeat. However, it can be stated with certainty that, during the final years of the military regime, the political structure that had been established by the enactment and implementation of the 1980 Constitution did not eliminate the national problem of serious and constant violations of human rights (although the frequency and numbers of victims admittedly declined). Indeed, the 1978 amnesty, which its civilian promoters may well have regarded as the closing of the book on a now superseded problem, ultimately seemed to entail impunity for the past and to promise impunity for the future. [See explanation of 1978 amnesty law-Decree Law No. 2191-on page 89 of Volumn One.]

## **Chapter Two:** Legal and institutional framework

### *A. The months after September 11, 1973*

#### 1. Installation of the junta

According to the 1925 Constitution, government functions were to be exercised by independent, separate bodies exercising oversight over one another. In his manner the Chilean institutional order expressed the principle that abuses by government bodies in carrying out their functions are to be prevented by dividing, imiting, and controlling their powers, and that those who violate these bounds must be held accountable within the legal system. Such was the order that the 1925 Constitution established; indeed it was the same order that had been in effect, with some variations, since the Constitution of 1833.

When viewed from this perspective, what happened starting on September 1, 1973, constituted a profound disruption of the Chilean governmental system. On that date the military junta stated that it was assuming "supreme rule over the nation with the patriotic commitment to restore the Chilean way of life, justice, and institutional order that have been shattered. . . as a result of the intrusion of dogmatic and intolerant

ideology inspired by the alien principles of Marxism-Leninism."<sup>14</sup> In that same legally binding statement, the junta stated that it would assure that the powers of the judicial branch remain fully in effect and will respect the Constitution and the laws of the Republic, to the extent the present situation allows, so as to better fulfill the principles it intends to follow."<sup>15</sup> There was no mention of the Congress or of the General Comptroller's Office.

What did it mean that the junta was assuming "supreme rule over the nation"?

Some looked to Article 60 of the 1925 Constitution, which states that "a citizen with title of President of the Republic of Chile administers the state and is the supreme head of the nation." They maintained that what the junta was assuming was only that body of powers proper to the head of state since he was the supreme head exercising his corresponding authority, and the purpose of the military movement was to remove the one who had been occupying that position until September 1973.<sup>16</sup>

Under that interpretation, the junta seemed to be saying that it was assuming only the executive, administrative, and co-legislative functions proper to the president. Thus the military manifesto would not affect the supervisory and co-legislative functions of the National Congress nor the oversight function that the Constitution entrusts to the General Comptroller's Office. The same could be said about the competency the president shares with the Congress-and with the electorate should there be a plebiscite-to act as one of the members of the constituent power.<sup>17</sup>

Any doubt was soon dispelled, however, when the junta specified "that the assumption of supreme rule over the nation means exercising all the powers of the persons and bodies that make up legislative and executive powers and consequently, the constituent power that is theirs."<sup>18</sup> In keeping with that premise, the junta stated that on September 11, 1973 it had assumed the exercise of the constituent, legislative, and executive powers, and it reiterated that the judicial power

---

<sup>14</sup> Decree Law No. 1, of September 11, 1973, Law Establishing the Ruling Junta, Diario Oficial of September 18, 1973.

<sup>15</sup> Ibid., No. 3.

<sup>16</sup> Military Decree No. 5, of September 11, 1973, No. 13.

<sup>17</sup> Constituent power: The Chilean institutional framework provides for the concept of a "constituent power" inhering in all citizens of a nation and superior to the executive, legislative and judicial powers (branches)-which are, in fact, derived from this greater power. It is regarded as embodying the "Sovereign Power of the People." In actuality the legislative and executive powers together represent the constituent power. When it is charged with reforming the constitution, certain requirements must be met, such as high percentage quorums in both legislative houses (Senate and Chamber of Deputies).

<sup>18</sup> Decree Law No. 128, consideration c, Diario Oficial, November 16, 1973.

"will exercise its functions as specified in the Constitution, and with the independence and authority indicated therein." Again the junta said nothing about the constitutional independence of the General Comptroller's Office. Nevertheless, it subjected the decentralized agencies of the administration to that office<sup>19</sup> and during September and October 1973 it sent its supreme decrees there to be registered but not to have their legality approved.

The junta retained the full use of such powers until June 26, 1974. At that point Decree Law No. 527, which states the junta's by-laws, went into effect, and it declared that "executive power is exercised by the president of the junta, who is the supreme head of the nation."<sup>20</sup> Shortly thereafter and in order to maintain the title traditionally granted to the head of state in our country, the junta declared that the executive power was "exercised by the president of the junta, who, under the title of President of the Republic of Chile, administers the state and is the supreme head of the nation." Thus the administration and governing of the state was entrusted to the president of the junta and of the republic, and his authority was extended to everything related to maintaining the internal public order and external security of Chile.

## 2. Functioning of political power

The junta exercised constituent and legislative power by issuing decree laws.<sup>21</sup> These decrees were signed by all members of the junta, either themselves or their deputies, and when they deemed it appropriate, they were also signed by the relevant ministers of state. In any case all the junta members had to be in agreement in order to issue constitutional and legal norms.

Decree Law No. 527 envisioned the issuance of complementary regulations that would enable the junta "to require the collaboration of the community through its technical and representative organizations in the preparation of decree laws." Additionally, and in keeping with Decree Law No. 991,<sup>22</sup> each junta member presided over one of the legislative commissions. The Legislation Secretariat was set up in order to coordinate the legislative process and issue legal reports.

In accordance with Decree Law No. 527, only the junta could pass laws.

---

<sup>19</sup> Decree Law No. 38, Diario Oficial, October 2, 1973.

<sup>20</sup> Decree Law No. 806, Diario Oficial, December 17, 1974.

<sup>21</sup> Decree laws: Decree laws are norms dictated by a de facto government-one not constitutionally established which has assumed legislative branch powers. A supreme decree differs from a decree law in that a supreme decree is issued by a legitimately established president as part of his/her regulatory powers. Supreme Decree #355 enacted by President Patricio Aylwin established the National Commission of Truth and Reconciliation.

<sup>22</sup> Diario Oficial, January 3, 1976.

Furthermore, it alone could take the initiative in those legal matters that were proper to the president of the republic, according to the text of the 1925 Constitution, as it stood until September 11, 1973.

It is worth keeping in mind that there were two kinds of decree laws, in accordance with the greater or lesser importance of their provisions. First, some decree laws were of constitutional rank because they expressly or tacitly modified, complemented, or annulled provisions in the Constitution. Second, some decree laws issued had legal standing but were subordinate to those of constitutional rank, and were the practical equivalent of those laws which until September 11, 1973, had been the joint work of the president and Congress.

Nevertheless, the junta issued many decrees whose provisions, even though they were substantially opposed to those in the Constitution, did not state that they were modifying or annulling it on a particular point. The result was confusion over the meaning and scope of those legal texts, that is, whether or not they constituted reforms of the 1925 Constitution. Since the situation was unclear, individuals who were affected, for example, by provisions suspending or restricting personal freedom when states of siege and states of emergency were declared, appealed to the Supreme Court, asking it to declare such decree laws inapplicable because they conflicted with individual guarantees that are safeguarded in the Constitution.

The Court managed to grant review and decide some of these appeals.<sup>23</sup> The Court's rulings, however, prompted the junta to issue Decree Law No. 788,<sup>24</sup> which specified the difference between decree laws that were constitutional in scope and those that simply had legal effect. In this regard the junta declared that the decree laws issued between September 11, 1973 and December 4, 1974 insofar as they were contrary to, opposed to, or different from any provision of the Constitution "had and have the nature of being norms that modify, whether expressly or tacitly, partially or totally, the corresponding clause in the Constitution." In other words, by playing its role as constituent power, the junta remedied the flaws of the unconstitutionality attributed to the decree laws issued during that period. As a result, pending appeals on the grounds of inapplicability were to be disregarded.

The provisions of Decree Law No. 788 affected not only those "judicial rulings made prior to their publication in the Diario Oficial," this law also stated that "decree laws issued in the future that may be expressly or

---

<sup>23</sup> For example, Supreme Court ruling No. 10987, dated October 9, 1974, published in Fallos del Mes No. 191, October 1974.

<sup>24</sup> Diario Oficial, December 4, 1974.

tacitly, wholly or partially, contrary to, opposed to, or different from some provision of the Constitution will have the effect of modifying it in that respect only if it is explicitly noted that the junta is issuing it in the exercise of its constituent power."

In short, after December 4, 1974, the difference between the two kinds of decree laws was formalized. The result was that the constituent body tended to be distinguished from the legislative body, at least adjectivally.

### 3. The junta's legislative activity

In quantitative terms, the legislative activity of the junta was considerable. In less than four months it issued almost 250 decree laws, a number equal to the whole of what had been legislated in the year prior to the declaration of military rule. The rapidity of legislative activity could be attributed in part to the system's concentration of government functions, the lack of any institutionalized opposition, and the authorities' declared intentions to change matters.

Qualitatively speaking, the body of legislation was extremely important, no matter what the ultimate judgement on the laws drawn up might be. The new legislation succinctly and plainly presented a scale of values and political principles that differed profoundly from those contained in the preceding and still somewhat surviving legal order. Hence the democratic orientation of the previous order gave way to one in which the state's coercive apparatus was reinforced and the system of government became authoritarian.

Acting as the legislative body, the junta made rulings on the most diverse matters in the political, social, and economic realms. So wide was the variety that it is impossible to make a systematic presentation of its content here. By the same token, in order to describe the institutional legal system then in effect, we must draw up a representative inventory simply to give an idea of its characteristic features.

#### a. Assumption of total control

It has already been noted that the system in place in Chile as of September 11, 1973, was one in which government functions were highly concentrated. The junta members made reference to that character when they called it an authoritarian regime. It is evident when we call to mind the following events:

1. Dissolving of Congress and of the Constitutional Tribunal By means of Decree Law No. 27, the junta disbanded the National Congress, stating that as of that moment its current members no longer exercised their legislative functions. That decision was based on "the need to assure that the principles that the junta has



proposed be implemented more expeditiously. . . and on the fact that it is therefore impossible to allow legislative measures to be subjected to the ordinary procedure for issuing laws, as well as the need to avoid jeopardizing the reestablishment of institutional order that is so urgently needed."

Shortly thereafter, the junta went on to dissolve the Constitutional Tribunal, since its primary function was to resolve conflicts between the executive and legislative branches "which cannot occur since the Congress is disbanded."

## 2. Outlawing and closure of political parties

Once the president had been unseated and the Congress had been disbanded, the basic political institutions of Chilean representative democracy were no longer in operation. The junta's decisions inevitably had an impact on those associations that made possible the operation of representative bodies, namely political parties.

That indeed is what happened on October 13, 1973, when with Decree Law No. 77 the junta declared to be disbanded, prohibited, and regarded as unlawful associations those parties, entities, groups, factions, or movements "which uphold Marxist doctrine or which in their aims or the behavior of their adherents are substantially in agreement with the principles and objectives of that doctrine and which tend to destroy or undermine the basic aims and principles laid down in the founding decree of this junta." With that same law, the junta also ordered that the juridical status of all the parties and the other organizations mentioned be canceled, and ordered that their property be transferred to the state.

In the very next decree, No. 78 (October 17, 1973) the junta, believing that it was absolutely necessary to suspend the normal pattern of party activity in the country, declared to be "in recess all political parties and entities, groups, factions or movements of a political nature not included in Decree Law No. 77"; all their properties likewise were to be administered in the same fashion. [Note: footnotes<sup>25</sup> and <sup>26</sup> are missing in the original text.]

## 3. Election lists declared null and burned

---

<sup>25</sup> [Missing in text.]

<sup>26</sup> [Missing in text.]

Decree Law No. 130<sup>27</sup> declared null all the electoral registration lists, and they were burned by the head of the Electoral Registry. As of that date the process of registering to vote was suspended. As a basis for its decision the junta declared that "investigations carried out by governmental and university agencies have demonstrated that there have been serious and widespread electoral frauds," and hence it was necessary to devise a system "which from now on may prevent such frauds and assure the seriousness and efficiency of decisions by the citizenry."

#### 4. Mayors and aldermen dismissed

Recognizing the need to harmonize the organization and functioning of municipalities with its own principles, in Decree Law No. 25 (September 19, 1973) the junta declared that the mayors and aldermen [municipal council persons] were to cease functioning. The junta subsequently appointed people in whom it had complete confidence to serve as mayors.

#### 5. Interim status of government employees

By means of Decree Law No. 6 (September 12, 1973), government personnel, with the exception of those in the judicial branch and the Comptroller General's Office, were put on interim status. A few days later Decree Law No. 22<sup>28</sup> gave authorization to immediately dismiss such public servants at will, and without being bound by the laws preventing dismissals and assuring job stability.

Invoking its intention to "reestablish the principles of order, discipline, rank, and public morality" that ought to inspire government administration, the junta in Decree Law No. 98<sup>29</sup> declared that all public services, with the two exceptions noted above, were being reorganized.

#### b. Effect on constitutional guarantees

We must now refer to the changes the junta introduced into the doctrinal portion of the Constitution, that is, changes affecting rights and duties as well as actions aimed at safeguarding both of them, which are recognized and protected by the constituent power. We refer to what are called constitutional guarantees.

---

<sup>27</sup> Decree Law No. 1 (September 11, 1973), Decree Establishing the Junta, Diario Oficial (September 18, 1973).

<sup>28</sup> Ibid. No. 3.

<sup>29</sup> Diario Oficial, October 26, 1973.

## 1. States of emergency

Personal freedom was first suspended and then restricted by the new provisions concerning states of emergency and particularly the state of siege. Those provisions were in effect during this entire period.

Decree Law No. 3 (September 11, 1973) declared that a state of siege was in effect throughout the country and that the junta was in effect "the general-in-chief of the forces that will be operating during the emergency." Nevertheless, starting the next day and in accordance with Decree Law No. 8, the junta delegated to the commanders-in-chief of the operational units in the country the exercise of military jurisdiction and the power to issue decrees.

Moreover, Decree Law No. 4 issued that same day (September 11, 1973) imposed a state of emergency in the provinces and departments which it listed.

Chile was thus under one of the states of exception,<sup>30</sup> the state of siege. For the next several years the state of siege was to be extended every six months, generally for reasons of internal defense as laid down, for example, in Decree Law No. 922 (March 11, 1975). It should be noted that the state of siege was to be declared for that reason "when there is an internal disturbance provoked by rebellious or seditious forces already organized or being organized whether openly or underground," in accordance with Decree Law No. 640<sup>31</sup> which codified regulations concerning situations of emergency.

In accordance with Decree Law No. 228 (December 24, 1973), the junta exercised the powers proper to the state of siege.

---

<sup>30</sup> States of exception: The Constitution of 1925, then in effect until 1980 (although seriously modified by the junta), provides to the president of the republic the power to declare a "state of assembly" in the case of war with external forces, and to declare a "state of siege" in the case of internal disturbance. Making use of decree laws, the junta established a series of "states of exception" which provided to the president the power to declare these states. States of exception could be declared in cases of internal disturbance, public calamity, or on the subjective grounds of the existence of subversive forces. The states of siege, assembly, emergency, and catastrophe were later formalized in the Constitution of 1980, Articles 39, 40, and 41. These articles state that the "rights and guarantees of the Constitution . . . can only be effected in the following situations of exception: external or internal war, interior disturbance, emergency or public calamity," and that during states of assembly and/or siege the courts could not challenge the reasons given by government officials for arresting people, thereby-in effect-making the appeals of habeas corpus and protection not applicable during these periods.

<sup>31</sup> Diario Oficial, September 10, 1974.

Nevertheless, Decree Law No. 951, issued March 31, 1975, declared that such powers "will be exercised through supreme decrees which the interior minister is to sign with the formula 'by order of the president of the republic,' or through resolutions which the intendants [regional governors] or provincial governors may issue as natural or immediate agents of the head of state."

The magnitude of the suspensions and restrictions thus imposed on personal freedom are obvious when we consider the following constitutional and legislative decisions made by the junta:

Interpreting Article 418 of the Military Justice Code, Decree Law No. 5<sup>32</sup> declared that "in the current situation of the country the state of siege decreed by reason of internal disturbance should be understood as 'state or time of war,' and thus the penalties laid down by the Military Justice Code and other criminal laws for such a period are to be applied and in general all the other effects of such legislation are also in effect." The practical result of such a ruling was that the power to examine and decide upon cases of infraction of the rules of a state of siege were removed from the ordinary court jurisdiction and were assigned to the jurisdiction of military courts in wartime.

We should add that ordinary courts did not issue decisions questioning the constitutionality of that legislation. On the other hand, from the standpoint of legal doctrine, we should mention the essay by Daniel Schweitzer in which he explained his disagreement with the way ministers of the judicial branch were behaving toward military tribunals.<sup>33</sup>

That same Decree Law No. 5 also added various regulations to the Military Justice Code, to the Weapons Control Law, and to the Internal State Security Law, some of which provided that certain crimes be punishable by death.

Decree Law No. 81 (October 11, 1973) made it a punishable offense to disobey public call on the part of the government to present oneself to the authorities. It also empowered the government during the state of siege to deport Chileans and foreigners "when the noble interests of the state so require," as long as it issued a decree giving the reason for doing so. Finally this decree law punished anyone who entered the country

---

<sup>32</sup> Diario Oficial, September 22, 1973.

<sup>33</sup> Revista de Derecho Procesal, September 22, 1973.

clandestinely in order to attack state security, and it presumed that such would be the intention of those who had left the country through asylum, or had been expelled or forced to leave it.

## 2. Control over union activity

The junta's lawmaking activity also affected labor unions. Decree Law No. 198 (December 10, 1973) ordered labor unions, their boards, and their leaders "to refrain from all political activity in carrying out their functions." It furthermore declared that "while the state of war or state of siege the country is experiencing is in effect, union organizations may only hold general meetings of an informational nature or in order to deal with matters concerning the internal management of the organization." The fact that such a meeting was to be held, the site, and the agenda were to be provided in writing to the nearest police station with at least two days prior notice.

That same decree law declared that the terms in office of union board members that were in effect on September 11, 1973, were to be extended and it made their rules applicable to the provisional directorates. These directorates were to be made up of those who had worked longest in the particular industry, job, or activity.

## 3. Stepping in to control the universities

"Considering the need to work toward unifying standards in the administration of higher learning" the junta issued Decree Law No. 50 (October 1, 1973) by virtue of which it appointed "delegate rectors to represent it in each university in the country." These rectors held all the powers and functions previously held by the various individuals or collegial bodies that ran Chilean universities.

The junta complemented Decree Law No. 50 with Decree Laws Nos. 111, 112, and 139,<sup>34</sup> issuing specific norms for certain universities and broadening the powers of rectors, so that they could, for example, dismiss professors, disband existing academic bodies, eliminate courses of study and degrees, draw up curricula, and issue or change relevant by-laws.

---

<sup>34</sup> [Missing in text.]

## *B. The 1974-1977 period*

### 1. Principles and reality

The junta assumed "power only as long as the circumstances require it," "with the patriotic commitment to restore the Chilean way of life, justice, and the institutional order, which have been shattered."<sup>35</sup>

How far the junta's thought had developed, however, became evident on March 11, 1974, when the Declaration of Principles of the Government of Chile was published. In that document, the junta declared that it "understands national unity as its most prized objective and rejects any conception that entails and encourages irreducible antagonism between social classes." It added that "in keeping with its guiding inspiration derived from Portales, the government of the armed forces and police will vigorously exercise the principle of authority, and will severely punish any outbreak of undisciplined behavior or anarchy."

That declaration also stated that, "The human being has natural rights that are prior to and higher than the state," and that hence the state "must be at the service of the person rather than the reverse." The document goes on to say that "Chile has always lived under a legal framework. . . that has ever reflected the deep esteem Chileans feel for the spiritual dignity of the human person, and consequently for his or her fundamental rights. It is in this respect for human rights, more than in its tradition of the popular origins and constitutional succession of governments, in which the essence and core of Chilean democracy are to be found."

In practice, however, the junta gradually built up a legal framework that departed from the principles and goals of that statement. A comparison of what was promised in that document with the text of the decree laws and administrative rulings given in accordance with those decree laws leads to the conclusion that they moved along separate and parallel tracks and operated with principles and values that did not meet around a set of ideas truly respectful of the dignity of the person and of human rights.

An analysis of the system then in effect indicates that the junta had defined the most basic principles of the legal and political framework in a formal and general way, but that as they were actually put into operation, those principles made it clear that total power was being consolidated by means of violations of the right to life and other human rights directly connected to that right and that those violations were being committed with impunity. The content of that legal framework indicated

---

<sup>35</sup> Decree No. 5 (cited above [cf. n. 3]) No. 13, and consideration 4c.

the determination of the ruling group to make the suspension and restriction of public freedoms the normal state of affairs. They were operating on the basis of a certain notion of national security that involved using secret police agencies or the armed forces themselves. Consequently repression was unleashed against the opposition, political parties were dismantled, labor union activities were paralyzed or controlled, and universities lost their independence.

The result within the Chilean legal system was an impairment of the ability of the judicial system to offer protection, and particularly the role of the Supreme Court to respond to appeals on the grounds of inapplicability, habeas corpus and the appeal for protection [recurso de protección], (which was instituted in 1976).<sup>36</sup> Likewise such consequences became obvious with regard to the revision of the constitutionality and legality of the power to regulate administrative acts, which was the role of the General Comptroller's Office. In short, those mechanisms of legal oversight remained formally in place, but insofar as the efforts of those persons affected to utilize them ran counter to the junta's decisions, the oversight agencies opted for caution in order to avoid having to make potentially conflictive decisions.

## 2. Creation of the DINA

Decree Law No. 521, issued June 14, 1974 created the DINA (National Intelligence Directorate), which, as the decree noted, was an outgrowth of the commission set up in November 1973 and known by that same acronym. The DINA was said to be a "military body of a technical and professional nature, under the direct command of the junta. Its mission is to be that of gathering all information from around the nation and from different fields of activity in order to produce the intelligence needed for policy formulation and planning and for the adoption of those measures required for the protection of national security and the development of the country."

This agency was staffed by personnel from the armed forces and when necessary it could contract other personnel with presidential authorization. The head of the DINA, who was appointed by a supreme decree, was given the power to demand from any agency, municipal body, legally constituted juridical person, or state enterprise, whatever reports or documentation he might regard as necessary to carry out his assigned tasks.

It must be emphasized that, as was the case with more than a hundred laws issued in subsequent years, Decree Law No. 521 was only partially

---

<sup>36</sup> Decree Law No. 1, of September 11, 1973, Law Establishing the Ruling Junta, Diario Oficial of September 18, 1973.

made public, since Articles 9, 10, and 11 were published in a supplementary edition of the Diario Oficial whose circulation was restricted. Some years later, however, it became known that those articles allowed the junta to involve all the armed forces intelligence agencies in the DINA's own functions, and that it empowered the DINA to engage in raids and arrests.

3. New provisions on personal freedoms

Decree Laws Nos. 1008 and 1009, which were published in the Diario Oficial on May 8, 1975, dealt with new restrictions on personal freedom.

The first of these added a new paragraph to the Constitution, on the grounds that "crimes against national security are extremely serious" as well as the fact that "while the state of siege is in effect the period of time contemplated in Article 15 of the Constitution is insufficient" for investigating such crimes. Article 15 permitted officials to hold a person for a period not exceeding forty-eight hours; by the end of that period they had to advise the appropriate judge and turn the detainee over to the judge. When Decree Law No. 1008 went into effect, the permitted detention period was extended to five days "in the case of crimes against state security and while periods of emergency are in effect."

Based on that change in the Constitution, Decree Law No. 1009 declared:

Under a state of siege, when those agencies that are devoted to assuring the normal unfolding of national activities and to maintaining the established institutional framework proceed to the preventive arrest of people who with some foundation are believed to be capable of jeopardizing state security, they are obliged to advise immediate family members of the arrest within forty-eight hours.

An arrest made by the agencies referred to in the previous paragraph may not exceed five days; at that point the detainee is to be released or handed over to the proper court or to the Ministry of the Interior, when extraordinary powers are being applied, or a state of siege is in effect, along with a written report of the evidence gathered.

The use of unlawful mistreatment against prisoners is to be punished in accordance with Article 150 of the Criminal Code or Article 330 of the Code of Military Justice, as the case may be.

Decree Law 1009 also modified the Law of State Security by authorizing the appropriate tribunal to suspend the publication or transmission of an offending newspaper, magazine, radio station, or television channel for ten days. Finally Decree Law 1009 modified Decree Law No. 640, by



ordering that "when the state of siege is declared due to a situation of internal or foreign war or in response to an uprising within the internal defense [police] forces, wartime military tribunals will enter into session. . . . When the state of siege is declared for reasons of internal security or for a simple internal disturbance, the arrangements for peacetime military tribunals will be in effect."

#### 4. The Constitutional Acts

In Constitutional Act No. 2 ("Essential Foundations of the Chilean Institutional Framework") the junta defined the underlying principles of the country's future political system. In Constitutional Act No. 4 ("Emergency Periods") it sketched the consolidation of the full power that had been assumed in 1973. Finally, placed between these two was Constitutional Act. No. 3, a wordy catalogue of rights, freedoms, equalities and inviolabilities, brought together under the title "On Constitutional Rights and Duties."<sup>37</sup>

As the government explained, these acts constitute an effort to implement a future constitution chapter by chapter. The suitability of the new institutional framework would thereby be tested gradually, and what was built up by accretion would be systematized, while the existing emergency legislation and other similar innovations would be recast.

However, these acts were also prompted by more practical and immediate considerations. In this sense they served to create the image of progress in building a new institutional order, and in other countries they gave the impression that the military were respecting human rights, that the military government was restraining itself, and that the judicial branch was truly independent.

In Act No. 2 the constituent power mixed provisions from the 1925 Constitution with new ones, thereby combining tradition with lessons learned in more recent years, and attempting to fulfill the following principle: to give form to "a new and solid democracy that may permit the members of the community to participate in acknowledging and resolving the major problems of the nation; a democracy endowed with mechanisms to defend it from the enemies of freedom who, under the protection of a misunderstood pluralism, seek only to destroy it."<sup>38</sup>

The second of these acts read, "The activity of government agencies and public officials is subject to the constitutional acts, the Constitution, and the laws." However, this statement did not apply to the constituent power rooted in the junta, for the junta could exercise that power to modify them

---

<sup>37</sup> Decree Laws Nos. 1551, 1553 and 1552, published in the Diario Oficial on September 13, 1976.

<sup>38</sup> Consideration 4c.

"through explicit changes that must be incorporated into the text"<sup>39</sup> of the Constitution.

Act No. 4 laid out the framework of how rights and public freedoms were restricted, suspended, or lost. It should be kept in mind that the institutional context of that period authorized the junta to determine which events justified the declaration of one or more of the states of exception. The president, either personally or through his delegates was given the discretionary authority to carry out measures for preventing, thwarting, or overcoming emergencies, that is, the state of foreign or civil war, internal uprising, latent subversion, and public disaster.

Such states, with the exception of that of assembly, could not exceed six months, although they could be extended through successive periods of no longer than six months, as actually happened in practice.

The catalog of rights guaranteed to all persons in Act No. 3 was most complete, but it was often dependent upon further legislation for its implementation. Such was the case of the right to life and to both physical and emotional integrity, of a more specific development of equality before the law and the justice system, of personal freedom, and of the right of petition.

It should also be noted that the affirmation of some rights was weakened in practice by other measures taken by the same legal body. Thus freedom of opinion was complemented by the freedom and right to receive information, all without prior censorship. These provisions, however, did not affect the courts' ability to issue prohibitions of opinions or news that might affect morality, public order, national security, or the private life of people. Article 11 of that same Act No. 3 ordered that "any act by a person or by groups intended to spread teachings attacking the family, advocating violence or a notion of society based on class struggle, or that are against the established regime or the integrity or functioning of government of law, is unlawful and contrary to the institutional order of the republic." Another illustration of the same problem was the right to association without prior permission, even though political parties continued to be banned or in recess by virtue of Transitory Article 7 of that act.

The duty to comply with the constitutional acts, the Constitution, and laws bound every official, person, institution and group to obey the orders that the established authorities might issue within the scope of their powers. A measure that could have served human rights was one that prohibited the invoking of any constitutional or legal provision in order to interfere

---

<sup>39</sup> Constitutional Act No. 2, Article 9, second paragraph.

with the rights and freedoms acknowledged by Act No. 3, or to attack the integrity or functioning of the rule of law or of the established regime.

The most valuable feature of the constitutional acts was the fact that Act No. 3 in combination with Article 14 of Act No. 4 envisioned habeas corpus appeals and appeals for protection on the grounds of other constitutional rights. These were legal defenses which in theory would work rapidly and could be invoked for broad reasons both against the decisions of government officials (except when they were exercising constitutional and legislative power), and against the activity of private citizens. Broad powers were conferred on the courts; if the judges had actually used them, they would have provided the most effective safeguard of human rights within the Chilean legal system.

The appeal for protection [recurso de protección] was an extremely important innovation. Any person or association could invoke it as a defense, for example, against unlawful mistreatment, against being judged by special commissions, against being prevented from assembling peacefully, and for preserving the inviolability of the home and of private communications, expressing opinion, and freely giving and receiving information.

The broadening of habeas corpus should also be emphasized. In principle from that point on it was possible to act on behalf of any person who might be prevented, disturbed, or threatened illegally from exercising his or her right to personal freedom and individual security. The respective appeals court was obliged to issue the rulings it judged conducive to reestablishing the rule of law and to assure that the individual in question was properly protected.

Between January and March 1977, however, the junta modified the constitutional acts and declared that the appeal for protection was inapplicable during periods of emergency and it suspended the application of Act No. 4 until the law corresponding to such periods should be issued. Nevertheless, at the same time the junta declared that Article 13 of that act was to be implemented immediately, thus extending from forty-eight hours to ten days the time period for presenting those arrested or detained to the appropriate judge, during emergency periods and when actions affected state security.<sup>40</sup>

5. Banning of all political parties and suspension of political rights  
Decree Law No. 1697 (March 11, 1977) declared that those political parties that were in recess were disbanded; prohibited the existence of

---

<sup>40</sup> Decree Laws Nos. 1684 and 1689 published in the Diario Oficial, January 31 and March 11, 1977.

parties, groups, factions, or movements of a political nature; banned any kind of political party action, and suspended indefinitely the political rights mentioned in Article 9 of the 1925 Constitution.

In accordance with Decree Law No. 77 of 1973, Decree Law No. 1697 canceled the legal status of such organizations, and ordered that their property be treated as in the statutes of that law; if nothing was stated about a particular category of good, it was to be put to whatever use the president might decide.

#### 6. Authoritarian executive

The actual implementation of Decree Law No. 527, already mentioned, went beyond what was stated in its articles and what those in power said when it was issued. Indeed, although at first the formal division of the constituent and legislative functions on the one hand and the executive on the other remained in place—the latter being exercised primarily but not exclusively by the president even though the junta was still regarded as its bearer—matters eventually came to the point where the chief of state held a monopoly over the executive function. Moreover, the practice of delegating legislative powers to the chief of state was ever more observable and in more significant matters.

For various reasons, the DINA came to be directly under the president's authority, even though Decree Law No. 521 had established that it should be directly under the authority of the junta. The same thing happened with regard to applying the laws dealing with a state of siege, which, until the issuance of Decree Law No. 527 was a matter for the junta, according to the terms of Decree Law No. 228 (1974). Decree Law No. 951 (1975) broadened the president's power by empowering him to exercise it through the Minister of the Interior or through regional and provincial governors.

In a somewhat opposite direction, Decree Law No. 1141, issued as an exercise of constituent power on August 13, 1975, clarified the status of the General Comptroller's Office, which had been unclear during the period immediately after September 11, 1973. The General Comptroller's Office was thereby enabled to exercise its powers more independently through supreme decrees and resolutions, although the effect was negligible, since the appointment and dismissal of the comptroller was decided by agreement between the president and the junta.

#### 7. Control over intermediate groups and professional associations

The lawmaking body issued directives of a social character while leaving unaffected those that restricted the activities of intermediate groups. Such was the case of Decree Law No. 349 (March 4, 1974). Noting that

"although the situation of the country has practically returned to normal, it is not yet appropriate to allow the unlimited functioning" of community organizations and professional associations, the junta extended the mandate of their boards, and provided procedures for replacing members unable to participate "due to physical or moral impossibility or any other reason."

#### 8. Situation of public freedoms

Most of the many rulings on personal freedom were codified in Supreme Decree No. 890 (1975) of the Ministry of the Interior,<sup>41</sup> which brought the text of the State Security Law up to date. From the day it was issued until 1977 that supreme decree was subject to a number of changes, the most important of which were declared in Decree Law No. 1281,<sup>42</sup> which among other things made the state of emergency a permanent condition and broadened the powers of the local commanders over the media during the state of emergency. We make the former observation because the expression "for a single time," which limited to this single instance the authorization given to the president to impose martial law throughout Chile, was eliminated. We make the latter observation because all that was required was that a particular military officer determine that one of the media was offering opinions, news, or broadcasts that might cause alarm or displeasure in the population, that exaggerated matters, that were clearly false or went against instructions given for the sake of internal order, and it could be prevented from being published or broadcast for as many as six days or editions. Moreover, if the same kinds of things happened again, the military commander could order that such media and their workplaces and facilities be subject to intervention and censorship. Decree Law No. 1281 ended by stating that those affected by any of these measures could appeal to the martial or naval court<sup>43</sup> within forty-eight hours. Making such an appeal, however, did not prevent the measure from being carried out.

Decree Laws 1008 and 1009 had no effect whatsoever in limiting detention by government officials to five days while states of emergency were in effect and in obligating the relevant agencies to inform the immediate family of the arrest within forty-eight hours. The Supreme Court likewise continued to declare itself incompetent to handle habeas corpus appeals presented in response to the implementation of the state of siege regulations.

Finally, "to guard and protect the integrity of the supreme and permanent

---

<sup>41</sup> Diario Oficial, August 26, 1975.

<sup>42</sup> Diario Oficial, December 11, 1975.

<sup>43</sup> Martial and naval courts: Chilean law provides for the martial court to be composed of and to have jurisdiction within the army, air force, and police forces. The naval court pertains to the navy only.

values of the Chilean community and of the national honor which has been compromised," Decree Law No. 604<sup>44</sup> forbade "the entry into national territory of persons, whether Chileans or foreign, who spread or encourage, by word or writing or any other means, doctrines tending to destroy or change through violence the social order of the country or its system of government; those who are said to be or have the reputation of being agitators or proponents of such doctrines, and in general, those who carry out actions that Chilean laws classify as crimes against the external security, national sovereignty, internal security, or public order of the country, and those who engage in acts against the interests of Chile, or who in the judgement of the government constitute a danger to the state."

That same law ordered that the passports of all such Chileans were to be canceled, made clandestine entry into the country a crime, and authorized the military tribunals to take up and issue sentences on the crimes outlined in the decree. In accordance with Article 2, Chileans who were forbidden to enter the country could go to their consuls and request that the interior minister lift such a measure; when he deemed it appropriate, he was allowed to grant that request through a justifying resolution.<sup>45</sup>

#### 9. Dissolving of the DINA and creation of the CNI

Considering that it was convenient "to structure in accordance with the present circumstance of national events the powers of an agency that had been created to deal with a now superseded situation of internal conflict," the junta issued Decree Law No. 1876,<sup>46</sup> repealing Decree Law 521, which had established the DINA. That same day by means of Decree Law No. 1878, the junta created the CNI (National Center for Information).

This was a specialized military agency of a technical and professional nature. Its missions were to gather on a national level all information that the government might need for the formulation of policies, plans, and programs, the adoption of measures necessary for safeguarding national security, the normal unfolding of the nation's activity, and the maintenance of established institutions. Even though the CNI belonged to the armed forces and police, it was connected to the government through the Interior Ministry.

Its director had to be a top level officer on active duty from the armed

---

<sup>44</sup> Diario Oficial, August 10, 1974.

<sup>45</sup> Justifying resolution: A justifying resolution is one in which the reasons or basis for an action are expressed. It is not always the case that resolutions are "justifying," especially when taken under discretionary powers.

<sup>46</sup> Diario Oficial, August 13, 1977.

forces or the police and be appointed by supreme decree. An overall secret set of by-laws established the CNI's organization, structures, and duties. It had its own personnel and others from the armed forces and police, and could contract additional personnel by means of a supreme decree. The members of the CNI were subject to the same set of laws as civilians working for the armed forces, and they were regarded as such for all legal and disciplinary effects.

Decree Law No. 1878 authorized the head of the CNI to demand of any government body such information or documentation as he might deem necessary for effectively carrying out its duties. The director was also exempted from the obligation to respond in person to any legal summons. Finally this law ordered that the CNI was to coordinate the intelligence services of the armed forces and police in joint efforts ordered by the government when these entailed functions that were specific to the CNI.

#### 10. Broadened powers

Exercising constituent power, the junta issued Decree Law No. 1877<sup>47</sup> in order to "perfect the legal instruments that might make it possible to deal more effectively with situations of emergency."

From that point on, by declaring a state of emergency, the president of the / republic had the power "to arrest persons for up to five days in their own houses or sites other than prisons." It was made clear that the references to the state of siege in Decree Laws Nos. 81, 198, and 1009 should be understood as applicable to the state of emergency as well.

### *C. The 1978-1990 period*

#### 1. General amnesty

Decree Law No. 2191<sup>48</sup> was issued in view of "the ethical imperative to make all efforts conducive to strengthening the bonds uniting the Chilean nation, leaving behind hatreds that are meaningless today, and encouraging all those initiatives that might solidify the reunification of Chileans."

To that end, this Decree Law granted amnesty to those who had committed criminal actions while the state of siege was in effect from September 11, 1973 to March 10, 1978, or had been accomplices to, or covered up such actions, provided they were not already involved in a legal process or already sentenced when the law went into effect. Those

---

<sup>47</sup> Diario Oficial, August 13, 1977.

<sup>48</sup> Published in the Diario Oficial on April 19, 1978.

whom military tribunals had found guilty after September 11, 1973, also received amnesty.

The amnesty did not include, however, "persons who are responsible, whether as perpetrators, accomplices, or as covering up, the actions being investigated in legal proceeding No. 192-78 of the military tribunal of Santiago," that is, the case dealing with the murder of the former foreign minister, Orlando Letelier, and his secretary, Ronnie Moffit, in Washington, D.C.

## 2. Powers of the military judiciary

Decree Law No. 3425<sup>49</sup> created the military public ministry, represented by an attorney general of that jurisdiction, appointed by the president of the republic, who was charged with assuring that the interests of society, and particularly the interests of the armed forces and police, were safeguarded in crimes tried in peacetime military tribunals.

The decree law listed the following as some of that official's duties: to report criminal actions within military jurisdiction that might come to his knowledge in any way; to participate in court proceedings undertaken in peacetime military tribunals, preferably in appeals or before the Supreme Court (he might become involved in the case during the judicial investigation, appeal decisions to grant the accused provisional freedom, and be present during the public testimony stage of the proceeding and would enjoy all the rights of the parties themselves); and to follow any military trial "in which the interest of society or of the armed forces and police is involved, at any point in the legal process."

We may note that Decree Law No. 3655,<sup>50</sup> granted further authority to wartime military tribunals to punish "with the utmost rigor terrorist actions planned from outside the country that damage the noble values of the country and seek to destroy the very foundations of our national being."<sup>51</sup> Hence "in the case of crimes of whatever nature, in which as a result of the main or related action, the result is the kind of death or injury referred to in Articles 385 and 396, first paragraph of the Criminal Code, inflicted on the persons mentioned in Article 361 (1 and 2) of the Code of Civil Procedures, or against members of the armed forces and police, and which given the characteristics or circumstances of its perpetration, it must be assumed that the actions were committed against those persons as such, the wartime military tribunals will try such cases, taking into account the changes incorporated into this decree law."<sup>52</sup>

---

<sup>49</sup> Diario Oficial, June 14, 1980.

<sup>50</sup> Diario Oficial, March 10, 1981.

<sup>51</sup> Decree Law No. 3627, Diario Oficial, February 21, 1981, consideration number one. The articles of that decree were replaced by Decree Law 3655, but the consideration cited was retained.

<sup>52</sup> Decree Law No. 3655, first paragraph.



3. Delegation of extraordinary powers and extension of arrest period  
Exercising its constituent power, the junta issued Decree Law No. 3168,<sup>53</sup> by virtue of which it modified Decree Law No. 1877, stating that the presidential power to arrest people for five days during the state of emergency, "is to be exercised by means of a decree signed by the minister of the interior with the formula 'by order of the president of the republic.'"

Decree Law 3451,<sup>54</sup> which was likewise intended to have constitutional rank, also modified Decree Law No. 1877, ordering that the five day period "could be extended up to twenty days, when crimes against state security resulting in persons being killed, injured or abducted are being investigated."

#### 10. The 1980 Constitution

The Study Commission to Prepare a New Draft Constitution finished its work five years after being created.<sup>55</sup> In July 1980 the State Council handed the president a proposed new constitution. Exercising constituent power, the junta issued Decree Law No. 3464,<sup>56</sup> approving the text of the 1980 Constitution and submitting it for ratification by a plebiscite. The plebiscite took place on September 11, 1980 under a state of siege and of emergency, in accordance with Decree Law No. 3465,<sup>57</sup> which was of constitutional rank. Ratified in this fashion, the Constitution went into effect on March 11, 1981, with the exception of those matters contained in its twenty-nine transitory articles, most of which were in effect until March 11, 1990.

- a. Motivation of the perpetrators

The Constitution states that all human beings are born free and equal in dignity and rights, and declares that the state is at the service of the human person and that its purpose is to promote the common good, with full respect for the rights and guarantees laid down in the Constitution. Moreover, the Constitution obliges the state to safeguard national security, provide protection for the population and the family, and promote the harmonious integration of all sectors of the nation. It further acknowledges that the exercise of sovereignty is limited by respect for the essential rights that arise out of human nature.<sup>58</sup>

---

<sup>53</sup> Diario Oficial, February 6, 1980.

<sup>54</sup> Diario Oficial, July 17, 1980.

<sup>55</sup> Supreme Decree No. 1064 of the Ministry of Justice, published in the Diario Oficial on November 12, 1973.

<sup>56</sup> Diario Oficial, August 11, 1980.

<sup>57</sup> Diario Oficial, August 12, 1980.

<sup>58</sup> Articles 1 and 5, second paragraph.

Applying the concept of a protected democracy, Article 8 declared unlawful and contrary to the institutional order of the republic any act intended to promote doctrines that attack the family, advocate violence or a conception of society, the state, or the legal order that is totalitarian in nature or based on class struggle. Organizations, movements, or political parties tending toward such objectives through their aims or the activity of their members, were unconstitutional.<sup>59</sup>

The Constitution declared that terrorism in any of its forms is inherently contrary to human rights, and specified that a law passed by a "qualified quorum"<sup>60</sup> was to define terrorist behavior and how it should be punished.

In the chapter on constitutional rights and duties the Constitution guaranteed all persons:<sup>61</sup>

- \* The right to life and to physical and psychological integrity and prohibited the application of any illegitimate mistreatment.

- \* Equal protection under the law in exercising their rights, by requiring that any decision by an agency exercising jurisdiction be made in accordance with legally established procedures and requiring the legislative authority to establish guarantees for a rational and just procedure;

- \* The inviolability of the home and of private communication of any sort-although the home could be searched and correspondence could be intercepted, opened, or examined in such manners and cases as the law determined;

- \* The right to personal freedom and individual security, including the ability to enter and leave the country. No one could be arrested or held except by order of a government official expressly empowered by the law and after being legally notified of that order. If, however, government authorities arrested or detained someone, they were obliged to advise the appropriate judge and entrust the person detained to the judge within forty-

---

<sup>59</sup> Article 8. This provision was complemented by Law No. 18662, published in the Diario Oficial on October 29, 1987.

<sup>60</sup> Qualified quorum: The Constitution of 1980 established that a qualified quorum is required for the approval, amendment, or abrogation of certain legal norms, such as the determination of what constitutes a terrorist act and the legal sanctions for their committal. An absolute majority of deputies and senators in office is necessary-or 61 deputies (of 120) and 25 senators (of 48) for a qualified quorum.

<sup>61</sup> Article 19, Nos. 1, 3, 5, 7, 12, 13, 15.

eight hours. By means of a justifying resolution, however, that time period could be extended up to five days, and up to ten days when terrorist activities were under investigation. Finally, no one could be arrested or detained, subjected to preventive detention or imprisoned except in his or her home or in public sites designated for that purpose;

\* Freedom to express opinion and to provide information without prior censorship; the response to crimes and abuses committed in the exercise of these liberties was to be in accordance with the law;

\* Finally, the right to peaceful assembly without prior permission and without weapons, as well as the right of association without prior permission; the Constitution itself laid down the foundations of the system as it applied to political parties. Nevertheless, the tenth transitory provision prohibited the carrying out or encouragement of activities, measures or actions of a political party nature, until the organic constitutional law on political parties should enter into effect.

Article 20 of the Constitution made it possible to seek protection in the appropriate appeals court, in cases of arbitrary or illegal acts or omissions that prevented, hindered, or jeopardized the legitimate exercise of the rights and freedoms already mentioned, except as related to due process and personal freedom and individual security. With regard to these latter freedoms, Article 21 granted the right of introducing habeas corpus to the court as indicated by the law; that right could be used on behalf of any individual who might be arrested, detained, or jailed in violation of what is laid down in the constitution or in the laws, and likewise on behalf of any person who might illegally be hindered, disturbed, or threatened in his or her personal freedom and individual security.

b. Reference to private citizens

From March 11, 1981 to August 27, 1988 (with the exception of a few very short periods), Chile lived uninterruptedly under one or more states of exception, as envisioned in the permanent or transitory provisions of the Constitution and its complementary legislation.

It must be kept in mind, however, that according to Article 39 of the Constitution, the rights and guarantees mentioned could only be affected in situations of civil or foreign war, internal disturbance, emergency, and disaster; for each of these

situations the Constitution authorized the imposition of the corresponding state of exception. For example, when the president with the assent of the junta declared a state of siege, he was empowered to transfer people from one place to another in the country, to arrest them, to deport them from the country, and to prohibit them from entering or leaving the country, in each instance for a ninety day period. Nevertheless, the measures of deporting and prohibiting entry remained in effect even though the state of siege was over, as long as the authority who had given such orders did not explicitly cancel them.<sup>62</sup> That extension was also in effect with respect to prohibiting entry into the country during the state of emergency, which could be decreed simply by a presidential decision.<sup>63</sup>

Under a state of siege the appeals for protection and habeas corpus were not admitted. Moreover, as a rule habeas corpus was not admitted during states of exception, including the state of emergency, with regard to "the rights and guarantees which have been suspended or restricted in accordance with the norms governing such states."<sup>64</sup> In such situations the courts could never step in to judge the factual grounds for the measures the authorities had taken in exercising their powers.<sup>65</sup>

We may close this summary description of the original text of the Constitution by recalling the fifth of the states of exception, as envisioned in Transitory Article No. 24, which, as will be seen, concentrated the full powers of the head of state over public freedoms and revealed that those powers not only stood in continuity with the earlier form of those powers but were even being extended.

In accordance with that article, and regardless of the other similar kinds of periods envisioned in the permanent articles, if during the presidential period beginning on March 11, 1981 there should occur acts of violence intended to disturb public order, or there was a danger that public internal peace might be disturbed, the president of the republic was obliged to declare and assume the following powers for six months, subject to renewal:

\* To submit people to house arrest or place them under arrest in sites other than jails. Should there be terrorist actions with

---

<sup>62</sup> Article 41, Nos. 2 and 7, in relation to transitory provision No. 15, B, No. 40.

<sup>63</sup> Article 41, Nos. 4 and 7, in relation to transitory provision No. 15a, No.1.

<sup>64</sup> Article 41, No. 3.

<sup>65</sup> Article 41, No. 3.

serious consequences, that period could be extended for two more weeks.

\* To prohibit from entering, or expel from the country those who spread the teachings mentioned in Article 8 of the Constitution, those who are accused of being active proponents of such teachings, those who carry out actions contrary to Chile's interests or who constitute a danger to its internal peace.

\* To order particular persons to remain in an urban location of the country for three months.

\* To restrict the right of assembly and freedom of information (the latter only with regard to initiating, publishing, or circulating new publications).

The measures adopted by virtue of this article did not admit any kind of appeal, except that of being reconsidered by the official by whom they were ordered.

- c. Determination of causal connections and the fate of the victims  
1) Violations of Transitory Article No. 24 and of the state of emergency

Law 18015<sup>66</sup> punished by depriving of personal liberty all those who were arrested, those obliged to remain in a specific urban locality, or those returned to the country, as well as those who participated in organized meetings, all of whom were violating the terms of Transitory Article No. 24 of the Constitution. That same law assigned punishments for those persons who violated the measures decreed for dealing with the state of emergency. Criminal procedures for these crimes were subject to the provisions of the Law of State Security.

New reforms were introduced into Decree Law 1877 with Decree Law No. 3645, which had constitutional status and entered into effect along with the Constitution, although it was issued five days previously.<sup>67</sup> In accordance with the Constitution, the references to the state of siege in Decree Laws Nos. 81, 198, and 1009 were to be understood as likewise applicable to the state of emergency, and now in addition to Transitory Article No. 24 of the Constitution.

---

<sup>66</sup> Diario Oficial, July 27, 1981, modified by law No. 18150, published there on July 30, 1982.

<sup>67</sup> Diario Oficial, March 10, 1981.

Finally, Decree Law No. 1878 regarding the CNI was modified twice. Law No. 18315<sup>68</sup> brought about the first such change by ordering that while that transitory article was in effect, the CNI could hold people under arrest in its own installations, which for all legal purposes were regarded as detention sites. A decree of the Interior Ministry declared which CNI installations were to be so regarded.<sup>69</sup>

Three years later Law No. 18623<sup>70</sup> repealed that previous law and ordered that anyone apprehended by the CNI "is to be detained or arrested in his or her home or taken immediately to a jail or a public detention site, in accordance with what is ordered for the particular case."

## 2) Systematization of states of exception

Law No. 18415,<sup>71</sup> the Organic Constitutional Law for States of Exception, abolished all the regulations authorizing the suspension, restriction, or limitation of constitutional rights in situations of exception. The provisions of this new statute were to be applied in their place. Hence Decree Laws Nos. 81, 198, 604, 640, 1009, 1878 and others were no longer in effect except as related to Transitory Article No. 24 of the Constitution.

In accordance with Article 12 of that law, a constitutional guarantee was suspended when its full exercise was temporarily impeded during a state of emergency, and likewise such a guarantee was restricted in one such state if its exercise was limited partially [by requiring bureaucratic steps which would hinder full exercise] or entirely.

The same law stated that the related presidential powers could be delegated and exercised through decrees which were exempted from the procedure for notification. Moreover the commanders-in-chief or heads of the armed forces or police forces were also authorized to issue whatever decrees they regarded as useful, for example, to give instructions aimed at maintaining order within a zone under a state of emergency.

---

<sup>68</sup> Diario Oficial, June 14, 1984.

<sup>69</sup> Supreme Decrees Nos. 594, 603, and 3214 of the Interior Ministry, published in the Diario Oficial of June 15, 1984, and March 2, 1987, respectively, listed fourteen CNI installations which were "regarded as detention sites for carrying out the arrests" ordered by virtue of Transitory Article No. 24.

<sup>70</sup> Diario Oficial, June 11, 1987.

<sup>71</sup> Diario Oficial, June 15, 1985.

### 3) Liability to punishment for unauthorized demonstrations

Prompted by the protests and demonstrations that had been taking place since May 1983, Law No. 18256<sup>72</sup> modified the regulations on state security by sanctioning those persons who without permission encouraged or called for public or collective actions in the streets, squares, and other public places, as well as those who encouraged or incited to any other kinds of demonstrations that might issue in, or lead to, disturbance of public order.

Besides prescribing jail terms for those who violated its terms, this law declared that those responsible were collectively responsible for damages caused as a result, of or on the occasion, of such events, in addition to the responsibility that might incur to those who actually carried out the acts.

### 4) Antiterrorist legislation

Law No. 18314<sup>73</sup> defined terrorist actions and assigned punishments. With regard to the former, the law described sixteen punishable crimes, including publicly inciting to the commission of some of the crimes described in that law; defending terrorism, a terrorist act, or someone participating in it; maliciously provoking disturbance or grave fear in the population or a sector of it, by information concerning the preparation or execution of false terrorist acts. This law proposed the death penalty for some of these acts.

Procedurally, the law declared that with a justifying resolution the competent tribunal could extend up to ten days the period in which the person detained was to be entrusted to it, and could approve that the person could be held in solitary confinement during this period. Moreover the armed forces and police, either separately or jointly, were authorized to carry out whatever tasks the courts might order. However, in dealing with such cases, military courts were authorized to order the CNI to carry out the procedures.

The law also stated that when investigating terrorist crimes, the members of those forces and of the CNI could "proceed without a warrant, if they had a written order from the interior minister, regional governors, provincial governors, or base commanders,

---

<sup>72</sup> Diario Oficial, October 27, 1983.

<sup>73</sup> Diario Oficial, May 17, 1984.

but only if obtaining a warrant might prevent the effort from being successful or those presumed responsible from being arrested, or hinder the search and impounding of the goods or instruments that might be found in the arrest site and might be related to the crimes under investigation." The authorities were obliged to inform the court of actions carried out in this fashion within the next forty-eight hours, a time period which the court could extend to ten days by means of a justifying order.

Subsequently Law No. 18585<sup>74</sup> created the position of military prosecutor general, whose duty it was to become involved on behalf of the Interior Ministry in all trials dealing with violations of Law No. 18314 [the antiterrorist law, see above] which were to be treated within the jurisdiction of the ordinary courts. As such this attorney had the "task of centralizing the defense of the established government and of the threatened society in all such legal proceedings."

#### 11. Documents concealed, filed and destroyed

Modifying the Military Justice Code, Law No. 18667<sup>75</sup> ordered that when the prosecutor of a case believes it necessary to include in the case secret documents belonging to the armed forces or police of Chile, he is to request them from the commander-in-chief of the particular branch or the head of the armed forces. However, if the authority to whom the request is made believes that sending them might affect state security, national defense, internal public order or the security of persons, he can refuse to do so. If the prosecutor believes the measure to be absolutely necessary, he may proceed to take the matter to the Supreme Court to be resolved.

That same law stated that "secret documents are understood to be those directly related to state security, national defense, internal public order, or the security of persons, including those related to personnel lists and the institutional security of the armed forces or police of Chile and of their members. . ." This law also ordered that the ordinary criminal courts abide by its terms.

In addition, Law No. 18711<sup>76</sup> ordered that the documents of the Ministry of Defense, of the armed forces, and of the police and security forces and of the other bodies under this ministry, or that were related to the government through it, were to be filed or destroyed in accordance with the relevant ministerial and institutional regulations.

---

<sup>74</sup> Diario Oficial, December 19, 1986.

<sup>75</sup> Diario Oficial, November 27, 1987.

<sup>76</sup> Diario Oficial, January 17, 1989.



Finally, Law No. 18845<sup>77</sup> on the electronic storage of documents prohibited their destruction when they belonged to the public administration, both centralized and decentralized, or to public registries. Nevertheless, those institutions mentioned in Law No. 18771 cited above, were subject to what was there stipulated, and were "authorized to proceed to destroy the original documents, in accordance with the provisions and restrictions laid down" in Law No. 18845.

## 12. Constitutional reform

In the plebiscite held on July 30, 1989, with no state of exception in effect, 87.7 percent of the voters ratified the fifty-four amendments that the junta, exercising its constituent power, introduced into the 1980 Constitution. Law No. 18125<sup>78</sup> contains those changes.

### a. Changes on human rights

It is the duty of governmental agencies to respect and promote the essential rights that flow from human nature, which are guaranteed by the Constitution as well as by those international treaties that Chile has ratified and which are in effect.<sup>79</sup>

In canceling Article 8, while maintaining its strictures against those responsible for terrorist crimes, the reform guaranteed political pluralism. However, "parties, movements or other kinds of organization whose objectives, actions or behavior do not respect the basic principles of democratic and constitutional rule, seek to implant a totalitarian system, or those that employ violence, advocate it or incite to it as a method of political action, are unconstitutional."<sup>80</sup>

Only situations of exception can affect the exercise of constitutional rights and guarantees. During a state of siege, the president can only transfer people from one site to another urban site within the nation; keep them under house arrest or in sites other than jails or other places set aside for the detention or imprisonment of common criminals; suspend or restrict the exercise of the right of assembly and restrict the exercise of freedoms of movement, information, and opinion. By declaring a state of emergency, the chief of state is now empowered only to restrict the exercise of freedom of movement and of the right to meet. The measures adopted on the basis of these and other states of exception cannot be extended beyond their proper

---

<sup>77</sup> Diario Oficial, November 3, 1989.

<sup>78</sup> Diario Oficial, August 17, 1989.

<sup>79</sup> Article 5, paragraph 2.

<sup>80</sup> Articles 9 and 19, No. 15, paragraph 6.

period.<sup>81</sup>

In no case are the courts allowed to make a judgment on the grounds or factual circumstances that the authorities invoke to adopt such measures. Nevertheless, appeals of habeas corpus and other constitutional guarantees may be presented and judges are bound to process them; doing so will not suspend the effects of the measures decreed, regardless of what the final outcome of such appeals may be.<sup>82</sup>

Finally the Supreme Court still has no authority over the war tribunals in the realm of issuing orders, reproof, or funding. In this respect matters remain as laid down in the original text of the Constitution in 1980.<sup>83</sup>

b. Complementary annulments and adjustments

As of March 24, 1990, Transitory Article No. 24 of the Constitution was no longer in effect. On August 17, 1989, the date on which the constitutional reform went into effect, the terms of Decree Laws Nos. 77, 78, and 1697 having to do with the proscription, recess, confiscation of property and other matters related to political parties that had not yet been annulled ceased to have effect. The Organic Constitutional Law on States of Exception and the law defining terrorist behavior and punishment for such were modified by Laws Nos. 18906 and 18937<sup>84</sup> to adjust them to changes in the Constitution.

Finally, along with the laws already mentioned, the following, which essentially affected constitutional guarantees were also repealed: Decree Law No. 50 on universities (by Law 18944); Decree Laws Nos. 81 and 1009, on states of emergency, (by Law No. 18903); Decree Law No. 349 on intermediate groups and professional associations (by Law No. 18879); Decree Law No. 1878 which created the CNI (by Law No. 18943); and Law No. 18585 dealing with the prosecutor general in cases initiated by virtue of the antiterrorist law (through Law No. 18925).<sup>85</sup>

---

<sup>81</sup> Article 41, Nos. 2,4, and 7.

<sup>82</sup> Article 41, No. 3.

<sup>83</sup> Article 79.

<sup>84</sup> Diario Oficial, January 24 and February 22, 1990.

<sup>85</sup> Diario Oficial, March 10, 1990, March 19, 1990, December 19, 1989, February 22, 1990, and February 20, respectively.

## Chapter Three: War tribunals

### A. Laws

Section III of Book One of the Military Justice Code provides for the establishment of wartime military tribunals. Article 71 determines who exercises military jurisdiction and Article 73 declares that their competence on territory declared to be in state of assembly or state of siege is to begin from the moment a commanding general is appointed for an army which is to operate against the foreign enemy or against organized rebel forces. The regulation adds that as of that moment peacetime military courts no longer have jurisdiction.

According to Article 418 of that same code, "a state of war or of wartime is understood to exist not only when war or a state of siege have been officially declared in accordance with the respective laws, but also when war exists in fact or a mobilization for war has been ordered, even though there has been no official declaration."

From the text of Article 73 one may conclude that for wartime military tribunals to function enemy forces must be present if it is an external war, or organized rebel forces must be present, in the case of an internal war; and according to paragraph 2 of Article 419, "enemy" is understood to mean not only the foreign enemy but any kind of militarily organized rebel or seditious forces. Hence two different situations are being defined: foreign war and internal war (or internal disturbance) each with different requirements, but some common features. In both cases military court jurisdiction is being broadened, new kinds of crimes are described as a result of the "state" or "time" of war, and more severe sanctions are laid down.

Combining the provisions of Articles 73 and 419, it may be concluded that in the case of internal war, wartime military tribunals should act only when militarily organized rebel forces are present.

With regard to the war tribunals that operated after September 11, 1973, it should be recalled that Decree Law No. 3, which the junta issued that same day as it was assuming full governing powers over the nation, declares a "state of siege throughout the republic, with this junta acting as commanding general of the forces that will operate during the emergency."

Decree Law No. 4 (also September 11) states that the provinces and departments named there are "in a state of emergency for the longest period envisioned in Article 31, paragraph 2, of Law No. 12927" and appoints particular officers to govern them. These officers are to have the powers established in Articles 33 and 34 of that same law. Decree Law No. 51

(October 2, 1973) authorized that a wide range of the powers of the commanding general be delegated to the commanders of divisions or brigades.

Decree Law No. 5 (September 12), interpreting Article 418 of the Military Justice Code, declares that under the conditions existing in the country, the state of siege decreed as a result of internal disturbance is to be understood as a "state of war" and that hence the punishments of such a period are to be in effect as established in the Code of Military Justice and other criminal laws, and all other of such legislation are also to be understood as in effect." For many crimes the changes introduced into Laws No. 17798 (Weapons Control) and 12927 (State Security) contemplate the death penalty, contrary to what had previously been the case. That same decree law adds to Article 281 of the Military Justice Code, in the paragraph on "outrage against sentinels, the flag, and the army," a clause stating that "when the security of those under attack requires it, the party or parties responsible may be killed in the act."

Among other reasons, Decree Law No. 5 is based on the situation of internal disturbance affecting the country; on the need to repress as severely as possible actions committed against the physical integrity of the armed forces and police personnel and the general population, and on the desirability of granting greater discretion to military tribunals in sanctioning some of the crimes listed in Law No. 17798, in view of their seriousness and the frequency with which they are being committed. The competency of wartime military tribunals is accordingly broadened to include dealing with various actions for which that law provides sanctions.

While the legal basis for the state of siege declared by Decree Law No. 3 is found in clause 17 of Article 72 of the 1925 Constitution, then still in force, nevertheless that clause granted the president of the republic only those powers listed in paragraph 3. Decree Law No. 5 is based on what is laid down in Decree Laws Nos. 1 and 3, but it does not offer legal foundations; in fact those decree laws regard the basis for the state of siege to be the fact that the armed forces believe that the situation is such that the nation's traditions make it imperative for them to act.

From the preceding it is clear that those decree laws declare that the territory of the republic is in a state of siege or emergency or in a "state of wartime" as a consequence of the internal disturbance the country has been undergoing and of the other motivations noted above; they evade, however, the legal requirement that "organized rebel forces" or "militarily organized rebel or mutinous forces of any kind" be present.

The foregoing makes clear that the decreed state of siege leads to a "state or time of war called preventive" rather than a real state of war, since those decree laws never pointed to, or based their decisions on, the existence of militarily

organized rebel or mutinous forces. These observations and the terms of Articles 73 and 419 of the Military Justice Code enable us to state that this "preventive" state or time of war neither justified nor permitted the functioning of wartime military tribunals. Thus it may be concluded that the tribunals that acted in such fashion to punish actions committed prior to September 11, 1973 did so in opposition to the legislation then in force and in violation of basic principles of law.

Nevertheless, it cannot be denied that besides wartime military tribunals, those that the law calls peacetime tribunals could act, provided that what is contained in Article 73 could be reconciled with the general requirements of law, and provided it were accepted that these latter could continue to deal with the cases pending before them when the state of war was declared, and could hear cases that arose as a result of criminal acts committed prior to that declaration, and hence that the wartime military tribunals were not able to hear those cases, in accordance with the terms of Articles 11 and 12 of the 1925 Constitution, then in force, and Article 18 of the Criminal Code.

Decree Law No. 13 (September 20, 1973) was issued in order to clarify possibly contradictory positions. Among other justifications, it observed that "the complexity and extension of a large number of legal proceedings underway in the wartime or peacetime military tribunals as an extension of the military jurisdiction makes it impossible to subject them to the wartime investigation procedure." Hence it declares that "the meaning and scope of Article 73 of the Military Justice Code is to make wartime military tribunals responsible for hearing cases under military jurisdiction when they are initiated in a territory that has been declared to be in a state of alert or state of siege once the commanding general has been appointed. Those cases underway in peacetime military tribunals are to be dealt with and judged in accordance with military procedure, until they have all been concluded."

The clear tenor of this decree law tends to corroborate what we have said: wartime military tribunals are competent to handle military trials begun on a territory declared to be in a state of assembly or of siege, subsequent to the appointment of the commanding general. As already noted, Decree Law No. 5 (September 11, 1973) published in the *Diario Oficial* on September 22, interpretatively stated that the state of siege declared as a result of internal disturbance was to be understood as the "state or time of war."

Nevertheless, in violation of fundamental legal norms and essential ethical principles, the war tribunals and other military tribunals, acting during the "state or time of war" in accordance with this new legislation, applied the new sanctions to events that had taken place prior to their entering into effect. They were thereby explicitly contravening the provisions of Article 11 of the 1925 Constitution, which was then in effect, and Article 18 of the Criminal Code, which enshrines the universally accepted principle that criminal law is not

retroactive.

In submitting its report, this Commission expresses its condemnation of these violations of the law. In particular it notes that it was particularly improper and regrettable that in many instances the various war tribunals imposed the death penalty for actions that those accused had carried out before September 11, 1973, and before Decree Law No. 5, published in the Diario Oficial on September 22, 1973, went into effect.

The Commission also believes that the wartime military tribunals were empowered to consider only events that took place after they were established. It further believes that Article 240, paragraph 2, of the Military Justice Code was not applicable since its requirements were not met, and it is at least not evident that the opinion or judgment of the commander-in-chief of the army or the commander of the area under siege had been obtained, nor that the general norm of paragraph 2, Article 82 of the Criminal Code (located in paragraph 5, Title II, Book One) was fulfilled.

The Commission further expresses its indignation over the repeated failure to fulfill the provisions of Article 84 of the Criminal Code. The result was irreparable pain and suffering that has continued to this day in the form of a steadfast and just anger over the violation of a humane and noble legal obligation, namely that of entrusting to the family the body of a person who has been executed, whenever such is their request.

#### *B. Procedure governing war tribunals*

The provisions for how wartime military tribunals are to be set up and to function prescribe a hierarchical organization that is autonomous and independent of any other authority in ordinary jurisdiction. At the head of this organization stands the commanding general, who is endowed with the fullness of jurisdiction, which by its very nature and scope rules out any intervention by tribunals which are not themselves part of this hierarchical organization.

The war tribunals are jurisdictionally subject to the commanding general of the particular territory, and he has all-embracing powers to approve, revoke, or change the verdicts of the tribunals and exercise disciplinary jurisdiction over them in accordance with the terms of Article 74 of the Military Justice Code (located in Section III, which deals with wartime military tribunals).

Articles 82 and 86 of the Military Justice Code define those cases in which war tribunals are to be formed and the ways they are to be established under the various possibilities considered. Decree Law No. 3655 (1981), which replaced the single article that makes up Decree Law No. 3627 (also 1981), defines other such cases, stating that any crimes whatsoever in which as the main or

related activity the result is death or violations of Articles 395 and 396, paragraph 1 of the Criminal Code, inflicted on persons mentioned in Nos. 1 and 2 of the Code of Civil Procedures and on members of the armed forces and police, and which, given the manner or circumstances of their perpetration, it can be assumed that the actions were committed against them as such, are to be tried by wartime military tribunals. This stipulation in the text is very clear, and it was always applied unhesitatingly.

Section IV of Book Two of the Military Justice Code deals with the criminal procedure for wartime. Section V deals with the lawyers and officers of the armed forces and police who can act on behalf of the defense in the tribunals; it establishes that they are binding on the military, on the lawyers assigned, and on those designated by the prosecution.

When the tribunal has been convened and when the place, date, and time have been designated, those accused will be advised, and they are to designate who will defend them; otherwise, the prosecutor will make the appointment. In the time between the convoking and holding of the tribunal, the defense is to be allowed to familiarize itself with all the evidence at the disposal of the prosecutor and to gather such evidence as it regards as helpful for the defense. It is to be permitted to communicate with the accused and shall not be hindered by any solitary confinement.

The defense must present its case in writing, indicating the means to be used as proof and the list of witnesses and experts who will appear and give testimony in the hearing. The prosecutor is to give them enough advance notice to appear for the hearing.

Once the tribunal is in session, the accused and the defender are to appear, and the defender must indicate whether he has any grounds for implicating or rejecting any member of the tribunal; if such exists and is accepted a replacement is to be appointed immediately.

The prosecutor gives an account of the judicial investigation and reads the accusations. The accused or his defender reads the defense, and then the proof presented is accepted; the witnesses are to be interrogated separately, but the members of the tribunal, the prosecutor, or the defender may ask them to clarify or explain points that are doubtful in their statements. Should witnesses live far from the site of the trial, arrangements may be made to question them in writing.

If the tribunal believes it necessary to examine some place or some object that cannot be brought in, one or more of its members may be commissioned to do so, with the aid of experts, should that be necessary. The prosecutor and the defender are to be present, and if it is judged appropriate, the defendant may be ordered to be present as well; meanwhile the tribunal procedure is

suspended.

Then the tribunal president orders everyone to leave the room, and the tribunal immediately proceeds to consider and resolve all issues presented; it is to decide whether the defendant is innocent or guilty and in the latter case is to dictate very precisely the punishment to be imposed.

Proof is to be assessed in accordance with the general rules for trials, but in determining what really happened the court may make its most reasonable and honest assessment. The judge writes the verdict immediately, and in it he takes note of any dissenting opinions and their grounds. The accused and the prosecutor are personally notified, and the result, along with all the documentation, is made available to the general or commander for his approval or modification. The tribunal functions uninterruptedly and publicly, except when it is deliberating over its decisions, and when it may decide to do otherwise in particular cases.

As can be seen, in accordance with the terms laid down in Sections IV and V of Book Two of the Military Justice Code, it can be said that the defendants have at their disposal suitable means for defending themselves adequately.

It is worth noting that in accordance with paragraph 2 of Article 87 of that code, the rules of Articles 72, 73 (paragraph 1), 74, and 88 of the Organic Code for Tribunals are applicable to the decisions of war tribunals. These rules are laid down in paragraph 2 of Section V of the Organic Code for Tribunals which deals with "decisions by appeals courts." Article 1 deals with the quorum needed for it to function and make decisions. Article 2 states that at the second level [under appeal] the death penalty must be by unanimous consent of the tribunal, and that when there is only a simple majority, the immediately lesser punishment is to be applied. Article 3 states that if half the votes favor a verdict of innocence or a lower punishment, such is to be the decision. Should there be a deadlock over which opinion is more favorable to the accused, the side on which the oldest member of the tribunal has voted prevails. Finally, when votes are scattered, those who have sustained the position most disadvantageous to the accused should opt for one of the others, and the voting process should continue until there is a necessary majority or a deadlock favorable to the accused.

Thus it may be said that by virtue of Article 87(-2) of the Military Justice Code, these rules of the Organic Code for Tribunals must be applied in decisions made by war tribunals.

The Commission reiterates its own position that the carrying out of sentences imposing the maximum penalty cannot have been based on what is laid out in Article 240(-2) of the Military Justice Code, which refers to immediate execution of a sentence, since in its obvious literal meaning the text refers exclusively to a



time of foreign war. The reasons given and the tenor of that clause do not allow any other reading, and the provisions of Article 238 further corroborate this position.

In those cases in which the war tribunals impose the death penalty, the norms laid down in paragraph 5 of Section III of Book One of the Criminal Code should have been observed, assuming that it was a common penalty applied to non-military defendants.

Failure to reflect and weigh matters generally weakens respect for just procedure and a practice of justice that is independent, efficient, and free of negative concerns.

### *C. Activity of the war tribunals*

#### 1. General remarks

In accordance with Article 81 of the Military Justice Code, all crimes tried under military jurisdiction in time of war are to be handled exclusively in war tribunals.

While it proved impossible to obtain the records of the proceedings of these tribunals, with the exception of trial document 11-73 in Puerto Montt, which the Chilean Air Force had in its possession, Commission members did obtain copies of many verdicts and other reliable documentation from the several regions which they visited. We will examine the activity of the tribunals and make relevant observations in the light of these copies.

It should be noted that the Commission asked the army solicitor general for copies of the records of the trials heard by the war tribunals of Pisagua and other documentation connected to its investigation. That request was answered in Resolution No. 12900-16, dated October 8, 1990, which states that the army chief of staff "has advised that those trial records, were among those that were completely burned in a fire that broke out as the result of a terrorist attack on the Army Physical Education School on November 14, 1989, where some of the documentation of the army's general archive was located. This incident is under investigation by Military Prosecutor's Office No. 6 of Santiago." In concluding this discussion, we will offer a critical analysis of flaws in compliance with various legal norms governing the jurisdiction and procedures of war tribunals. Such norms include both those related to determining which acts are subject to punishment and how guilt is to be established and those for evaluating evidence, establishing the defense, and accepting or rejecting circumstances that might qualify the degree of responsibility attributed to those guilty.

One especially serious set of circumstances should be noted immediately, however; they should be singled out and noted as running counter to the respect due to the rule of law and as offending the fundamental rights that the Constitution guarantees all persons. In Pisagua five people who were condemned to death and executed were supposed to have been taken before a war tribunal. Military Decree No. 82 (October 11, 1973) offered the only notice of the execution of five people in the detention camp in that city.

It was impossible to obtain a copy of the sentence, if there was any, and according to the testimony of several detainees of that camp, far from being allowed to have representation in their own defense, the accused did not appear before any war tribunal. In short, this situation was unlawful, and the decree published in the newspaper El Tarapac on October 26, 1973, was an attempt to justify it. That decree states that they "were found guilty because they confessed that they had committed the crimes of treason to country and espionage as found in Articles 252 and 254 of the Military Justice Code, and also of violating what is laid down in Article 1 of Law No. 12927 (State Security), by actively participating in subversive plans and infiltrating the armed forces to carry out their assigned missions."

## 2. Detailed examination

# The Commission has been able to determine that sixteen war tribunals were held in the city of Arica, and that they tried fifty-seven persons, eleven of whom were acquitted while the remainder were sentenced to various punishments of imprisonment and banishment for being guilty of the crimes envisioned in Article 416, Nos. 2 and 4 of the Military Justice Code; Articles 2 and 3 of Decree Law No. 77 (1973); Article 4 (b, c, d, f), of Law No. 12927 on state security; Article 6 (a, c, d, and f), and Articles 10 and 11 of that same decree law, and Articles 10 and 11 of Law No. 17798 (Weapons Control).

# In Pisagua, besides the previously mentioned illegal and falsified tribunal known only through the decrees of October 11-12, 1973, there is evidence that three war tribunals were held and that they processed 147 people. According to trial record No. 4-73 on October 29, 1973, six of those persons tried received the death sentence for having committed the crime described in Article 245, No. 2, as related to Article 246 of the Military Justice Code, that is, the crime of treason. The commander of the prison camp at Pisagua changed the death penalty of two of those on trial to life imprisonment and upheld the maximum punishment for the other four. The rest were given life imprisonment, with the exception of one who was given twenty years imprisonment under maximum security. The commander lowered this latter sentence to ten years imprisonment

and reduced one of the life sentences to twenty years. In addition to the crimes already mentioned, the tribunal believed that the crimes sanctioned in Articles 3, 6, 11, and 13, of Law No. 17798 (Weapons Control) as modified by Decree Law No. 5 (December 12, 1973, published in the Diario Oficial on September 22) had been committed.

With the sentence in case No. 5-37 (November 29, 1973) the tribunal condemned two defendants to death, one for committing the crime sanctioned in Article 13, as related to Article 3 of Law No. 17798 (Weapons Control) and the other for committing the crimes mentioned in Article 2, No. 2, in relation to Article 254 of the Military Justice Code and Article 4-d, and Nos. 5 and 7 of Law No. 12927 (State Security). One of these death sentences was reduced to a prison term of five years and one day, in a sentence given by the commander of the zone under state of siege in the province of Tarapacá.

Trial record No. 2-74 states that on February 19, 1974, the war tribunal sentenced to death four of those persons who had been tried for being involved in treason in accordance with Article 245, No. 2, as connected to Article 246 of the Military Justice Code; it sentenced the others who were accused of violating that same law and of the crimes described in Article 4 (d and f) of Law No. 12927 (State Security) to varying prison terms or internal exile. On February 11, the commander of the prisoner camp reduced two of the death sentences to life imprisonment, increased or reduced some of the sentences of imprisonment or internal exile; and acquitted seventeen of those sentenced and allowed sixteen of those who had been tried to be released unconditionally. He gave his approval to the rest of what the war tribunal had decided.

# In Iquique a war tribunal was held to try two Carampangue Regiment soldiers who had deserted and taken their equipment and weapons. Upon being captured two months later they were tried in a war tribunal and sentenced to fifteen years of imprisonment for having committed the crimes described in Articles 348, 305, 355, and 321 of the Military Justice Code.

# In Calama nineteen war tribunals are known to have tried thirty-four persons; five were acquitted and the rest received various sentences or exile for crimes described in Article 284 of the Military Justice Code, Article 440 of the Criminal Code, Article 3 of Decree Law No. 77 (1973), Articles 8, 9, 10, and 13 of Law No. 17798 (Weapons Control), Article 4, (a, b, c, and f), Article 6 (a, b) and Article 11 of Law No. 12927 (State Security).

In trial record 11-73 one person is given the maximum punishment, which the commander of the zone under state of siege lowers to twenty

years and one day. In trial record 46-73 the person receives the death sentence; when the division commander examines the sentence, he gives his approval but then lowers the punishment to life imprisonment for the crimes sanctioned in Article 4 (a and d) of Law No. 12927 (State Security) and Articles 3, 10, 11, and 13 of Law No. 17798 (Weapons Control).

It is striking to note that three were found guilty of being accomplices in the crime of embezzlement of public funds as found in Article 233 of the Penal Code, even though there is no mention of those who were guilty of the crime itself.

# In Antofagasta it is known that 190 persons were tried before thirty-five war tribunals; 156 were found guilty, and twenty-three were found innocent; the process was definitively halted for six of the accused in accordance with Article 408(-2) of the Code of Criminal Procedures, and it was temporarily halted for five of them, in accordance with Article 409(-1), of that code, since it had not been fully established that they had in fact committed the crime of which they were accused. The guilty verdicts were based on Articles 292, 293, and 294 of the Criminal Code, Articles 245, No. 2, 257, 276, 284, 299, No. 3 and 394, No. 3 of the Military Justice Code, Articles 8, 9, 10, 11, 13, and 15 of the law (Weapons Control), and Article 4 (b, c, d, and f) and Article 11 of the State Security Law and Article 3 of Decree Law No. 77 (1973).

In trial record 347-73 two people were sentenced to death and executed for the crimes described in Articles 8, 9, and 13 of Law No. 17798, and Article 252 of the Military Justice Code.

Other punishments imposed range from military life imprisonment to the lowest level of internal exile, as determined by the laws mentioned previously.

# In Copiapó it is known that seventeen war tribunals were held to try forty-three persons; the only ones found innocent were two minors who acted without being aware of the crimes of which they were later accused. The sentences meted out were based on the provisions of Articles 443 and 446 of the Criminal Code, Articles 9, 10, and 11 of Law No. 17798, and Article 4 (a, c, d, e) and Article 11 of Law No. 12917.

One irregularity in trial record 200-75 is the fact that a member of the tribunal also gave testimony on who the parties were and how the police had acted.

In trial record 42-73 the defendant was sentenced to three years and one day of internal exile for various crimes described in Laws 12927 and

17798. As the result of a sentence given on September 14, 1988, those charges were lifted, since he was regarded as eligible for amnesty according to Decree Law No. 2919 (1978).

# In the sixteen war tribunals held in La Serena it is known that 178 people were tried; twenty-six were acquitted, in four cases proceedings were halted temporarily, in four other cases they were halted permanently-although two of the people had been executed as a result of decisions made in other trials. In trial No. 159-73 four were found guilty of various crimes and although the local commander had given his approval, the head of the army's Second Division acquitted the defendant in what was called a verdict review given in response to orders from the Ministry of Defense and the Army Solicitor General on August 9, 1974.

In trial No. 219-73 one of the defendants received a death sentence, which the local military commander subsequently reduced to a series of prison terms. He was found guilty of violating Article 252, No. 3 of the Code of Military Justice; Articles 4, 8, 9, 10, and 13 of Law No. 17798; Article 4 (a, c, d, f, and g) and Article 6 c of Law No. 12927 and Article 3 of Decree Law No. 77 of 1973.

Thirty-seven people were tried in the five war tribunals known to have been held in Los Andes. Guilty verdicts were based on the terms of Article 248, No. 2 of the Military Justice Code; Article 4 (a, b, c, d, and f) of Law No. 12927 and Articles 8, 9, 10, 11, 12, and 13 of Law No. 17798.

In war tribunal 97-73 the death penalty given to one of the defendants was lowered to life imprisonment when it was reviewed by the commander of the army's Second Division, who in fact considerably reduced a number of prison terms the tribunal had meted out.

When the commander of the army's Second Division reviewed trial 3-74 in which two people had been given prison terms, he acquitted one of them, and permanently halted action against the other in accordance with the terms of Article 408, No. 7 of the Code of Criminal Procedure.

# According to documents the Commission obtained, eighteen war tribunals were held in San Felipe; of the eighty-two persons tried, three were acquitted and one was a minor who was judged to have acted without full knowledge. The guilty verdicts were based on Article 399 and 446 of the Criminal Code; Articles 8, 9, 10, and 13 of Law No. 17798 and Article 4 (a, c, d, and f) and Article 6 (a, c, e, and f) of Law No. 12927. With regard to the activity of these tribunals it should be noted that:

In trial record 22-73 the war tribunal expressly noted that it was not taking into account the changes in punishment introduced by Decree Law 5

(1973) since that law had been promulgated after the events being considered in the trial; likewise in trial record 45-73 the terms of that decree law were not applied for the same reason.

In trial record 41-73 the war tribunal judged that the ordinary court system should deal with violations of Law No. 12927 committed before September 11, 1973, and thus it declared itself incompetent;

In trial record 173-73 the war tribunal declared that it was not competent to try the violations, but the commander of the zone in state of siege determined otherwise and convoked another tribunal, which arrived at a guilty verdict; In trials 38-73 and 127-73 two people whom the war tribunals had found guilty of various punishable violations were subsequently acquitted by the commander-in-chief of the army's Second Division when he examined the verdicts.

# The Commission found documents on one war tribunal held in Quillota, in which one person was tried and was found guilty of the crime sanctioned in Article 133 of the Criminal Code; the circumstances mentioned in Nos. 12 and 13 of Article 12 of that code were considered to increase responsibility.

# It is known that forty-one war tribunals were held in Valparaiso and that 181 persons were tried; eleven were found innocent and the rest were sentenced to various prison terms and to internal exile for committing the crimes described in Articles 194, 196, 240, 250, 436, and 440, No. 1 of the Criminal Code; Articles 8, 9, 10, 11, and 13 of Law No. 17798; Article 4 (a, d, and g) and Article 7 of Law No. 12927.

It should be pointed out that contrary to what generally occurred in war tribunals, namely that they made it very difficult to accept mitigating factor No. 6 of Article 11 of the Criminal Code, trials held in Valparaiso followed the procedure common in ordinary courts, and the result was a more positive approach to meting out punishment.

During trial No. 846-78 (January 1978), those defending the accused invoked the terms of Decree Law No. 2191 (amnesty) but the petition was rejected because the verdict had not been given when the decree law went into effect and hence the accused had not been found guilty.

# There is documentation for eleven of the war tribunals that were held in Tejas Verdes, in which fifty-six people were put on trial; four were acquitted and the rest were sentenced to different punishments of either prison or internal exile for having committed the crimes sanctioned in Articles 282 and 417 of the Military Justice Code, Articles 8 and 13 of Law No. 17798, and Articles 4f, and 6 (a and f of Law No. 12927. In trial No.

20-73 the two defendants were found guilty of having committed the crime envisioned in Article 4f of Law No. 12927, but in reviewing the verdict, the commander-in-chief of the army's Second Division acquitted them. In trial record 43-78 (which constitutes three pages) the crime was regarded as proven on no grounds other than a confession by the defendant. Moreover, the reference to Article 282 of the Military Justice Code is irrelevant; it should cite Article 283, since the crime was against a member of the armed forces.

With regard to trial No. 18-73, through unofficial channels the Commission has been able to obtain a copy of the death sentence given to two people who were executed for having committed the crime sanctioned in Article 8 of Law No. 17798. That sentence is itself the only evidence that this trial took place, and its proceedings are known only through relatives of those found guilty and through witnesses who appeared before the Commission and stated that the defendants had no one to defend them and were not charged before any war tribunal.

# The Commission has been able to obtain documentation on only forty-six war tribunals held in Santiago from 1973-1975. Of the 218 people tried, nineteen were acquitted, proceedings against one of them were halted because he had died (Article 408, No. 5 of the Criminal Procedures Code), and proceedings were halted temporarily against another, in accordance with Article 2 of that Code, since his guilt had not been proven. The grounds for the guilty verdicts and sentences were Articles 254, 274, 278, 280, 299(-3), 304(-3), 307, 314, 316(-2), 354, 415, and 416(-4) of the Military Justice Code; Articles 193, 235, 242, 436, 440, and 442 of the Criminal Code; Articles 5, 8, 9, 10, 11, and 13 of Law No. 17798; Article 4 (d and 1) of Law No. 12927 and Article 2 of Decree Law No. 77 (1973).

In war tribunal record 1-73 of the air force four people were condemned to death, but when the commander reviewed the tribunal's verdict, he lowered these sentences to extended military jail terms.

# Five war tribunals are known to have been held in Rancagua; of the eighty-two people brought to trial, proceedings against twenty-two were halted in accordance with the terms of Article 409, No. 1 of the Criminal Procedures Code. The rest were sentenced to varying prison terms for having committed the crimes defined in Articles 8, 9, 10, 11, 13, and 15, of Law No. 17798 and Article 4d and 6a of Law No. 12927.

# Information was obtained on fourteen war tribunals held in San Fernando. Of the 108 people tried in these tribunals, six were found innocent while the remainder were given different sentences for having committed the crimes described in Article 356 of the Military Justice

Code; Article 470, No. 1 of the Criminal Code; Article 4 (a, c, and f) of Law No. 12927 and Articles 5, 8, 9, 10, and 13 of Law No. 17798.

# One war tribunal is known to have been held in Curicó; nine persons were put on trial and were sentenced to various prison terms for having committed the crimes sanctioned in Articles 8 and 13 of Law No. 17798, in accordance with Article 4d of Law No. 12927.

# Only four war tribunals are known to have taken place in Talca, and they tried twenty-two people. In trial record 1613-73 one of the defendants is given the death sentence for having committed the crimes described in Articles 416 and 354 of the Military Justice Code and other unspecified violations of Law No. 17798. The other defendants were sentenced for violating Article 284 of that Code and Articles 5, 6, 9, and 13 of Law No. 17798 and Articles 4b and 6b of Law No. 12927.

# The Commission has documentation on the activity of eight war tribunals in Linares, which tried 139 persons. Eight of them were acquitted because their involvement in the crimes of which they were accused was not proven, and seventeen were acquitted because they had been sentenced in other trials for these same deeds. The grounds for the guilty verdicts were the provisions of Articles 184, 199, 304, No. 3, 354, and 416 of the Military Justice Code; Article 446 of the Criminal Code; Articles 8, 9, 10, and 13 of Law No. 17798, and Article 4a of Law No. 12927.

# With regard to Cauquenes, the Commission was able to obtain only a copy of the sentence handed down by a war tribunal in trial record 1-73, in which eleven people were found guilty of the crimes described in Article 9 of Law No. 17798 and Article 4d of Law No. 12927.

# Six war tribunals are known to have been held in Chill, and they tried sixty-one people; three defendants were acquitted and the proceedings against three others were temporarily halted. The grounds for the sentences were the terms of Article 281 (last paragraph), Article 350 of the Military Justice Code and Article 8 clause 2, and Article 10 of Law No. 17798.

# The Commission obtained copies of sentences or other documentation connected with nine war tribunals held in Concepción, which tried eighty-one defendants. Four of them were convicted and given the death sentence found in trial record 1645-73 for committing the crimes sanctioned in Articles 8, 10, and 13 of Law No. 17798 in time of war and in accordance with the terms of Decree Law No. 5 (1973). In various other trials four of the accused were acquitted, and proceedings against six others were temporarily suspended, in accordance with the



terms of Article 409, No. 2 of the Code of Criminal Procedures. The grounds for the guilty verdicts and sentences are Articles 8, 10, 13, and 14 of Law No. 17798, Article 4f of Law No. 12927 and Articles 2 and 3 of Decree Law No. 77 (1973).

# There is documentation on five war tribunals held in Talcahuano in which sixty-six people were put on trial; two of them were given a death sentence for committing the crimes defined in Articles 9 and 10 of Law No. 17798, and Articles 6c and 7 of Law No. 12927. Six of the accused were acquitted and the remainder were given varying prison terms for their involvement in the crimes defined in Articles 446, No. 3 of the Criminal Code, Articles 3, 8, 9, and 10 of Law No. 17798, and Articles 4d and 6c of Law No. 12927.

# Two war tribunals are known to have been held in Los Angeles; ten of the thirty-one persons tried were acquitted and the rest were given prison terms for having been involved in the crimes described in Article 8 of Law No. 17798 and Article 4d of Law No. 12927.

# The one war tribunal known to have taken place in Angol tried six defendants who were given prison terms for having committed the crimes described in Articles 8, 9, and 11 of Law No. 17798.

# In the two war tribunals held in Victoria, four people were put on trial; one of them was acquitted and the others were found guilty of the crimes sanctioned in Articles 8 and 9 of Law No. 17798.

# The four war tribunals held in Temuco tried thirteen persons, who were given prison sentences for committing the crimes described in Article 416, No. 4 of the Criminal Code, Articles 8 and 10 of Law 17798 and Article 4g of Law No. 12927.

# The Commission found documentary evidence of a war tribunal in Traiguén which tried eleven people, one of whom was found innocent while the rest were given prison terms for being responsible for the crimes envisioned in Articles 121 and 122 of the Criminal Code and Articles 8 and 9 of Law No. 17798.

# The Commission has copies of verdicts issued by seven war tribunals in Valdivia in which nineteen people were put on trial. Three were acquitted; proceedings against one were temporarily suspended in accordance with the terms of Article 409, No. 2 of the Code of Criminal Procedure and the rest were sentenced to prison terms or internal exile for having been involved in the crimes sanctioned by Articles 8, 9, and 15 of Law No. 17798 and Articles 4 a and 6 c of Law No. 12927.

# The two war tribunals held in Osorno put eight people on trial and gave them prison sentences for committing the crimes sanctioned in Article 8 of Law No. 17798, Article 10 of Law No. 12927, and Article 2 of Decree Law 77 (1973).

# The Commission has copies of two sentences issued by war tribunals in Puerto Montt in which thirty-eight people were put on trial. In trial record 11-73 six defendants were given death sentences for the crime of treason as envisioned in Article 248, No. 2 of the Military Justice Code. This sentence was approved by the commander of the zone under the state of emergency. According to that same record, one of the accused was set free unconditionally, and proceedings against the other were temporarily suspended in accordance with the terms of Article 409, No. 2 of the Code of Criminal Procedure.

Before concluding this section, we should point out that fortunately in a number of war tribunals, especially those in La Serena and Los Andes, the commander of the army's Second Division, making use of powers delegated and instructions given by the attorney general's office by order of the Ministry of Defense, reviewed a number of sentences, and in many instances acquitted the defendants, lowered sentences, and applied legislation correctly in the sense that crimes committed before the declaration of a state of war could not be sanctioned in accordance with subsequent legal rulings.

The Commission repeats that what this report states about the workings and decisions of war tribunals is based entirely on copies of sentences they issued, and on documentation obtained in visits to the various regions as well as that provided by the Vicariate of Solidarity and the Chilean Human Rights Commission. The Commission could only obtain and study trial record 11-73 for one of the war tribunals held in Puerto Montt, which it obtained in that city. The Commission also notes that just as it is claimed that a first war tribunal was held in Pisagua, there are similar claims that war tribunals were held elsewhere in the country. However there is no documentation for them and in fact there are good reasons for doubting that such tribunals were actually held. We have not dealt with them here, but they are presented case by case in the rest of this report.

#### *D. Observations on sentences issued by the war tribunals*

# As a first general observation, we should note formal and underlying flaws in the way the events are presented and established, and in the serious lack of a legal and doctrinal basis for the verdicts given. These flaws are notable in the factual basis used to establish that crimes have been committed, in determining the accusations against the defendants, in determining which

punishments are to be applied, in arguments for the defense-especially those that might change the degree of responsibility of the defendants. Even though Section IV of Book II of the Military Justice Code does not speak about requirements for sentencing, the terms of Article 194 cannot be ignored. That Article provides standards for evaluating proof and declares that the court must generally observe the rules of procedure in this regard, although it grants it the power to rely on a reasonable and honest assessment of evidence gathered. It is clear that one way or another there is an obligation to weigh the elements of proof in the trial for that purpose; to do so entails taking into account all items of evidence and avoiding faulty analysis.

As a rule the sentences issued by the war tribunals accept or state that the crimes were actually committed without stating which deeds constitute the crimes or which proofs establish that fact; hence whether such crimes were in fact committed remains in doubt. The legal basis for most of the sentences is not provided. The elements that constitute a crime, exactly which crime is being committed, and the basis in law or equity that make it possible to come to a just decision should all be set forth.

# In those trials in which the punishments imposed are increased because the actions were committed in a state or time of war, in accordance with Decree Law No. 5 (1973), the approximate date of the actions is not stated; indeed in some instances in which the date is known it is not stated, in open defiance of the terms of the Constitution and Article 18 of the Criminal Code.

# In some trials the confession of the accused is regarded as establishing that the crimes were committed, without any further evidence of a punishable action. This transgression of the law is utterly inadmissible for justifying a guilty verdict and sentence.

# Sanctions for separate and multiple crimes are applied separately, disregarding the terms of Article 75 of the Criminal Code.

# Circumstances diminishing responsibility are ignored, particularly those laid down in Article 11, No. 6 of the Criminal Code; the standards used in that regard are not what the legislator had in mind and are contrary to standard jurisprudence in this area. The factor diminishing responsibility listed in point 8 of that article is disregarded, even when the trial record indicates that indeed such conditions were present and should have been acknowledged. Even when there are clear extenuating circumstances, they are not taken into account in the argument, nor are they considered in the sentencing.

# Judgments are often made merely on a reasonable and honest estimate, in disregard of what Article 194 paragraph 3 of the Military Justice Code very clearly says about reliable evidence.

# Witnesses for the defense are ignored or not brought forth, or crimes are regarded as established by an investigation carried out by agencies that the law does not recognize for that purpose.

# The existence of a crime is regarded as established by the summary investigation, but there is no mention of any documentary evidence of that investigation, nor is it spelled out as the law demands.

# In Calama various war tribunals reject attenuating factors in accordance with the terms of Article 212 of the Military Justice Code, a provision that was abolished by Law No. 17266 (January 6, 1970).

# In a number of trials the war tribunals themselves make decisions about who is a minor, disregarding the fact that a juvenile judge should make that determination, since Law No. 16618, the general law protecting minors, must be applied unless an exception must be made on the basis of a particular law.

# The aggravating circumstance that in Article 213 of the Military Justice Code refers only to members of the military is applied to civilians.

# In many war tribunals there was no appointment of a defense lawyer as required by Article 183 of the Military Justice Code, or if in fact a lawyer was appointed, he or she was not allowed to see the defendant, or a lawyer was assigned to defend several defendants in a situation in which the evidence was at odds, or the time periods were so short that it was impossible to prepare for the trial.

# In many instances observations on reasons for doubting the accusing witnesses are ignored, or there is simply no judgment made on the matter.

# In trial record 4-73 in Pisagua six defendants were sentenced to death, even though the prosecutor favored a lesser sentence. This is a violation of the terms of Article 73 of the Organic Code of Tribunals, which is applicable to war tribunals by virtue of Article 87, paragraph 2 of the Military Justice Code. The commander of the prisoner camp approved this sentence for four of those found guilty.

# In two cases the primary punishment is that of being submitted to close surveillance by the authorities, which according to Article 23 of the Criminal Code is to be applied only as an accessory punishment.

# In general it should be noted that the establishment of the facts is not in keeping with the proof that crimes have been committed nor with the sentences meted out.

# The two policemen who were assigned to the police station in Algarrobo and

who were executed are said to have been sentenced to death by a war tribunal in Tejas Verdes. However, there is no information on the establishment, activity, and decisions of this war tribunal. What is known is that they were arrested and executed the day after their arrest; what is not known is whether they were given defense lawyers and thus whether they received a just and proper trial in this respect.

(We note that today, February 6, 1991, after this report has been prepared, the Commission received official request No. 12900/127 from the deputy head of the army's advisory committee in which he provides a summary copy taken from the book in which sentences are recorded of five sentences issued, one by the Military Prosecutor's Office of Calama and the rest by the Military Prosecutor's Office of Antofagasta. These documents could not be taken into account in this chapter nor in that devoted to examining cases of grave human rights violations that took place in that region).

**Chapter Four:** Behavior of the courts toward the grave human rights violations that occurred between September 11, 1973, and March 11, 1990

*A. Overall attitude of the judiciary toward human rights violations*

This Commission believes it must deal with the posture of the judicial branch toward the most serious human rights violations; otherwise, it would be impossible to present an overall picture of what took place in this regard as its founding supreme decree requires it to do.

During the period in question the judicial branch did not respond vigorously enough to human rights violations. That fact combined with other factors such as the conditions of that period, restrictions imposed by an array of special laws, and the general lack of resources, particularly help from the police, prevented the judicial branch from truly working to protect the essential rights of persons when those rights were jeopardized, threatened, or crushed by government officials, or by private citizens operating with the complicity or tolerance of those officials.

The judicial power was the only one of the three powers or branches of government that continued to operate; the officials who took power on September 11, 1973 did not dissolve it or step in to control it. The concern of the new military authorities to maintain a structure or image of legality made them particularly cautious in dealing with members of the judiciary. As indications of this concern, we may note the assertion in Decree Law No. 1(-3) (September 11, 1973) that the junta would assure that "the powers of the judicial branch [remain] fully in force." At the same time, however, it noted that such would be the case only to the extent the situation allowed. That same concern for appearances was evident in the fact that the new authorities expressed their criticism of the behavior of some judges they regarded as sympathetic to the previous government only privately to the Supreme Court, which supervised all courts in the country during that period.

Recognizing the atmosphere of confidence and respect of the new government toward the judicial branch, at the opening of the 1974 judicial year the president of the Supreme Court stated:

...I can emphatically assert that the courts under our supervision have functioned in the normal fashion as established by the law, that the administrative authority governing the country is carrying out our decisions, and that our judges are accorded the respect they deserve.

Judging from his statement, the judicial branch could have adopted a more resolute stance in defending human rights, which were under assault. Nevertheless, while the court system continued to operate normally in almost

all the realms of national activity whose conflicts reached the courts, legal oversight was glaringly insufficient with respect to the personal rights that were being violated by government agents to an unprecedented extent. The judiciary, which in view of the Constitution, the law, and the nature of its functions, was the government institution called to protect those rights, failed by not acting more forcefully. Moreover, they failed to do so even though from the beginning churches, lawyers, the victims' relatives, and international human rights agencies were furnishing the courts with information on actions by government officials that violated human rights.

The country was surprised to see the courts take such a stance, for it was accustomed to regard the judiciary as a staunch defender of the rule of law. We may recall the historic statement the Supreme Court issued toward the end of the Popular Unity government, criticizing its various transgressions of the legal system in general, and specifically the way it dealt with court decisions.

In order to fully grasp how far the upper levels of the judiciary system were from taking into account the very serious problem of how unprotected people were, we may cite the words of the Supreme Court president in his speech opening the judicial year on March 1, 1975, as he gave the annual report Article 5 of the Civil Code requires of him. On that occasion he said:

Contrary to what unworthy Chileans or foreigners operating with a particular political aim have said, Chile is not a land of barbarians; it has striven to give strict observance to these rights. With regard to torture and other atrocities, I can state that here we have neither firing squads nor iron curtains, and any statement to the contrary is the product of a press that is trying to propagate ideas that could not and will not prosper in our country.

He went on to deny that people had disappeared after arrest, and finally with regard to the work of the courts he said,

As a result of appeals presented, the Appeals Court in Santiago and this Supreme Court have been overwhelmed with a large number of habeas corpus actions that have been introduced, alleging arrests made by the executive branch. The administration of justice has thereby been impeded, since the higher courts, particularly in Santiago, have been prevented from attending to urgent matters entrusted to them.

Subsequently and even to the final years of the military government, the higher courts did not take advantage of the annual opportunity offered by Article 5 of the Civil Code to present to the president of the republic the problems they were encountering in effectively carrying out their duties to protect essential human rights. Consequently, this posture taken by the judicial branch during military rule was largely, if unintentionally, responsible for aggravating the process of systematic human rights violations, both directly insofar as persons who were

arrested and whose cases reached the courts were left unprotected, and indirectly insofar as that stance offered the agents of repression a growing assurance they would enjoy impunity for their criminal actions, no matter what outrages they might commit. As a result the people of this nation still do not have confidence that the judicial branch as an institution is committed to defending their fundamental rights.

The stance we have been describing varied somewhat over time throughout the various agencies of the judicial branch. In dealing with the period after September 11, 1973, we will note below the interpretation the Supreme Court made in order to avoid reviewing the decisions of the wartime military tribunals. Habeas corpus appeals made on behalf of people arrested for political reasons were rejected invariably until well into the 1980s, when the first dissenting votes were cast and some of these appeals were occasionally accepted.

Only at the end of the 1970s did specially appointed judges [ministros en visita] carry out the first exhaustive investigations prompted by the discovery of skeletal remains. These cases ended up in the hands of the military justice system. The same thing happened to some investigations into those crimes that most shocked public opinion. Despite some lack of cooperation on the part of the police, in these instances special judges and normal trial judges were able to certify that crimes had taken place and sometimes that official troops had been involved; when the latter was the case, they declared themselves incompetent. Once the cases were in the military justice system, they did not advance, and the usual result was that proceedings were eventually halted. This was in marked contrast to the diligent investigations carried out when it was a matter of human rights violations inflicted on government troops by private citizens for political reasons.

In any case, the Commission believes that whatever qualifications might be made, the judicial branch as a whole proved ineffective in both protecting human rights and punishing their violation during the period in question. On the other hand, the vigorous behavior of some individual judges has produced results that point the way toward the kind of behavior that should be expected.

*B. The stance of the judicial branch toward applying the established processes most relevant to its obligation to protect human rights*

The judiciary had at its disposition two basic instruments for preventing or punishing such violations: habeas corpus and sanctions for guilty parties. Both institutions are important in a preventive sense. As will be explained below, the purpose of habeas corpus is to end an illegal detention and assure the integrity of the person detained. Moreover, to have assigned punishment to the guilty parties would have seriously limited the further occurrence of human rights abuses. The victims' families sought to employ both of these institutions from the outset and throughout this whole period.



## 1. Reaction of the judiciary to habeas corpus

The essence of the habeas corpus procedure is that the tribunal that accepts it undertakes the measures necessary to assure respect for the freedom and individual security of people who are detained. Among these means is the one from which it takes its name, "habeas corpus," which means that the person for whom the appeal is made is brought before the court.

Throughout this period habeas corpus was completely ineffective. That is all the more serious since this was the period of Chile's brief independent life when it was most needed, inasmuch as from 1973 to 1988 Chile was living under states of exception in which fundamental rights were restricted.

### a. Applicable legislation

The ineffectiveness of habeas corpus during this period was partly due to the flaws in the legislation regulating it. In this respect it should be noted that Article 4 of the Organic Code of Tribunals encourages the notion that by reason of the principle of separation of powers therein enshrined, judges could be understood to be prohibited from examining the reasons given by officials when they had people imprisoned, transferred, or exiled during states of exception.

We believe that this position, which was always open to question and which prompted a certain amount of dissenting jurisprudence, could not be understood to mean that it was a matter of whim or that a judge was utterly forbidden to examine in any fashion the factual circumstances invoked to justify imprisonment or transfer. The existence of prior norms and already existing interpretations should at least be recognized. Unfortunately there was produced no analysis that might have taken into account the circumstances and questioned the absolute character of this doctrine, which given the seriousness of what was happening could have been changed. Hence that interpretation of the article constituted legal, doctrinal, jurisprudential support at least before the law for the rejection of many habeas corpus appeals.

The matter was clarified in a manner adversely affecting the defense of human rights when Article 41, clause 3 of the 1980 Constitution explicitly prohibited a court which receives a habeas corpus appeal during states of exception from passing judgement on the grounds and factual circumstances that an administrative official had in mind in ordering the measure that prompted the

habeas corpus action.

b. Practice of the courts

However, the lack of adequate legislation was not the only reason that made habeas corpus an ineffective tool for protecting people's personal freedom and individual security. Despite its flaws the existing legal framework allowed the court a broad margin for protecting an individual. This margin was generally not utilized, however. Indeed on many occasions people were left defenseless with no legal support whatsoever, and even in violation of the laws governing court practice. Among such violations we may note the following:

1. The principle of "immediacy" was not applied

This principle is enshrined in the 1925 Constitution, in Constitutional Act No. 3 of 1976, in the 1980 Constitution, and in Article 308 of the Code of Criminal Procedure, which sets a twenty-four hour period for a resolution on a habeas corpus appeal. The 1932 ruling ordering that a habeas corpus appeal should be decided before an unjust prison term becomes very long or is even fully served was not observed. There is evidence of cases in which it took fifty-five, fifty-seven, seventy days and so forth to decide on habeas corpus appeals. The fact that administrative officials delayed was no excuse for the judges, both because they had the power to act without reports, and because very seldom did they pressure those officials or set fixed periods for an answer.

2. Many arrests without the requisite warrant were tolerated

Under states of siege as envisioned in the 1925 Constitution, the power to order arrests rested exclusively on the president of the republic, and he was not empowered to delegate it. Decree Law No. 228 (January 3, 1974) empowered the interior minister to order arrests under the formula "by order of the junta," and hence it was possible to obviate the procedure of obtaining approval from the Comptroller's Office.

The appeals courts whose mission it was to examine habeas corpus actions and to at least assure that the formalities of arrest were minimally observed (since they were unlikely to be able to delve deeply) did not respond to the statistically established fact that most of the arrests were carried out by members of the security forces acting without a warrant.

The courts routinely delayed deciding on habeas corpus until the Interior Ministry sent the arrest order, at which point the detention was declared to have been in accordance with the law. They often accepted arrest orders that did not come from the Interior Ministry as valid. In the provinces, particularly Concepción, they accepted such orders from provincial governors. When such matters occasionally reached the Supreme Court, instead of ordering the person to be set free immediately, it advised the Interior Ministry that the person had been arrested, copying the governor's report, and inquiring if the arrest order had been issued by the ministry. The order was then issued and the court proceeded to reject the habeas corpus appeal. After some time had passed, Decree Law No. 951 empowering provincial governors to order arrests was passed.

The courts did not act on habeas corpus appeals in response to arrests carried out by the DINA, and later by the CNI. From the moment the latter was created in 1977, its power to arrest was questioned in many habeas corpus appeals. However, the courts made no decision, but rather waited until the person arrested was either set free, handed over to a court, or expelled from the country; at that point they rejected the habeas corpus appeal by virtue of the changed situation. When, by way of exception, the appeals court in Santiago examined a habeas corpus appeal in 1983 and ruled that the CNI did not have the power to carry out arrests and thus accepted the appeal, the response was Law No. 18314, which expressly granted the CNI the power to carry out arrests when the law on terrorist activities was being violated. The issuing of this law raised doubts about the validity and legality of the arrests the agency had carried out before that law went into effect.

3. There was no effort to assure that restrictions on detention sites were observed

The courts did not demand true compliance with the constitutional provision that no one may be arrested, preventively detained, or imprisoned except in his or her own house or in public sites designated for that purpose. During states of exception, the arrests carried out within the terms allowed by such states, were not to be carried out in prisons or other places set aside to house common criminals. For years there were secret prison sites to which officials of the judicial branch had no access.

Even though they had to be aware of the existence of sites like

the National Stadium, the Chile Stadium, the Air Force Military Academy, Villa Grimaldi, José Domingo Cañas 1367, Londres 38 and many other places in Santiago and the provinces-initially including sites belonging to the armed forces-where people were held and torture was common practice, the courts did nothing practical to remedy this unlawful situation nor even to condemn it, despite the claims made in the habeas corpus appeals that were continually being introduced.

4. The courts did not exercise oversight to assure the full observance of the norms on being held in solitary confinement

Solitary confinement is a measure that is strictly judicial, short term, and established by law, which judges may order only when it is necessary for the success of the court investigations. Not even under extraordinary circumstances does the legal system allow solitary confinement to be ordered by anyone outside the judicial branch, and the judiciary can do so only for those cases for which the law expressly authorizes it.

During the years covered by this report, administrative solitary confinement was widely used as a punishment. During the 1973-1980 period there were cases in which people were held in solitary confinement for 109 days, 179 days, 300 days and up to 330 days. After the 1980 Constitution went into effect, administrative solitary confinement of even twenty days was common. When solitary confinement was ordered by a judge, military prosecutors commonly ordered decreed extensions one after another. In some cases people were held in solitary confinement for up to seventy-five days.

There were few judicial decisions on the imposition of judicial and administrative solitary confinement. The judiciary chose to issue its decisions when the situations had been normalized; in other instances decisions simply made no reference to the solitary confinement mentioned in the habeas corpus appeal. In the case of administrative solitary confinement, the courts preferred to accept the claims of the Interior Ministry, which argued that the persons were not in solitary confinement, but were "prevented from having visitors for security reasons."

A few decisions even accept administrative solitary confinement as valid. In a ruling given on July 30, 1974 in a habeas corpus appeal which in fact sought to protest an illegal solitary confinement, the Supreme Court noted that "just as arrest itself and its length (during a state of siege) depends exclusively

on the judgement of the executive, it is likewise logical that the way it is carried out should depend on the same authority." The Supreme Court issued a similar decision on December 3, 1981, upholding the November 23, 1981 decision of the Appeals Court of Santiago, asserting that in a state in which there is danger that internal peace may be disturbed, administrative solitary confinement is lawful for dealing with cases of terrorism.

International statistics on human rights violations in a number of countries around the world establish the clear pattern that the greatest number of deaths, disappearances, and tortures occur when those arrested are taken to secret detention sites or when they are held in solitary confinement over a period of time so that external signs of mistreatment may disappear.

The failure to comply in a timely and thorough fashion with the constitutional and legal norms noted above was a crucial reason why habeas corpus appeals introduced in the courts failed to achieve results. It should be noted that the courts did not react vigorously enough to remedy the grave human rights violations that those appeals were seeking to address. Had the courts respected the constitutional requirement of acting immediately, or had they complied with the legal requirement to issue a decision within twenty-four hours, or exercised the legal power which is the essence of that appeal, namely to physically examine the person detained (habeas corpus), or finally had they fulfilled the requirement of the ruling that they make a decision before the evil of unjust imprisonment is allowed to take on major proportions, many instances of death, disappearance, and torture would have been prevented; furthermore, the perpetrators would have been put on notice that their actions were being rejected at least by one branch of government and that at some point they might be subject to punishment.

c. Other factors

In any case it should be emphasized that there were other parallel reasons for the ineffectiveness of habeas corpus besides those noted in the foregoing sections. Among these we may note:

1. With regard to the police

One very important factor was the lack of real cooperation from police agencies in investigating what had happened to people on whose behalf habeas corpus appeals had been filed. Consequently even though from 1978 onward many lower ranking judges and some appeals courts began to show more interest in

protecting people who might be suffering human rights violations, that interest did not in fact really translate into true protection for their rights.

## 2. With regard to the executive branch

The fact that many judges were very willing to accept as credible the information that the executive branch offered with regard to people for whom habeas corpus appeals were being filed (that is, they were willing to accept the claim that the person was not jailed or imprisoned by the officials named in the document) was enough to have these appeals rejected.

## 2. Impunity of the violators

After a very rigorous examination, this Commission concluded that more than two thousand people were killed as a result of human rights violations attributable to government agents during this period, most of them as a result of political repression. It can be said that, a few exceptional cases apart, the courts did not investigate these events, which were violations of human rights, nor were guilty parties punished.

In order to systematize to what extent judicial conduct helped allow the perpetrators of such violations to act with impunity, the following four situations may be noted.

- a. Weighing proof in accusations against government agents  
When called upon to decide on crimes committed by government agents, the excessive rigor with which the courts adhered strictly to formal legality in assessing the proof brought against the perpetrators sometimes prevented them from applying the appropriate sanctions. Had such excessive formal procedural rigor not been applied in determining whether government agents had been involved, they might have been found guilty in accordance with the actual facts of the matter. This Commission has assumed such to be the case in a number of cases on which it has gathered information.
- b. The court's acceptance of official versions of events  
We have noted this situation in section 1.c where we indicated that this was one of the problems that the judiciary had to face with regard to habeas corpus appeals. We must now emphasize that the excessively passive stance of the courts, reflected in their acceptance of the explanations of events provided by government officials-explanations at variance with the seriousness of the case-helped shield those guilty from being brought to justice.

One example is a housekeeper working at the house of a religious order who was killed in a DINA search. The court accepted the DINA's version without even interviewing the agents who were responsible for her death, even though it had been proven that they had opened fire and that no return shots came from within the premises.

Initially the same was the case with the decision made on the disappearance of thirteen Communist leaders in December 1976. After only a few days the investigation was said to have been exhausted and thus closed. This decision was based on the Interior Ministry's claim that all the individuals in question had crossed the Andes on foot through Los Libertadores Pass en route to Argentina. Even though that resolution was revoked by the court, the investigation was halted three more times; the authenticity of the documentation provided by the Interior Ministry was never verified nor were the steps requested by the plaintiff carried out. Nevertheless, one of the investigatory judges appointed in this case made significant progress. He proved that the documents provided to show that the disappeared had left the country were falsified, and that there was no proof that they had left the country; he also ordered procedures that made it possible to prove that there was a conspiracy between uniformed troops and civilians who were kidnapping, torturing, and murdering people and that this conspiracy had budgets, funding, personnel, buildings and so forth. Moreover, it was proven that at least two of these people had been arrested by people involved in this conspiracy. The Supreme Court ended these investigations when it ordered the procedures in the case suspended by virtue of the amnesty law.

- c. Using the amnesty law in a way to halt investigation of the events it covers

The courts have ordered that procedures be halted based on the amnesty laid down in Decree Law No. 2191 (Diario Oficial, April 19, 1978) whenever uniformed troops are involved in a case that falls under that law, arguing that the amnesty law prohibits investigation of the events it encompasses. That position disregards the argument derived from Article 413 of the Code-of-Criminal Procedure, which orders that "a definitive halting of procedures cannot be rendered until the investigation that seeks to determine the facts of the case and the identity of the perpetrator has been exhausted."

The person who served as minister of justice when Decree Law No. 2191 was passed has stated that in her own mind the

intention was never that the courts could apply amnesty as they have done, that is, before concluding the investigation. Consequently it has been impossible to clear up the events with which the courts had begun to deal, and thus the circumstances of the accusations of killings, torture, and disappearance and whether those alleged to be either victims or perpetrators were either guilty or innocent have remained undetermined.

Along with the frustration of those involved, the problem of many uniformed troops who were mistakenly or unjustly publicly mentioned as involved in events that constituted human rights violation should also be kept in mind. They also deserve to have their situation clarified.

d. Failure of the Supreme Court to exercise its oversight over war tribunals

By means of decisions handed down on November 13, 1973 and August 21, 1974 as well as others, the Supreme Court, ignoring solid arguments to the contrary, officially declared that the war councils were not subject to its oversight. By not exercising these powers over the war tribunals, as the provisions of the 1925 Constitution could have been understood, the Supreme Court was unable to assure that those courts really observed the regulations governing criminal procedure in wartime as laid down in the Military Justice Code. Consequently the Supreme Court was unable to insist that the war tribunals act in accordance with the law.

*C. Other actions by the courts*

We could examine a number of other questionable practices of the courts, and especially the Supreme Court, which fueled the human rights violations that are the object of this report. Examples include the acceptance of secret laws to which the courts never objected; the legitimization of the abusive search operations in shantytowns, which in 1986 alone numbered 668, by rendering decisions on the appeals for habeas corpus and other constitutional guarantees introduced as a result; an excessively formal approach to interpreting the law; the acceptance of confessions obtained through torture as proof; the fact that judges who were forthright in pursuing human rights violations were punished and given poor ratings. It is beyond the possibilities of this Commission to examine these situations and others in a more detailed fashion.

Nevertheless, what it has observed of these situations as a whole during the period that began on September 11, 1973, has led the Commission to the conviction that the judiciary's inability to halt the grave human rights violations in Chile was partly due to serious shortcomings in the legal system as well as to the weakness and lack of



vigor on the part of many judges in fully carrying out their obligation to assure that the essential rights of persons are truly respected.