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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 34/96; Cases 11.228, 11.229, 11.231, 11.182
Session:	Ninty-Third Regular Session (30 September – 18 October 1996)
Title/Style of Cause:	Irma Meneses Reyes, Ricardo Lagos Salinas, Juan Alsina Hurtos and Pedro Jose Vergara Inostroza v. Chile
Doc. Type:	Report
Decided by:	First Vice Chairman: Ambassador John S. Donaldson; Second Vice Chairman: Professor Carlos Ayala Corao; Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia. Commissioner Claudio Grossman, national of Chile, did not participate in the discussion and voting on this case, in accordance to Article 19 of the Regulations of the Commission.
Dated:	15 October 1996
Citation:	Meneses Reyes v. Chile, Case 11.228, Inter-Am. C.H.R., Report No. 34/96, OEA/Ser.L/V/II.95, doc. 7 rev. (1996)
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I. BACKGROUND

1. Between 1991 and 1993, the Commission began to receive various claims against the State of Chile, denouncing the enactment of Decree Law 2191 of March 10, 1978. The petitions were registered under the following numbers and names: 11.228 Irma Meneses Reyes; 11.229 Ricardo Lagos Salinas; 11.231 Juan Alsina Hurtos and 11.282 Pedro José Vergara Inostroza, and they argued that the 1978 amnesty law in question, Decree Law 2191--whereby various offenses committed between 1973 and 1978 were pardoned--and the consequent enforcement thereof by the Chilean courts constituted a violation of consuetudinary and conventional international law.

2. In all of the complaints, the petitioners requested that the Commission: 1) declare Decree Law 2191 to be incompatible with Article XVII of the American Declaration of the Rights and Duties of Man and with Articles 1, 8 and 25 of the American Convention on Human Rights; 2) recommend to the State of Chile that it adopt all of the necessary measures to establish the whereabouts of the victims and punish the persons responsible for the disappearances and executions implemented outside the law; and 3) recommend to the State of Chile that it grant compensation to members of the victims' families for the violation of their right to justice.

3. Having realized that the arguments used in these four petitions are essentially the same, and that the issue is basically a matter of law--since it is not the facts that are being disputed, but the question as to whether the decree is compatible with the Convention--the Commission has decided to consider them jointly.

II. THE CLAIMS AND THE PROCESSING THEREOF BY THE COMMISSION

4. Case 11.228. On December 21, 1993, the Commission received a complaint against the State of Chile for violation of the right to justice and the state of impunity maintained regarding the situation of Juan Aniceto Meneses Reyes, a student at the University of Chile who was arrested on August 3, 1974 by agents of what was then the Directorate of National Intelligence, the DINA. Meneses Reyes was seen after his arrest in the secret compound at No. 38 Londres Street, and then again at the Cuatro Alamos Camp where prisoners are held in solitary confinement. Thereafter he disappeared. The petitioners included the following account of the steps they had taken, the remedies they had sought and the judicial procedures utilized in the domestic jurisdiction of Chile: the criminal investigation was instituted before the Seventh Criminal Court in Santiago at the end of 1979. Since the agents of the state were unionized and subject to a military court, the file was turned over to the military tribunal. On July 24, 1981, the military judge decreed a nonsuit, and thereafter that verdict was confirmed by the Military Appeals Court on October 30, 1981. Subsequently, at the request of the Military Attorney General's Office, the file was reopened, and on December 12, 1989, the law of amnesty was applied and the case was dismissed. In its complaint regarding this decision, members of the victim's family presented a protest to the Supreme Court, which denied that recourse on November 3, 1993, leaving the dismissal definitively confirmed.

5. Case 11.229. On November 15, 1993, the Commission received a claim against the State of Chile for violation of the right to justice and the state of impunity persisting in the situation of Ricardo Lagos Salinas, an accountant. He was arrested on June 17, 1975 by agents of the former National Intelligence Directorate (DINA), who took him to the compound at the Villa Grimaldi in the City of Santiago. Shortly afterward, he was seen, alive, along with other directors of the Socialist Party, in the barracks there. Then he disappeared. The petitioners gave an account of the efforts they had deployed, the remedies sought and the judicial formalities effected, as follows: The investigation started with the presentation of a writ of habeas corpus on September 3, 1975, which was rejected with a statement from the Government to the effect that he had not been arrested by order of any authority. The criminal investigation procedure was opened at the Seventh Criminal Court of Santiago. In December of 1979, the file was sent to the military court. On June 17, 1982, the military judge decreed the dismissal of the case, which was confirmed thereafter by the Military Appeals Court in May of 1983. Upon finding the case to be filed, at the request of the Military Attorney General's Office for amnesty law 2191 to be applied, the military judge issued a judgment calling for permanent dismissal on October 30, 1989. That sentence was appealed, but then it was upheld by the Military Appeals Court on December 5, 1990. The petitioners presented a complaint regarding this decision to the Supreme Court. On June 30, 1993, however, the Court rejected their remedy of complaint and the judgment was definitively confirmed by that act.

6. Case 11.231. On November 5, 1993, the Commission received a claim against the State of Chile for violation of the right to justice and the state of impunity in which the situation of the Spanish priest Juan Alsina Hurtos remained. The priest had been arrested on September 19, 1973--at the San Juan de Dios de Santiago assistance center where he worked--by Army personnel who took him to the Barros Arana National Institute where a military barracks had

been established. He was seen there by the military chaplain, who also heard his confession. Thereafter he was murdered, and his body, riddled with bullet holes, was found on the bank of the Mapocho River near Bulnes, in the City of Santiago. The petitioners gave the following account of the steps they have taken, the remedies sought and the judicial formalities conducted within the internal jurisdiction of Chile: The proceeding for kidnapping and homicide began at the Third Criminal Court of Santiago, where it became possible to establish the identity of the persons responsible; but thanks to application of the amnesty decree law 2191, the criminal responsibility of the soldiers who committed these acts was declared to be extinguished. That verdict was definitively confirmed by the Santiago Court of Appeals on May 10, 1993.

7. Case 11.282. On March 15, 1994, the Commission received a complaint against the State of Chile for a violation of the right to justice and the situation of impunity which has persisted in regard to the situation of Pedro Vergara Inostrosa, who was arrested on April 27, 1974 in the City of Santiago, along with other persons, by personnel from the Conchali Carabineros Unit and taken to its barracks. Thereafter, despite the presence of various witnesses who testified to that arrest and transfer to the military post, Mr. Vergara disappeared. The petitioners give the following account of the procedures, recourse and judicial acts carried out within the domestic jurisdiction of Chile: The process of kidnapping and homicide began in the course of ordinary legal proceedings. He was transferred to the jurisdiction of the military, which ended with a temporary stay of the proceedings. In October of 1989, the military judge in Santiago reopened the file on the case and, applying the law of amnesty, decreed the permanent dismissal thereof. The judge's verdict was appealed to the Military Appeals Court, which on January 16, 1991 upheld the use of the law of amnesty. A complaint against that verdict was lodged with the Supreme Court, but the recourse was rejected on November 28, 1991, leaving the permanent dismissal firmly in place. Finally, the recourse of reinstatement was presented. It was declared without merit, however, on September 30, 1993, thereby ending the attempt to clear up the facts and punish the parties responsible.

III. ADMISSIBILITY OF THESE CASES

8. According to the provisions of Article 44 of the American Convention on Human Rights (hereinafter "the Convention"), to which Chile is a State Party, the Commission is competent to consider these cases since they are claims alleging violations of the rights guaranteed by the American Convention in its Article 25--relative to the right to effective judicial protection--and in Articles 1.1, 2 and 43--concerning the duty of the states to comply with and see to compliance with the provisions of the Convention; to adopt measures of internal law to give effect to the norms of the Convention; and to provide the Inter-American Commission on Human Rights with information on these matters.

9. The complaints satisfy the formal requirements for admissibility set forth in Article 46.1 of the Convention and in Article 32 of the Commission's Regulations.

10. The petitioners have exhausted the remedies set forth in the Chilean law, as established in the file on the case.

11. The complaints are not pending in any other international procedure, nor do they repeat a previous petition that has already been examined by the Inter-American Commission on Human Rights.

IV. FRIENDLY SETTLEMENT

12. The procedure for a friendly settlement, as set forth in Article 48.1 (f) of the Convention and in Article 45 of the Commission's Regulations, was proposed by the Commission to the parties, but no understanding was reached on that point.

13. Since no friendly settlement could be established, it is incumbent upon the Commission to comply with the provisions of Article 50.1 of the Convention, issuing its conclusions on the matter submitted to it for consideration.

V. COMPLIANCE WITH THE PROCEDURES ESTABLISHED BY THE CONVENTION

14. During the processing of these cases, the Commission has granted equal opportunities for defense to the Government of Chile and to the petitioners. It has also examined, with absolute objectivity, the evidence and arguments submitted by the parties, and in the processing thereof has observed, complied with and exhausted all of the legal and regulatory formalities established in the American Convention on Human Rights and in the Commission's Regulations.

VI. ARGUMENTS PRESENTED BY THE GOVERNMENT OF CHILE

15. The democratic Government of Chile alleges that it has enacted no law of amnesty that is incompatible with the American Convention, inasmuch as Decree Law 2191 was issued in 1978 under the de facto military regime.

16. The Government requests that the Commission take into account in these cases the historical context in which the acts took place, along with the special situation of the country's return to a democratic regime, in which the new government was forced to accept the rules imposed by the de facto military regime, which could not be amended except in conformity with the law and with the Constitution.

17. The Government has attempted to set aside the Amnesty Decree Law, but the constitutional precept requires that initiatives relative to amnesty be introduced only in the Senate (Article 62, Section Two of the Constitution), where it lacks a majority due to the number of persons in that legislative body who were not appointed by popular vote.

18. The democratic Government has urged the Supreme Court to declare that the amnesty now in effect shall not be an obstacle to the conduct of investigation and punishment of the persons responsible.

19. The National Commission on Truth and Reconciliation--the author of a report containing individual accounts of the victims whose fundamental rights had been violated under the military dictatorship, which included the persons named in these claims--acknowledged that the cases of

these individuals constituted serious violations in which agents of the state had participated; and, when their whereabouts could not be discovered, listed them in the category of "detainees who had disappeared."

20. Law 19123, enacted by the democratic Government, gave the families of the victims the following benefits: a single life-long pension amounting to no less than the average income of a family in Chile; a special procedure for the declaration of presumed death; special attention from the state in the areas of health care, education and housing; the condonation of debts owed for education, housing, taxes and any others payable to state agencies; and exemption--for the victims' children--from the compulsory military service.

21. The democratic Government expressed its conformity with the terms used by the petitioners to describe the nature of Decree Law No. 2191 of April 19, 1978, the purpose of which was to exonerate the perpetrators from responsibility for the most appalling crimes committed in the history of Chile.

22. The Government asked the Inter-American Commission on Human Rights to state in its final report that the violations of rights described in the petitioners' accusation in the present case could not be attributed to the Government of Chile, and that the Government bears no responsibility for those acts.

VII. OBSERVATIONS OF THE COMMISSION REGARDING THE ALLEGATIONS OF THE PARTIES

A. Preliminary Considerations

a. Quality of the authorities who decreed the amnesty

25. The so-called "law of amnesty" is an act of power on the part of the military regime which overthrew the constitutional government of Dr. Salvador Allende. Accordingly, we are dealing here with authorities who lack any title or right to such power, since they were neither elected nor in any way appointed, but took possession of the office by force after deposing the lawful government in violation of the Constitution.

26. A de facto government lacks legal title, since if a state has enacted a Constitution, everything that is not in accordance with that document is contrary to law. Installation of the de facto government in Chile was brought about by force, not by consent of the people.

27. Not even to preserve juridical security can the Commission put the legality of a de jure government on the same footing as the arbitrary and unlawful conduct of a usurping government, whose chance of existing is by definition a source of legal insecurity. Such governments warrant permanent repudiation in defense of the Constitutional State of Law, together with respect for democratic life and the principle of sovereignty of the people, based on the full-fledged validity of human rights.

28. In the present case, the persons benefiting from the amnesty were not third parties from outside, but the very ones who had taken part in the government plans of the military regime. One thing is to uphold the need to legitimize the acts celebrated by society as a whole (to avoid falling into chaos), or those stemming from international responsibility, since the obligations assumed in those areas cannot be shirked; but to extend equal treatment to persons who acted in accord with the unlawful government, thereby violating the Constitution and the laws of Chile, is another matter entirely.

29. The Commission considers that it would be absurd to suggest that the usurping party and its followers might invoke the principles of Constitutional Law--which they have violated--so they could derive benefits from the security which is only justifiable and deserved by those who have adhered strictly to that order. The acts of the usurper cannot be valid and are not legal, either in themselves or for the benefit of the unlawful or de facto officials. Because if those who collaborate with such governments are assured the impunity for their conduct that is bestowed by a usurping and unlawful regime, there would be no difference between what is legal and what is not; between the constitutional and the unconstitutional; or between the democratic and the authoritarian.

30. Chile's constitutional order must necessarily assure the government of compliance with its fundamental aims, untying it from the limitations contrary to law that are imposed by the usurping military regime, for it is not juridically acceptable that such a regime can place limits on the constitutional government which replaces it in attainment of the democratic system, or that the acts of de facto power should enjoy the full benefits that can only be bestowed on the legitimate acts of the de jure power. The de jure government recognizes the legitimacy thereof, not in the rules issued by the usurper, but in the will of the people who voted that government into office, and who alone are entitled to sovereignty.

b. Chilean constitutional law

31. The position expressed in the preceding paragraph is consistent with Chile's Constitutional Law. The 1833 Constitution of Chile stated in Article 158 that "Any resolution agreed to by the President of the Republic, the Senate or the Chamber of Deputies in the presence or at the order of an army, of a general at the head of an armed force, or by a meeting of persons who--whether bearing arms or without them--disobey the authorities is null and void and cannot take effect."The Constitution of 1925 in turn declared: "No magistrate's court, no person or meeting of persons can arrogate to themselves--not even under pretext of special circumstances--other authority or rights than those expressly conferred on them by the laws. Any act in contravention of this Article is null and void." (Article 4).

32. Even the supposed "Constitution" authorized by Decree Law of the military regime has something to say in this respect: "No judiciary, no person or group of persons may arrogate to themselves, even under pretext of special circumstances, any authority or rights other than those expressly conferred on them by the laws. Any act in contravention to this Article is null and void, and shall give rise to such responsibilities and penalties as the law may prescribe (Article 7, paragraph two).[FN1] At the same time, Article 5 of that document establishes that "the exercise of sovereignty recognizes the respect for essential rights that emanate from human nature to be a

limitation," postulating that no sector of the people nor any individual may claim the privilege of such exercise for itself."

[FN1] Political Constitution of the Republic of Chile, approved by Decree Law No. 3.464 on August 11, 1980.

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c. Fundamental rights and liberties of persons and of the state

33. Moreover, fundamental rights and liberties do not cease to exist in the face of a de facto government, because they preceded the state and the constitution which recognizes and guarantees--but does not create--them. Hence it is erroneous to say that a de facto regime has no limits on its anomalous or anticonstitutional powers. Consequently, a government that is accused of systematically violating the fundamental rights of the people it governs, and then acquits itself by means of an amnesty is guilty of an egregious abuse of power.

34. In that context, Professor Christian Tomuschat says: "To maintain that in certain cases obedience is owed to vicious laws and the implacable executors thereof is tantamount to making the state a fetish of a divine nature, unstained by even the most atrocious and odious acts." (See "On Resistance to Human Rights Violations," UNESCO, 1984, page 26.)

d. The international law of human rights

35. The international law of human rights reaffirms that concept in light of the provisions of Article XX of the American Declaration and Articles 23.1a and b of the Convention, which are inalienable according to Article 27.2 of the latter document.

Other inter-American instruments also reaffirm that premise: one of them is Article 3 of the OAS Charter, which holds that the principle of the American states' solidarity rests on the common denominator of "effective exercise of representative democracy."

The Inter-American Court of Human Rights

36. The Inter-American Court of Human Rights defines "laws" as a "general legal norm tied to the general welfare, passed by a democratically elected legislative bodies established by the constitution, and formulated according to the procedures set forth by the constitutions of the States parties for that purpose." (OC/6, paragraph 38). This definition was predicated on an analysis of the principles of "legality" and "legitimacy" and of the democratic regime--within which the inter-American system of human rights must be understood (OC/6, paragraphs 23 and 32), as noted in its OC/13, paragraph 25. For the Court, "the principle of legality, the democratic institutions and the state of law are inseparable" (OC/8, paragraph 24). Firm adherence to the democratic regime has been noted by the Court: "Representative democracy is determinant throughout the system of which the Convention is a part" (OC/l3, paragraph 34), which completes its criteria regarding "the just requirements of democracy" by which interpretation of the Convention--and, in particular, the precepts which are closely tied to the preservation and

functioning of democratic institutions--should be guided (OC/5, paragraphs 44, 67 and 69). Neither should we forget the Court's doctrine that underscores the importance of an elected legislature in the protection of fundamental rights (OC/8, paragraphs 22 and 23) or the precept calling for the Judicial Branch to control the legitimacy of acts performed by the Executive Branch (OC/8, paragraphs 29 and 30; and OC/9, paragraph 20).

The Inter-American Commission on Human Rights

37. The Inter-American Commission on Human Rights has issued pronouncements on this subject on numerous occasions. It has said, for example, that "the democratic framework is a necessary element for the establishment of a political society in which full human values may thrive" [See "Ten Years of Activities, 1971-1981, page 331] when it alludes to the predominant power granted to organs that are not representative of the people's will [idem., page 270]. In its Report on Panama (1978, page 114, paragraph 3; and the 1978/80 Annual Report, pp. 123/24) examining a draft political constitution for Uruguay; in its report on Suriname regarding the citizens' participation even in the drafting of constitutional texts (1983, p. 43, paragraph 41); the opinions expressed on the plebiscite in Chile, questioning the validity thereof, since it took place during the suspension of public liberties [1978/80 Report, page 115]; and in its findings in the "Rios Montt v. Guatemala" case.

The universal system

38. The following should be mentioned with reference to the universal system: a) the Charter of the United Nations and its preamble ("We, the peoples of the United Nations..."); in its reference to the "free self-determination of peoples" and to the "development and stimulation of respect for human rights and the fundamental freedoms of all..."); b) the Universal Declaration, in its Article 29; c) the International Covenant on Civil and Political Rights; and d) the statement of the Committee on Human Rights in "Ngaluba v. Zaire," paragraphs 8.2 and 10, on denial of the right to participate, on an equal footing, in the management of public affairs as a result of the sanctions applied to eight parliamentarians.

Usurper governments and democracy

39. For the reasons stated above, the Commission considers that representative democracy constitutes the essential bastion of the American states' political organization. Consequently, the de facto governments are not compatible with the requirements of the American Convention.

B. General Considerations

40. The Commission considers that in these cases, the petitions raise a question of law and they seek to determine whether the decree law in question--and the way it was applied by the Chilean courts--are compatible with the Convention, insofar as it has not disputed any of the alleged events, and none of the events need to be confirmed.

41. Although the democratic government has denied its responsibility for the acts perpetrated by the military dictatorship, it did recognize its obligation to investigate past violations of human

rights; so it set up a Truth Commission in order to determine the facts and publish its findings. As a means of reparation, former President Aylwin, speaking on behalf of the State of Chile, asked the members of the victims' families for their pardon. In addition, the ex-president publicly protested the decision of the Supreme Court, which called for the Amnesty Decree Law to be applied in such a way as to suspend all investigation of the events.[FN2] The democratic Government, invoking the impossibility of amending or annulling the Amnesty Decree Law and its obligation to respect the decisions of the Judiciary, argued that the measures it has already adopted are not only effective but suffice to comply with Chile's obligations pursuant to the Convention, thus making any further action unnecessary.

[FN2] President Aylwin pointed out that: "Justice also requires that the whereabouts of the disappeared be made known and that individual responsibilities be determined. As to the first item, the truth established in the report (of the Truth and Reconciliation Commission) is not complete, since in most of the cases of detainees and disappeared--as well as persons executed, whose remains are not turned over to the families--the Commission had no means of finding out where they were."

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42. The petitioners acknowledge the efforts made by the Government, but find that those efforts have been insufficient and ineffective, and that the Government has an ongoing obligation to conduct a relentless investigation of the facts, establish responsibilities and punish the persons responsible for previous violations of human rights.

43. The Commission observes that, as demonstrated in the previous section, adoption of the self-proclaimed amnesty decree law was in conflict with the constitutional provisions in effect in Chile at the time when the decree in question was issued. Aside from the constitutionality or legality of the laws in Chile's legal system, however, the Commission is competent to examine the juridical effects of a legislative, judicial or other measure, so long as it is incompatible with the rights and guarantees set forth in the American Convention.[FN3]

[FN3] Inter-American Court of Human Rights, OC-13 of July 16, 1993, in which it declared: "The Commision is competent, in the terms of the powers conferred on it by Articles 41 and 42 of the Convention, to term any rule of domestic law of a State Party as violating the obligations that State has assumed by ratifying it" (operative section I).

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44. In its decision relative to international responsibility for issuing and enforcing laws which violate the Convention (Articles 1 and 2 of the Convention), the Court declared that: "As a consequence of this measure, the Commission may recommend that the State set aside or amend the rule that is in violation, and to that end it is sufficient that the ruling has been brought to its attention by any means..."[FN4]

[FN4] Inter-American Court of Human Rights, International responsibility for issuing and enforcing laws which violate the Convention (Articles 1 and 2 of the American Convention on Human Rights), Advisory Opinion OC-14 of December 9, 1994, paragraph 39.

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45. Article 2 of the Convention establishes the obligations of the States parties to adopt "such legislative or other measures as may be necessary" to give effect to the rights or freedoms enshrined in this covenant. Accordingly, the Commission and the Court are empowered to examine--in light of the Convention--even the domestic laws that are alleged to suppress or violate the rights and freedoms enshrined therein.[FN5]

[FN5] Inter-American Court of Human Rights, 1992-1993 Annual Report, Report 29/92, paragraph 32.

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46. In examining this topic, it is important to consider the nature and gravity of the alleged offenses affected by the amnesty decree. The military government that ruled the country from September 11, 1973 until March 11, 1990 carried out a systematic policy of repression that resulted in thousands of victims of "disappearances," executions that were summary or outside the law, and instances of torture. In referring to the practices of that military Government, the Commission noted the following:

...the Government in question [had] employed virtually every known means for physical elimination of the dissidents, among others: disappearances, summary executions of individuals and groups, executions decreed in proceedings without legal guarantees, and torture."[FN6]

[FN6] Inter-American Yearbook on Human Rights/Anuario Interamericano de Derechos Humanos, 1985, Martinus Nijhoff Pub., 1987, page 1063.

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47. Some of these offenses were considered to be so serious as to justify the adoption, in various international instruments, of specific measures to forestall any impunity for such acts, including universal jurisdiction and inapplicability of the statute of limitations to the offenses.[FN7]

[FN7] Both the Inter-American Convention to Prevent and Punish Torture and the Inter-American Convention on Forced Disappearance of Persons establish universal jurisdiction for the offenses in question (Article 11 and Articles V and VI, respectively). The Convention on Forced Disappearance also establishes, in Article VII, the nonapplicability of the statute of limitations or, if that is impossible, application of the limitations corresponding to the most serious crimes.

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48. With reference to the practice of disappearances, the General Assembly of the Organization of American States has declared that "the forced disappearance of persons in the Americas is an affront to the conscience of the Hemisphere, and it constitutes a crime of lèse humanity."[FN8] In its 1988 decision in the "Velásquez Rodríguez" case, the Inter-American Court observed that international practice and doctrine have often categorized disappearances as a crime against humanity.[FN9] The Inter-American Convention on Forced Disappearance of Persons reaffirms in its preamble that "the systematic practice of forced disappearances constitutes a crime of lèse humanity."[FN10]The social need for clarification and investigation of these crimes cannot be compared with that of a mere common offense.[FN11]

[FN8] Resolution AG/RES. 666 (XII-0/83).
[FN9] Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, No. 4, paragraph 153.
[FN10] Inter-American Convention on Forced Disappearance of Persons, resolution adopted at the seventh plenary session, June 9, 1994. OAS/Ser.P,, AG/doc.3114/94 rev.
[FN11] See: AG/RES. 443 (IX-0/79); 742 (XIV-0/84) 950 (XVIII-0/88) 1022 (XIX-0/89); and 1044 (XX-0/90) and IACHR, annual reports for 1978; 1980/81; 1981/82; 1985/86; 1986/87; and special reports, such as the one on Argentina (1980), Chile (1985) and Guatemala (1985).

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a. The question of the Decree Law of Self-Proclaimed Amnesty

49. The problem of amnesties has been addressed by the Commission on various occasions as a result of claims against the States parties to the American Convention which have resorted to this device, leaving unprotected a sector in which many innocent victims of violence are deprived of the right to justice in their justifiable complaints brought against persons who have committed excesses and perpetrated savage acts to the detriment of the victims.[FN12]

[FN12] Cf. the Annual Report of the IACHR for 1985-1986, page 204.

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50. The Commission has repeatedly pointed out that the use of amnesties renders ineffective and without merit the international obligations of the States parties imposed by Article 1.1 of the Convention; as a result, such amnesties constitute a violation of that article and thereby eliminate the most effective measure for putting those rights into effect, such as the trial and punishment of the persons responsible.[FN13]

[FN13] The IACHR, Reports 28/92 (Argentina) and 29/92 (Uruguay).

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51. As the petitioners make abundantly clear, the question does not focus on the violations of human rights stemming from the unlawful detention and disappearance of persons--such as practiced by agents of the State of Chile during the previous military regime--but consists in essence of two problems: A) the failure to rescind--and consequent maintenance in effect of--

Decree Law 2191 on amnesty, which the military government handed down for its own purposes, but which has remained in effect and is being enforced during the democratic government, even after Chile had ratified the American Convention and assumed the commitment to comply therewith; and B) the failure to bring to trial or to identify the persons responsible and punish the perpetrators of these acts, which began during the military government and continues to prevail, even under the democratic and constitutional government.

52. The democratic Government of Chile has recognized the close relationship which exists between amnesty and impunity in these cases, and for that reason issued law No. 19.123, which indemnifies the families of the victims of human rights violations and considers the act violating the victims' rights as a single unified action from the time when the victims are arrested up to the denial of justice.

53. The events denounced in the claim against the democratic government cause, on the one hand, a lack of compliance with the obligations assumed by the State of Chile to bring the rules of its domestic law in line with the precepts of the American Convention, thereby violating articles 1.1 and 2 of that document; and, on the other, the enforcement thereof, which leads to a denial of justice to the detriment of the persons who have disappeared as stated in the accusations, thereby violating Articles 8 and 25 in connection with 1.1.

54. The Commission has taken into account the fact that the democratic government turned to the Supreme Court in March 1991, when it asked the Court--especially in cases of persons who had disappeared--to render justice and to consider that the decree of self-proclaimed amnesty then in effect should not and could not be an obstacle that would prevent investigation of the pertinent responsibilities by legal means; and that it had also vetoed a law which might have contributed to the amnesty.

55. Special recognition is owed to creation of the National Commission on Truth and Reconciliation and to the work of that body, which it performed by collecting background information on violations of human rights and detainees who had disappeared. The report cited the victims individually--including among them the cases of the persons named in the claims--and it tried to establish their whereabouts and ensure proper measures of reparation and revindication for each of them. In addition, it acknowledged that the cases of these persons constituted serious violations of the fundamental rights, in which agents of the state had played a part; and, when the victims' whereabouts could not be determined, the report classified them as "detainees who had disappeared."

56. Equally deserving of recognition is Law No. 19.123, an initiative of the democratic Government which grants benefits to the victims' families:a) a single life-long pension amounting to no less than the average income of a family in Chile; b) a special procedure for obtaining a declaration of presumed death; c) special attention from the state in the areas of health care, education and housing; d) the condoning of debts owed for education, housing, taxes and any other fees payable to state agencies; and e) an exemption--for the victims' children--from the compulsory military service.

57. But those measures do not suffice to guarantee respect for the human rights of the petitioners as prescribed in Articles 1.1 and 2 of the American Convention on Human Rights so long as the petitioners' right to justice is not satisfied.

b. The denial of justice

58. The violation of the right to justice and the consequent impunity triggered thereby in the present case constitute a chain of events which began, as has been established, when the military government issued--in its own favor and that of agents of the state who had committed violations of human rights--a series of rules designed to form a complex juridical framework of impunity which was formally introduced in the year 1978, when the military government approved Decree Law No. 2191 on self-amnesty.

59. The democratic government also joins in condemning the Decree Law on Amnesty when it says that: "The constitutional government has no choice but to agree with the petitioners as to the nature of Decree Law 2191 of April 19, 1978, which sought to exonerate [the perpetrators of] the most heinous crimes committed in our history from any responsibility."

60. Consequently, the Chilean State, through the organ of its Legislative Power, is responsible for its failure to rescind the de facto Decree Law No. 2191 of April 19, 1978, which is found to violate the obligations assumed by that state--to adjust its rulings to the precepts of the Convention--and has thereby violated Articles 1.1 and 2 of that document.

c. With respect to legal guarantees (Article 8)

61. The petitioners claim that the juridical consequences of self-amnesty are incompatible with the Convention, inasmuch as they violate the right of the victim to a fair trial, as set forth in Article 8 of that document.

62. The article protects the right of the accused to a fair trial "in the substantiation of any accusation of a criminal nature made against him..."Although the state has the obligation to provide effective recourse (Article 25), which must be "substantiated in accordance with the rules of due legal process" (Article 8.1),[FN14]it is important to point out that in many of the criminal law systems of Latin America, the victim has the right to present charges in a criminal suit. In systems such as that of Chile, which permits it, the victim of a crime has the fundamental right to go to court. [FN15] That right is essential for instituting and continuing the penal process. The decree of amnesty clearly affected the right of the victims, recognized in Chilean law, to bring a criminal suit in the courts against the parties responsible for violations of human rights.

[FN14] Inter-American Court of Human Rights. Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, paragraph 91.

[FN15] Chile's Code of Criminal Procedure , Section II, "On Penal Action and Civil Action in the Penal Process," Articles 10-41.

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63. And even if this were not the case in dealing, as in these cases, with offenses of public action--i. e., officially punishable--the state has a legal obligation, which cannot be delegated and renounced, to investigate them. As a result, the Chilean State has, in any case, a monopoly on punitive action and the obligation to promote and foster the various stages of the proceedings to carry out its duty of guaranteeing the victims and their families the right to justice. This function should be assumed by the state as an inherent legal duty, and not as a matter of private interests or one that depends on the initiative of such interests, or the presentation of proof by such parties.[FN16]

[FN16] Inter-American Court of Human Rights. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 79.

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64. The petitioners also allege that the Amnesty Decree Law made it impossible for members of the victims' families to obtain reparation in the civil courts. Article 8 of the American Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law . . . for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

65. In Chile, the possibility of starting a civil action is not necessarily related to the results of the criminal procedure. The civil suit must nevertheless be lodged against a given person so that responsibility can be established for the alleged events, and the payment of compensation determined. The failure of the state to investigate makes it virtually impossible to establish responsibility before the civil courts. Despite the emphasis placed by the Supreme Court on the fact that civil and penal procedures are independent of each other, [FN17] the manner in which the amnesty was applied by the courts clearly affected the right to obtain reparation in the civil tribunals, given the impossibility of singling out or identifying the responsible parties.

[FN17] Supreme Court of Chile. Decision on the recourse of inapplicability of decree law 2191, August 24, 1990, paragraph 15. The same court's decision on the recourse of clarification, dated September 28, 1990, paragraph 4.

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66. The de facto Decree Law 2191, as it was applied by the courts in the State of Chile, kept the petitioners from exercising their right to a fair proceeding to determine their civil rights, as set forth in Article 8.1 of the Convention.

d. With respect to judicial protection (Article 25)

67. The claim states that the victims and their families were deprived of the right to an effective recourse in relation to the rights violated, which are enshrined in Article 25 of the Convention.

68. The Inter-American Court of Human Rights has affirmed that the states have a legal obligation to provide domestic remedies. In this respect, the Court pointed out that:

According (to the Convention), the States Parties undertake to provide effective judicial recourse for the victims of human rights violations (Article 25), remedies which must be substantiated pursuant to the rules of due legal process (Article 8). All of this falls within the general obligation incumbent upon those same States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1).[FN18]

[FN18] Inter-American Court of Human Rights. Velásquez Rodríguez Case, Preliminary Exceptions, paragraph 91.

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69. The Court then established that: "Adequate domestic remedies are those which are suitable to address an infringement of a legal right."[FN19]

... The nonexistence of an effective recourse against the violations of rights recognized by the Convention constitutes a transgression of that covenant by the State Party in which such a situation occurs. In this context, it should be emphasized that the fact that it is envisaged by the Constitution or the law, or that it be formally admissible does not suffice to cause that recourse to exist: the requirement is that it be truly suitable to establish whether there has been a violation of human rights, and to take the necessary steps to remedy that offense.[FN20]

[FN19]Inter-American Court on Human Rights. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 64.
[FN20] Inter-American Court of Human Rights.OC-9/87, paragraph 24.

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70. The self-amnesty was a general proceeding utilized by the state to refuse to punish certain grave offenses. In addition, due to the manner in which it was applied by the Chilean courts, the decree not only made it impossible to punish the parties who violated human rights, but also ensured that no accusation be leveled and that the names of those responsible (the beneficiaries) were not known, so that, legally, the culprits were considered as though they had committed no illegal act at all. The law of amnesty gave rise to a juridical inefficacy in regard to the offenses, and left the victims and their families with no judicial recourse whereby those responsible for the violations of human rights committed during the military dictatorship could be identified and made subject to the corresponding penalties.

71. With the promulgation and requirement of compliance with the de facto Decree Law 2191, the Chilean State failed to guarantee the rights stipulated in Article 25.

e. The obligation to investigate

72. In its interpretation of Article 1.1 of the Convention, the Inter-American Court of Human Rights establishes that "The second obligation of the States Parties is to 'ensure' the free and full exercise of the rights recognized in the Convention to every person subject to their jurisdiction... As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention..."[FN21] The Court continues to examine this concept in several paragraphs:

What is decisive is whether a violation of the rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.[FN22] "The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. "[FN23] "If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction.[FN24] As to the obligation to investigate, the Court points out that investigation "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search by the government."[FN25]

[FN21] Inter-American Court of Human Rights. Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 166.
[FN22] Ibid., paragraph 173.
[FN23] Ibid., paragraph 174.
[FN24] Ibid., paragraph 176.
[FN25] Ibid., paragraph 177.

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73. The National Truth and Reconciliation Commission established by the democratic Government to investigate violations of human rights which had taken place in the past looked into a goodly part of the total number of cases, and granted reparations to the victims or members of their families. Nevertheless, the investigation conducted by that Commission on cases of violation of the right to life and the victims of other violations--in particular, torture--were handled without any legal recourse or any other type of compensation.

74. Furthermore, that Committee was not a judicial body and its work was limited to establishing the identity of victims of violations of the right to life. Because of the nature of its mandate, the Commission was not authorized to publish the names of those who had committed the offenses nor to impose any type of punishment. That being so, and despite the importance of its task of establishing the facts and granting compensation, the Truth Commission cannot be considered a satisfactory substitute for a judicial proceeding.

75. That same Truth Commission concluded in its report that:

From the strictly preventive point of view, this Commission believes that an indispensable element to achieve national reconciliation and thus avoid a repetition of the events of the past would be the complete exercise of its punitive faculties by the state. Full protection of human rights is conceivable only in a true state of law. And a state of law calls for submitting all of the citizens to the law and the tribunals of justice, which entails application of the penalties contemplated in the penal legislation, equal for all, to the transgressors of the rules which safeguard the respect for human rights.[FN26]

[FN26] The Rettig Report, February 1991, vol. 2, page 868.

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76. The recognition of responsibility by the Government, the partial investigation of the events and the subsequent payment of compensation are not, in themselves, sufficient to comply with the obligations set forth in the Convention. As provided in Article 1.1 of that document, the state has the obligation to investigate any violations that have been committed within the sphere of its jurisdiction in order to identify the persons responsible, impose pertinent penalties on them and ensure adequate reparation for the victim.[FN27]

[FN27] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 174.

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77. By adopting the de facto Decree Law on self-amnesty, the State of Chile failed to comply fully with the obligation stipulated in Article 1.1 and violated the rights recognized by the American Convention, to the detriment of the plaintiffs.

f. The international responsibility of the state

78. In the present case, there is no question as to the responsibility of the Government of Chile or that of the other organs which exercise public power: the issue is the international responsibility of the Chilean State.

79. During the examination of the present case, it has been established--and the Government has at no time denied--that agents of the Chilean State played an active role in the authorship and execution of the events denounced by the petitioners.

80. The Government agrees that Decree 2191 is contrary to law. It also acknowledges the close tie between amnesty and impunity, and it admits the successive commission of these acts violating the right to justice as one part of the act violating the rights of the victims, from the time they were arrested to the denial of justice, stating that the Amnesty Decree Law "encompasses within a single unit a policy of massive and systematic violations of human rights which, in the cases of the forced disappearances, starts with the kidnapping of the victim;

continues with the concealment thereof; goes on from there with the victim's death; continues with the denial of the act; and ends with the tender of amnesty to the public agents."[FN28]

[FN28] Government of Chile. Note of May 20, 1994, page 5, paragraph 17.

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81. The Government of Chile considers that, as an organ of the Executive Branch, it cannot be blamed nor has it any responsibility for the violations denounced by the petitioners because--insofar as amnesty is concerned--the democratic Government has never decreed a law of amnesty; and as--insofar as rescission of that law is concerned because that is impossible for the reasons stated; that the same limitation exists in regard to adaptation of domestic norms to those of the American Convention on Human Rights; and that, insofar as application of self-amnesty is concerned, it can only act within the law and the Constitution, which establish the framework for its competence, responsibilities and capabilities.

82. The circumstance that Decree Law 2191 was enacted by the military regime cannot lead to the conclusion that it is impossible to separate that decree and its legal effects from the general practice of human rights violations at that time. Although the Decree Law was adopted during the military regime, it continues to be applied every time a claim denouncing a presumed perpetrator of a human rights violation is presented to the Chilean tribunals. The things that have been denounced as incompatible with the Convention are the ongoing juridical consequences of the Decree Law on self-amnesty.[FN29]

[FN29] See also, the Inter-American Commission on Human Rights, Reports 28/92 and 29/92.

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83. While internally the executive, legislative and judicial powers are separate and independent, the three branches of the state form a single indivisible unit of the State of Chile which--in the international plane--refuses to admit separate treatment and, as a result, Chile is internationality responsible for the acts of its organs of public power which infringe the international commitments stemming from international treaties.[FN30]

[FN30] Brownlie: "Principles of Public International Law," Clarendon Press, Oxford, 1990, 4th ed., pages 446-452; and Benadava: "Derecho Internacional Público," Ed. Jurídica de Chile, 1976, page 151.

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84. From the standpoint of international law, the Chilean State cannot justify its failure to comply with the Convention by alleging that self-amnesty was decreed by the previous government or that the abstention and omission of the Legislative Power in regard to the rescinding of that Decree Law, or that the acts of the Judiciary which confirm the application of that decree have nothing to do with the position and responsibility of the democratic Government, inasmuch as Article 27 of the Vienna Convention on the Law of Treaties

establishes that a State Party shall not invoke the provisions of domestic law as a justification for failure to comply with a treaty.

85. The Inter-American Court has maintained that: "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law."[FN31]

[FN31] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 170.

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86. The responsibility for the violations caused by Decree Law 2191--enacted by the military regime which wrested the power in an unlawful and arbitrary manner and not rescinded by the present legislative power and applied by the jurisdictional organ as well--lies with the State of Chile, regardless of the regime which approved that law or the state power which enforced it or made its application possible. There can be no doubt whatsoever as to the international responsibility of the Chilean State for the events which--although they took place during the military government--have still not been investigated and punished. According to the principle of continuity of the state, international responsibility exists independently of changes of government. In that connection, the Inter-American Court of Human Rights has stated that: "According to the principle of the continuity of the state in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred."[FN32]

[FN32] Ibid., paragraph 184.

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87. The following events confirm the failure of the State of Chile to comply with the provisions of Articles 1 and 2 of the Convention: Decree Law 2191 was issued by the military dictatorship that was in power in Chile from 1973 to 1990, and has not been replaced by the present legislative branch, but continues to hold sway. In addition, Chile's domestic laws have not been adjusted to reflect the norms of the Convention; and they still apply to the judicial processes in progress, according to the statement issued by the present Judicial Branch.

88. The failure to set aside the de facto Decree Law after ratifying the Convention; the absence of any adjustment in the domestic laws to render the Convention effective in Chile, and the application of those laws to the specific case addressed by this analysis, as attributed to the legislative and judicial branches, each according to its respective competence, have led the Chilean State to incur in a violation of the Convention.

89. Although the self-proclaimed amnesty decree was enacted prior to the inauguration of the democratic Government and ratification of the Convention, the responsibility borne by the State of Chile as a result of this issue stems from the fact that its domestic laws have not been adjusted to comply with the terms of the Convention; and that when it was [arbitrarily] declared constitutional by the judicial branch, its effects have continued over a period of time to validate the application of that act of power in the violation of human rights.

90. It is important to note that a representative of the administration which took over when the military forced President Allende out of office testified before the United Nations Commission on Human Rights that the Covenant on Civil and Political Rights had been in effect in Chile since 1976.[FN33]

[FN33] See: Commission, Fourth Regular Session. Examinations of the reports presented by the States Parties...Initial Reports...Chile. CCPR/C/1 add.25, page 48, April 27, 1976.

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91. For its part, according to Article 5.2 of the Political Constitution of Chile, consistency between the international and the national norm is compulsory for the Chilean courts. [FN34]

[FN34] See Detzner: "Tribunales chilenos y Derecho Internacional de los Derechos Humanos." Chilean Commission on Human Rights/Academy of Christian Humanism. Santiago, 1988. Chapter IV, page 182.

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92. The States Parties to the Convention assume, as states, the responsibility and obligation to respect, compel respect for and guarantee all of the rights and freedoms recognized therein to the persons who are subject to their jurisdiction, and to change or adjust their laws to render effective the enjoyment and exercise of those rights and freedoms. When it failed to comply with that commitment, the Chilean State is infringing Articles 1 and 2 of the Convention.

VII. FINAL PROCESSING OF THE PRESENT CASE

93. In the course of its 92nd regular meeting--which took place from April 24 through May 10, 1996--the Commission adopted Report 23/96. The Report was sent to the Government of Chile with the request that it submit such comments as it deemed pertinent within 60 days of the date on which it was sent.

VIII. RESPONSE FROM THE GOVERNMENT OF CHILE

94. On September 30, 1996, the Government of Chile sent a note to the Commission with its reply, which include the following statements:

95. The Government of Chile once again underscores the priority it assigns to the international system for the protection of human rights at the universal as well as the regional

level, inasmuch as one of the objectives of its foreign policy is to help strengthen the system and enable it to defend individuals more effectively. That recognition resulted--after the restoration of our democracy--in adherence by the State of Chile to such important international instruments as: the American Convention on Human Rights in 1969 and the Optional Protocol to the 1966 International Agreement on Civil and Political Rights.

96. To that end, the inter-American system for the protection of human rights--and, in particular, the work performed by the Inter-American Commission on Human Rights--is especially important to our country. As a result, it has proceeded to nurture and support the various initiatives aimed at strengthening the system, specifically by means of its basic organs, i.e. the Commission and the Court of Human Rights.

97. The Commission's report does not question the position adopted by our democratic Governments to the effect that it was not they who enacted the 1978 Decree Law 2191 on amnesty, nor have they sponsored new legal rulings designed to block the investigation of the facts or the sanctioning thereof by the courts of justice.

98. The Commission is aware that the democratic Government of Chile does not share the position taken by the Supreme Court of Justice with respect to the interpretation and scope attributed to the Amnesty Decree Law. But constitutional and international imperatives nevertheless make it incumbent upon the government to ensure the independence of the Judiciary and to guarantee the juridical efficacy of its decisions.

99. The Government of Chile is gratified at the Commission's favorableevaluation of its efforts to establish the truth, to administer justice and to make reparation in cases of the most serious violations of human rights, thanks to the noteworthy work carried out by the National Commission on Truth and Reconciliation and, thereafter, the National Reparation and Reconciliation Corporation.

100. It is important to note, once again, that the democratic governments which followed the military regime are fully in accord with the criticism of the 1978 decree law on amnesty, and that they have never enacted legal rulings to prevent investigation of the egregious violations of human rights that were committed in the past. To the contrary, they have fostered legal initiatives designed to establish the truth regarding the fate of persons who were executed or forced to disappear by agents of the state, so that justice and reparation may be obtained insofar as possible.

101. Turning to the legal adjustment measures which the democratic Government has undertaken, the Inter-American Commission cannot be unaware of the difficulties encountered in this task, owing to the special characteristics inherent in the transition from an autocratic system to a democratic one in Chile.As is public knowledge, the Senate--which is the upper house of Chile's Congress--does not consist entirely of democratically elected members, but also includes a substantial number of those appointed by the previous military regime.This situation unquestionably produces a substantial political effect, one that distorts the will of the people and hobbles progress in the reformulation of democratic institutions, a process that includes an amendment or rescission of the 1978 decree law.

102. In the context of respect for the state of law and the resultant separation of the powers of state, it should be noted that the Government has adopted certain initiatives designed to adapt the internal juridical order, ensuring that the Tribunals of Justice have the necessary tools to pursue their investigations until the truth is established, and to handle the civil suits presented pursuant to Articles 279 bis, 413 and 421 of the Code of Criminal Procedure in conformity with the international treaties ratified by Chile that are currently in effect.

IX. CONCLUSIONS

103. Based on the considerations expressed in the present Report, the Commission has reached the following conclusions:

104. That the official act whereby the military regime which had taken over the government in Chile issued the so-called Law of self-decreed amnesty (Decree Law No. 2191) in 1978 is incompatible with the provisions of the American Convention on Human Rights which was ratified by that State on August 21,1990.

105. That the sentence handed down by the Supreme Court of Chile on August 28, 1990 and the confirmation thereof on September 28 of that year--which declares the aforementioned "Decree-Law 2191" constitutional and requires that it be enforced by the Judicial Power, when the American Convention on Human Rights had already entered into effect for Chile--violates the provisions of Articles 1.1 and 2 of the Convention.

106. That the judicial decisions dismissing the charges in the criminal cases opened by the detention and disappearance of Irma Meneses Reyes (Case 11.228), Ricardo Lagos Salinas (Case 11.229), Juan Alsina Hurtos (Case 11.231) and Pedro José Vergara (Case 11.282), in whose names these cases were introduced, not only aggravate the situation of impunity, but also definitively violate the right to justice to which the members of the victims' families are entitled: to identify the persons responsible and to establish the responsibilities borne and the penalties to be paid by those persons, and to obtain legal compensation from the guilty parties.

107. That, insofar as the persons on whose behalf the present cases are

brought are concerned, the State of Chile has failed to carry out its obligation to recognize and guarantee the rights set forth in Articles 8 and 25 in connection with Articles 1.1 and 2 of the American Convention on Human Rights, to which Chile is a State Party.

108. That the State of Chile has not complied with the norms contained in Article 2 of the American Convention on Human Rights, inasmuch as it has failed to adapt its laws on amnesty to the provisions of that Convention. Without prejudice to that finding, the Commission is favorably impressed with the Government's efforts to see that the competent organs, in accordance with their constitutional processes and current laws, adopt such legislative or other measures as may be necessary to give effect to the right of those persons to obtain justice.

IX. RECOMMENDATIONS

For the reasons stated, and pursuant to its examination of the facts and the international norms invoked,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

CONCLUDES:

109. To recommend to the State of Chile that it adapt its domestic laws to the provisions of the American Convention on Human Rights, in order that violations of human rights by the "de facto" government may be investigated in such a way that the guilty are singled out, their responsibilities are established and they are effectively punished, thereby guaranteeing to the victims and members of their families the right to justice which is their due.

110. To recommend to the State of Chile that it enable the families of the victims to which the present case refers to be effectively and fairly compensated for the injuries inflicted on them.

111. To publish this report in the Annual Report to the General Assembly of the OAS, pursuant to the provisions of Article 48 of the Commission's Regulations and Article 51.3 of the Convention in view of the fact that the Government of Chile has failed to adopt the requisite measures to remedy the situation denounced within the periods granted.

CONCURRING VOTE OF COMMISSIONER

DR. OSCAR LUJÁN FAPPIANO

I agree in full with the report that the Commission has prepared. I wish merely to make the following additions to the “preliminary considerations” contained in chapter VII, part "A)" of that report:

BY WAY OF INTRODUCTION

1. It is worthwhile emphasizing that the role of the Commission, in analyzing the question brought for its consideration, consists in determining the sense of the standards in the American Convention according to the interpretative methods of juridical science, and that in this work of the Commission there is no place for ideological connotations, which it does not profess, nor for any partiality in favor of, or any bias against, any government, persons or group of persons, which it does not entertain.

THE QUALITY OF THE AUTHORITIES THAT DECREED THE AMNESTY

2. In light of the foregoing, the question is to establish, at the outset, whether the so-called “amnesty law” constitutes an arbitrary act of the authorities that arose upon the military overthrow of the constitutional government of Dr. Salvador Allende, and whether for that reason those authorities had no right or legitimacy, since they were neither elected nor appointed by any legitimate means, but were installed in power by force, after the legal government had been

deposed in violation of the constitution. In this case, in the strict application of juridical orthodoxy, we are dealing with a “usurper government”.

3. In fact, although they are commonly known under the generic term of “de facto” governments, there are two kinds of illegal governments: de facto and usurper. The first is a government which, while it may not have been appointed under the terms of the constitution and prevailing laws, acts “under a veneer of legitimacy” because its authority derives, seemingly, from a regular appointment or election. The second, on the other hand, lacks all legitimacy, since it was neither elected nor appointed in any manner, but was installed in power by force.[FNi]

[FNi].1.Constantineau: "Tratado de la doctrina de facto". Ed. Depalma. Bs.As., 1945. To. I, pp. 31 ff. Antokoletz: "Tratado de derecho constitucional y administrativo". Bs.As., 1933. Vol.I, p. 60.

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4. A government de facto is not a government de jure, because it is outside or contrary to law, because it has no legal basis and because if a State has taken to itself a constitution, then anything that departs therefrom is illegal. It is consistent with neither the letter nor the spirit of a constitution to overthrow a duly instituted government. The installation of a de facto government is the product of force rather than of consent, which of course causes no compunctions to those who regard might as the source of all right, and who see the “rule of law” and the “constitutional state" as merely “schemes” that will collapse in the face of the “realism” of a dictatorship, such as those that have plagued our hemisphere.[FNii]

[FNii].Cf.: Bielsa: "Régimen de facto y ley de acefalía". Ed. Depalma. Bs.As., 1963. pp. 26/30.

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5. But to those who would argue thus, we may reply with the words of Bluntschli: "Just as they recognize no rights other than those of their momentary triumph, so they admit no error other than the overthrow itself. In their eyes, any rebellion deserves to be punished if it fails, but is perfectly legal if it succeeds. Any usurpation they will condemn if it collapses in the attempt, just as they will recognize any that achieves its objective. The only standard in their eyes is that of change, even when it comes to law. They allow themselves to be swept along by opinion and they change their color and loyalties whenever they feel the mood shifting. They would have us believe that they are defending the status quo, but in reality they are destroying it. They pride themselves on their ability to bring about real transformation, and yet they concern themselves only with the immediate business at hand. They have no ethical or intellectual concept of law."[FNiii]

[FNiii].Antokoletz: op./loc. cit.

ILLEGAL GOVERNMENTS AND THE INVALIDITY OF THEIR ACTS

6. The acts of a usurper have no juridical value, whatever their nature. We cannot speak here of “objective legality”, since the mere observance of the forms of “true legality” is not sufficient if the usurper lacks the constitutional authority that would give him legal standing to act. Nor can we speak of laws or “decree-laws” as such, and much less can we speak of these as acts of “delegated legislation”, since the Congress did not, and could not, delegate anything to a de facto regime.[FNiv]

[FNiv].See Bielsa: "Régimen"..., cit. pp.17; 23; 24, n.5; 35 y ss. Id.: "Estudios de derecho público". Ed. Depalma. Bs.As. 1952. To. III, pp. 431/78.

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7. Not even for the laudable goal of preserving juridical security can we place on an equal footing the constitutional legality of a de jure government with the authoritarian and unconstitutional illegality of a usurper government, whose very existence is the fountain of juridical insecurity. To accord any such recognition would be to place a seal of approval on such governments and become their accomplice, whereas we should steadfastly repudiate them in defence of the rule of law, constitutional order, commitment to democracy and the principle of the sovereignty of the people, based on the full respect of human rights. If those who collaborate with such governments are assured of impunity for their conduct under a usurping and illegitimate regime, then there will be no difference between good and evil, between legal and illegal, between constitutional and unconstitutional, between right and wrong, between democratic and authoritarian, and there would be no reason to refuse to be an accomplice of such illegitimate regimes. What juridical security can we hope for if we place on an equal footing “de jure” rule - which means basing our security on the constitution - and the “de facto” rule of the usurpers who have disrupted and violated that constitution?

8. We cannot give the stamp of legitimacy to something that owes its very existence to the trampling of legitimacy.

9. We cannot allow that solid line to be erased that separates constitutional rule from those who refuse to live under its system of freedoms, rights and guarantees that is the hard-won prize of so many struggles and sufferings by the men and women of our hemisphere, who have sought to live in peace and tolerance and mutual respect for our human dignity.

10. Hence, the most important point to establish is the inviolability of the juridical regime conceived as the rule of law. In the face of acts and presumptuous laws of a government imposed solely by force, the first point to make clear, without hesitation, is their glaring invalidity, their absolute nullity. They cannot be even suggested to have the slightest shred of legitimacy, since they are the unacceptable result of rebellion against the fundamental law, which is the pillar of juridical security.

11. The foregoing applies a fortiori in the present case, where the beneficiaries of the amnesty are not foreigners or third parties but integral participants in the designs of the usurper. It is one thing to proclaim the need to legitimize the acts of society as a whole, or those taken

under international responsibility, when they stem from obligations that cannot be avoided without plunging the country into chaos, and it is quite another thing to extend equal treatment to acts that imply complicity with an illegitimate government. It is simply absurd to pretend that the usurper and his henchmen can invoke the principles of constitutional law, which they themselves have violated, in order to enjoy the benefits of security that are only justified and merited for those who adhere rigorously to that law. Complicity and bad faith can never be protected, even in acts that are otherwise legal. Crime does not give rise to rights.

12. We are trying here to interpret the Constitution correctly, starting from the need to invalidate any act that violates or contradicts it. We are trying to apply the weight of that law, now that it is once again fully in force. We are trying, in short, to ensure the supremacy of a democratic regime that has recovered its full strength, which it should never have lost, and whose stability the Commission must promote and defend, because the solidarity of the American States rests on the common denominator of the "effective exercise of representative democracy" (OAS Charter, Article 3), and because "no problem that any State member might encounter can justify the disruption of a representative democratic regime" (Declaration of Managua. AG/OAS. Nicaragua, 1993).

13. To the arguments heard during the present case to the effect that it is impossible to abrogate the self-amnesty, we must respond that the now-restored constitutional order must of necessity guarantee the government the ability to fulfill its fundamental duties, free of the inconceivable limitations imposed on it by the usurper. Indeed, the whole structure would collapse if it did not. This point is consistent, for example with the doctrine of the United States Supreme Court established long ago in the case of "Horn v. Lockhardt", in 1873: "We accept that acts taken in wartime by those (Confederate) States as individual entities, through their different branches of government - executive, legislative and judicial - must be deemed, in general, to be valid and compelling, to the extent that they do not affect or tend to affect the supremacy of the national authority and of the just rights of citizens that are guaranteed by the Constitution." Along the same line of thought, the Supreme Court of Argentina held that to deny to a constitutional government the power to annul the validity of its effects would imply, directly, "a harmful limitation on its efforts to consolidate the democratic system, and moreover would mean granting it - the de facto act in question - the full validity that can only be reasonably attributed to legitimate acts of a de jure power."[FNv]

[FNv]."Gamberale de Manzur v/ U.N.R."., decision of 6 April 1989.

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14. Even the most steadfast supporters of the notion of legal continuity of the state admit the validity of actions of a de facto government only with respect to third parties, since they draw a clear distinction between the official with "plausible investiture" and the usurper with "the veneer of legitimacy". As stated by Antokoletz, "the Anglo-American model only admits the acts of 'de facto' officials as valid as far as they affect the public: i.e., to the extent that they are of public benefit. It does not regard them as legitimate in themselves, nor to the extent that they benefit the illegal official. The official's responsibility for having performed his public functions improperly does not disappear."[FNvi]

[FNvi].Antokoletz: op. citada, pp. 72/73.

AMERICAN CONSTITUTIONAL LAW

15. The constitutional law of the states of the region is concordant with this doctrine. Antokoletz points out that those systems that deem illegitimate any power not emanating from the Constitution declare all of the acts of such a power to be null. This concept of nullity is expressly established in the constitutions of Honduras, Nicaragua, Costa Rica, Peru, El Salvador, Venezuela and Chile.[FNvii]

[FNvii].Antokoletz: op./loc. cit. in previous note.

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16. A survey that we conducted of the constitutions of member states of the Organization confirmed this statement. The thesis of nullity of the acts of a usurper is enshrined in the following constitutions: Bolivia (1967), Article 3; Costa Rica (1949), Article 10 (earlier, Article 17); Chile (1980), Articles 5 and 7; Dominican Republic (1966), Article 99; Guatemala (1985), Article 152; Honduras (1982), arts. 2 and 3; Paraguay (1992), Article 138; Peru (1993), Articles 45 and 46; Venezuela (1961), arts. 119 and 120. As a result of the reforms introduced to its text in 1994, the Constitution of Argentina has incorporated a similar provision to make explicit what had previously been known as the “unwritten clause”, as the logical consequence of the precepts in its Articles 22 and 33. In effect, the current Article 36, first paragraph, provides: “This Constitution shall take precedence even if its observance should be interrupted by acts of force against the constitutional order and the democratic system. Those acts shall be irredeemably null”.. In its following provisions, it makes the authors of such acts liable for punishment such as that reserved for the infamous “traitors of their country."

17. On the basis of the precept cited from the earlier Constitution, the Argentine Congress was able validly to revoke the so-called “self-amnesty” decreed by the military regime (law 23040), and to adopt law 23062 which, with respect to the point at issue, establishes the following: “In defence of the republican constitutional order based on the principle of popular sovereignty, no juridical validity whatsoever shall attach to any law or administrative act issued by de fact authorities who have taken power through an act of rebellion...even if they pretend to base them on powers acquired by right of revolution."

18. The 1833 constitution of Chile declares in Article 158: “Any resolution issued by the President of the Republic, the Senate or the Chamber of Deputies, in the presence or at the instigation of an army, or of a general leading an armed force, or of any group of people, whether armed or not, that would disobey the authorities, is null and void and can produce no effect whatsoever."[FNviii] The Constitution of 18 November 1928, in turn, declares similarly: "No entity, no person or group of persons may take upon itself, even under the pretext of extraordinary circumstances, any authority or rights other than those expressly conferred upon it

by law. Any action in contravention of this Article is null". Even the "constitution" issued by decree-law No. 3464 of 11 August 1980 repeats the Article of its predecessor almost letter for letter (Article 7).

[FNviii].Adopted as a precedent by J.B. Alberdi in writing the draft text of a constitution for the Province of Mendoza (Argentina).

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19. Consequently, we can say that American constitutional law is unanimous in its concept of the people's sovereignty, and therefore a de facto government is repugnant to the Constitution, and hence, the overthrow of the constitutional authorities creates no rights in favor of the seditious military leader or rebel. A fortiori, there can be no presumption to any legitimacy when the case involves not a single de facto functionary, but an entire regime that is unconstitutional, since a regime that is totally de facto is neither democratic nor republican.

20. Many centuries ago the Romans inscribed over an archway the words "Senatus Populusque Romani" to give expression to the harmonious unity of governed and governors.

21. Pursuing the line of thought upheld by the Commission in its report No. 30/93, it should be noted also that in the present case, the nullity of the acts of a usurper is a normal constitutional clause with a solid tradition in the hemisphere.[FNix]

[FNix].Case 10.804. "Ríos Montt v/ Guatemala". CIDH Annual Report 1993, p. 296, para. 29.

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22. It is also instructive to compare the jurisprudence of some of the Region's courts. The Argentine Supreme Court did not hesitate to declare the illegality of laws created by de facto governments, and to refuse to recognize in such laws those qualities that can for good reason only be attributed to legitimate acts of a de jure power. In the words of the Court,[FNx] "there can be no question as to the illegitimacy of an act dictated under the shadow of a de facto legislative power that is not instituted by our Fundamental Charter".

[FNx]."Gamberale de Manzur v/ U.N.R.", decision of 6 April 1989. Note that this pronouncement predates the constitutional reform of 1994.

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23. But above all, we must point to the transcendental judgment of the Constitutional Court of Guatemala, issued in light of the events surrounding ex-President Serrano.[FNxi]

[FNxi].See: "La Corte y el Sistema Interamericano de Derechos Humanos". Rafael Nieto Navia Editor. San José, Costa Rica. 1994, pp. 199 y ss.

PARLIAMENTARY DEBATE AS A GUARANTEE

24. Moreover, constitutional law establishes an irreplaceable procedure for formulating and adopting laws, which is in essence a guarantee that arbitrary acts, misnamed “laws”, of a de facto government, drafted and issued behind closed doors, sometimes by their own beneficiaries, as in the heyday of the absolute monarchies, are absolutely and irrevocably null and void.

25. Such arbitrary acts are not subject to healthy public debate. Such debate represents not only homage to democracy, but also fulfillment of constitutional precepts dealing with the formulation and adoption of laws, and which serve as authentic guarantees of fundamental rights and freedoms, as we now see reaffirmed in the provisions of Article 23.1 of the Convention.

26. The omission of public debate, moreover, causes grave damage to the people, since it destroys their trust in the law, it undermines their sense of legality and destroys the “legal fiber” of the country, as the philosopher Vanni has put it.[FNxii]

[FNxii].Bielsa: "Régimen...", citado, pp. 36; 38; 41; 42; 46 and 68.

FUNDAMENTAL RIGHTS AND THE STATE

27. Our fundamental rights and freedoms are not extinguished by a de facto government, because they predate both the state and the constitution, which merely recognize and guarantee them, but did not create them. Thus it is an error to claim that a de facto regime has no limits on its arbitrary and unconstitutional powers, i.e. that it can proceed "de legibus solutus" [exempt from the laws], or according to the maxim of "quod principii placuit, legis habet vigorem" [What pleases the ruler has the force of law]. Hence, an amnesty dictated by a government that stands accused of grave and systematic violations of human rights and that attempts in this way to exculpate itself is just such a practice and is therefore an abuse of power.

28. In this regard, Tomuschat writes: "A regime that makes a practice of genocide loses even the appearance of legitimacy. To maintain that in certain cases we must obey a corrupt law and yield to the demands of its perpetrators, would be to make of the State a divinely inspired fetish, unstained by the most atrocious and odious acts."[FNxiii]

[FNxiii].Tomuschat: "On Resistance to Violations of Human Rights", UNESCO, 1984, p. 26.

THE INTERNATIONAL LAW OF HUMAN RIGHTS

29. This dimension is confirmed by the provisions of Article 3 of the OAS Charter, Articles XX and XXVIII of the American Declaration, the preamble to the Convention and its Articles 23.1 a and b, which cannot be suspended, according to its Articles 27.2, 29 and 32.

30. In order to convert human rights into a legal reality, the first requisite is to ensure a stable constitutional state, which embraces, in effect, two other requisites: a) for a state to be free, the people who comprise it must have the ability to choose their own destiny (the principle of self-determination), and b) the people must determine, freely and by means of generally applicable (not personal) laws, the legal system that is to establish their human rights (the rule of law).[FNxiv]

[FNxiv].Vasak: "Human Rights as legal reality." In: "The International Dimensions of Human Rights." UNESCO. Barcelona. 1984. Vol. 1, p. 27.

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

31. The approach taken here accords with the judgments of the Inter-American Court of Human Rights, which has defined “laws” as “a general legal norm tied to the general welfare, passes by democratically elected legislative bodies established by the constitution, and formulated according to the procedures set forth by the constitution or the States Parties for that purpose." (OC/6, paragraph 38). It arrived at this definition on the basis of analyzing the principles of “legality” and “legitimacy” and of the democratic regime within which the inter-American system of human rights must be comprehended(OC/6, paragraphs 23 and 32), as is explicit in its OC/13, paragraph 25. For the Court, “the principle of legality, democratic institutions and the rule of law are inseparable” (OC/8, paragraph 24). Strict adherence to a democratic regime has been stressed by the Court in these terms: “Representative democracy is the determining factor in the entire system of which the Convention is a part” (OC/13, paragraph 34), and this stands in complement to its standards on “the just demands of democracy” that must guide the interpretation of the Convention, especially of those precepts that are critically related to the preservation and functioning of democratic institutions (OC/5, paragraphs 44; 67 and 69). Nor should it be forgotten that the doctrine of the Court stresses the importance of the elected legislature in guarding our fundamental rights (OC/8, paragraphs 22 and 23), and it also stresses the role of the Judiciary in reviewing the legitimacy of the acts of the Executive Power (OC/8, paragraphs 29 and 30; OC/9, paragraph 20).

THE INTER-AMERICAN COMMISSION

32. The Commission has been blazing similar trails in its work, as follows: a) when it states that the democratic context is a necessary element for the establishment of a political society in which human values can flourish freely ("Ten Years...”, p. 331); b) when it alluded to the granting of overriding powers to bodies that are not representative of the popular will (id., p. 270. Report on Panama, 1978, p. 114, paragraph 3. Annual Report 1978/80, p. 123/24, analyzing a new draft constitution for Uruguay); c) when it sets out its criteria for public participation at the drafting stage for constitutions (report on Suriname, 1983, p. 43, paragraph 41); d) when it question the validity of the plebiscite in Chile, for having been held during a time when public freedoms were suspended [Report 1978/80, page. 115]; and e) in its Report 30/93 on the case of Ríos Montt v/Guatemala.

THE UNIVERSAL SYSTEM

33. With respect to the universal system, the following should be noted: a) the Charter of the United Nations and its preamble (“We, the people of the United Nations..."), in its reference to the “free self-determination of peoples” and to "developing and encouraging respect for human rights and fundamental freedoms for all..."; b) the Universal Declaration, in its Article 29; c) The International Covenant on Civil and Political Rights and d) the statement by the Human Rights Committee in "Ngaluba v/Zaire", paragraphs. 8.2 and 10 on the denial of the right to participate, under conditions of equality, in the management of public affairs, due to sanctions imposed on eight parliamentarians.[FNxv]

[FNxv].For a more recent, full and analytic discussion of this topic, see Cançado Trindade: "Democracia y Derechos Humanos..." in the collection: "La Corte y el Sistema Interamericano de Derechos Humanos”, op. cit.

USURPER GOVERNMENTS AND DEMOCRACY

34. For the above reasons, it can be concluded that democracy and rights are inseparable terms in one and the same equation that has been postulated in the philosophy that underlies the political and institutional organization of the American States, and consequently any act taken by a usurper or de facto government is in and of itself incompatible with the letter and the spirit of the American Convention.

CHILE AND THE INTERNATIONAL TREATIES

35. We have already reviewed the Chilean constitutions as relates to the treatment they have accorded “governments” by usurpation. We have seen that even the “Constitution” promulgated by the military regime itself declares the nullity of acts of a usurper. We shall now look at another aspect of the title of this paragraph.

36. Article 27 of the Vienna Convention on the Law of Treaties was accorded special recognition by Chile at the adopting Conference. Its representative, Mr. Barros, stated: “There is nothing to prevent a state from invoking its constitution as grounds for refusing to sign a treaty, but once a state has committed itself under a treaty, it cannot subsequently attempt to circumvent its commitments by invoking its constitution, still less its ordinary national legislation."[FNxvi]

[FNxvi].See Diaz Albónico: "la Convención de Viena...", in: "Estudios". 1982. Sociedad Chilena de Derecho Internacional, pp. 147/74.

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37. Moreover, the regime that arose from the military overthrow of President Allende maintained before the Human Rights Committee that the Covenant on Civil and Political Rights had been in force in Chile since 1976.[FNxvii]

[FNxvii].See Comité, fourth session. Review of reports submitted by the States Parties... Initial reports... Chile. CCPR/C/1Add. 25, 48pp. 27 April 1976.

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38. Again, according to the provisions of Article 5.2 of the Constitution of Chile, it is a mandatory duty of the courts to reconcile international and national standards.[FNxviii]

[FNxviii].See Detzner: "Tribunales chilenos y derecho internacional de derechos humanos". Comisión Chilena de Derechos Humanos/Academia de Humanismo Cristiano. Santiago, 1988. Cap. IV. p. 182.

A FINAL WORD

39. The Commission can only applaud the efforts made in this hemisphere and around the world to anathematize, now and forever, all those who would disrupt constitutional order and overthrow democratic regimes; to affirm that in the Americas the only route to power is through direct or indirect suffrage, and not by coup d'état; and to demonstrate that constitutions and the standards they uphold are not, as some seem to believe, so weak that they will crumble at the first shout of a mob. The Commission affirms the sanctity of the principle of legality, of democratic institutions, of the rule of law and the sovereignty of the people, in full respect for human rights, since this was the reason for which it was created.

40. Reviewing the political history of our peoples brings to mind the compelling statement of Ramella: "What we have before us is a somber spectacle indeed. The destruction of institutions by de facto governments has disrupted the constitutional order, and has created a climate of disrespect for the legitimate authorities and sown scepticism about the political process in the minds of our youth."[FNxix]

[FNxix].Ramella: "Derecho Constitucional". Depalma. Bs.As. 1986, 2da. ed., p. 700.

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41. There is among our people a certain scepticism about laws and the meaning of constitutions.

42. To paraphrase Bielsa, we may say that in times such as these, when history seems to be unfolding so rapidly and unexpectedly, we must take advantage of the few lucky things that have happened to the peoples of America. America has something better to offer. There are many--the vast majority--who have remained loyal to the Constitution, to the law and to civic virtues, and

who ardently desire to see democratic regimes firmly established. There are citizens of sound conduct who not only reproach transgressors, but all manifestations of mis-government, who do not lust after the trappings of power, and who do not believe that public duty means seizing power outside the law.[FNxx]

[FNxx].Bielsa: "Régimen...", cit., pp. 66/67.

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43. It is with those citizens, with those young generations of America to whom Ramella alluded, that the Commission makes its pact, and that commitment can only be fulfilled if we give an example of standing up for democracy in a way that will banish their disbelief and help to strengthen their faith in the rule of law and the constitutional state.

44. To that end, we must approach this question with our eyes firmly set on the highest statement of our principles, for a jurist, a man of law, cannot abandon a doctrine just because it has been put to ill use. The lawyers of America, at their 21st Inter-American Conference, issued a ringing call: "...In the face of the many distortions that these principles have suffered at the hands of various autocratic forms of government...we must seek to proclaim clearly and categorically that the lawyers of America stand squarely for the survival of a form of government that meets the tests of a constitutional and pluralist democracy...".[FNxxi]

[FNxxi].San Juan, Puerto Rico, 1979.

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45. Again, at the 22nd Conference, they declared: "...If we conceive of representative democracy as the system that offers the greatest respect for people's rights, then it is incumbent upon us, wherever there is a change of regime or whenever a government sets itself up in defiance of the constitution, to preserve inviolate the principle that the people are sovereign, and also that public authority must be exercised in full respect for the inherent values of human dignity.[FNxxii]

[FNxxii].Quito, Ecuador, 1981.

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46. This means that, while social upheavals cannot always be avoided, the only honest response when they do occur is to remain steadfastly loyal to the rule of law, which is the only way of life in a democratic society.

47. A former member of the Inter-American Juridical Committee, Jorge R. Vanossi, writes: "Over this long journey, the price to be paid has been very high: disregard for legality, acquiescence in autocratic lawgivers on a more-or-less frequent and more-or-less permanent basis, confusion between what is anomalous and ephemeral and what is normal and lasting, the breakdown, if you will, of a certain constitutional rigidity. The almost unthinking comparison

between legislation that is 'de jure' and laws that are 'de facto' leads inevitably to identifying any 'government' by the mere fact that it makes its dictates effective (however coercively), in utter disregard for legal procedures and organs that have come to be viewed by the predominant juridical conscience as irrelevant. We must recant in this matter.... but all men of law are called upon to examine carefully all those tendencies of resigned obedience to validating doctrines, and to offer an analytic and thoughtful alternative for reformulating them so that we may avoid yet another manifestation--perhaps the most discouraging of all--of that phenomenon that Ripert referred to as 'the decline of law'."[FNxxiii]

[FNxxiii].Vanossi: "El estado de derecho en el constitucionalismo social". EUDEBA. Bs.As. 1987, pp. 468/469.

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48. And that alternative so dramatically evoked by Vanossi for escaping from the “monologue and the mausoleum” to which, in the unforgettable phrase of Octavio Paz, every dictatorship is inevitably consigned, is the one that an enlightened man of this land once opened for us: “That we here highly resolve that these dead shall not have died in vain, that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people and for the people shall not perish from the earth.".[FNxxiv]

[FNxxiv]. Lincoln. Gettysburg Address.
