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HUMAN RIGHTS COMMITTEE

Sixty-fifth session

SUMMARY RECORD OF THE 1733rd MEETING

Held at Headquarters, New York,
on Wednesday, 24 March 1999, at 10 a.m.

Chairperson: Ms. EVATT
(Vice-Chairperson)

later: Mr. BHAGWATI
(Vice-Chairperson)

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In the absence of Ms. Medina Quiroga, Ms. Evatt, Vice-Chairperson, took the Chair.

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Fourth periodic report of Chile (CCPR/C/95/Add.11)

1. At the invitation of the Chairperson, Mr. Arévalo, Ms. Bertoni, Mr. Salinas, Mr. Tapia and Mr. Troncoso (Chile) took places at the Committee table.

2. Mr. SALINAS (Chile) said the period covered by the fourth report had been a period of transition from an autocratic regime to a democratic State. The new democratic Government had had to re-establish the democratic institutions and practices which had been eliminated or seriously damaged during 16 years of an authoritarian military regime, in which serious human rights violations had been committed. There had been difficulties and threats, but the democratic institutions had been consolidated and the rule of law had been strengthened; and the legitimacy of republican and democratic institutions was no longer in question. A favourable climate had been restored in which the Chilean people once again enjoyed the fundamental rights and freedoms recognized in the international human rights instruments. At the same time, the new democratic State had made efforts to overcome the enormous deficiencies in the social and economic sphere inherited from the past, eliminate poverty and marginalization, and establish conditions of social equality which would contribute to the enjoyment of social, economic and cultural rights. Those efforts were being made within the context of the commitments made by his Government at the World Conference on Human Rights.

3. Numerous legislative initiatives had been undertaken to bring domestic legislation into line with the spirit and letter of international human rights norms. Those efforts were being made in a situation in which members of the authoritarian regime continued to play an active role in Chile's political life. There was therefore a need to continue to strengthen the institutions which protected human rights and fundamental freedoms. One of the first steps taken by the Government of President Patricio Aylwin had been to ratify the major international human rights instruments. His Government's efforts went far beyond overcoming the problems inherited from the military period; the military regime had been a painful gap in Chile's long process of social and political development which had begun in the nineteenth century. His Government was now taking up issues such as women's rights, adoption, and social problems. Through the establishment of institutions such as the National Commission on Truth and Reconciliation and its successor, the National Compensation and Reconciliation Corporation, it had also begun to deal with other negative aspects which undermined fundamental rights and freedoms.

4. In recent years, there had been a positive trend in the decisions of the law courts, especially the Supreme Court, in terms of taking account of the

international human rights instruments, thereby contributing to the harmonization of international legislation with domestic legislation; that was especially relevant in relation to the investigation of serious human rights violations between 1973 and 1978.

5. Chile was aware that in the new democratic State there were still problems which needed to be solved in order to improve democratic institutions and guarantee the enjoyment of human rights, and also recognized the need to review the way in which public officials interpreted the law and their official duties. It should be borne in mind, however, that the process of promoting such far-reaching changes in attitudes, practices and customs required a long period of education and promotion of the values enshrined in international human rights instruments.

List of issues (CCPR/C/65/Q/CHL/1)

Constitutional and legal framework within which the Covenant is implemented (article 2 of the Covenant)

6. The CHAIRPERSON read out the questions relating to article 2 of the Covenant: measures contemplated to prevent the blockage by the Senate of democratic reform; instances in which the Covenant had been directly invoked before the courts; and any plans to establish a national defender of citizens' rights.

7. Mr. TRONCOSO (Chile) said that on six occasions since 1990 his Government had introduced proposals for reforming the electoral system, to set the number of Senators in accordance with the electoral districts established by law and remove the nine appointed senators, who had made it impossible for the Government to carry out democratic reforms. None of the proposals had been successful because the required majority for their approval had not been obtained.

8. The date on which the Covenant had been published in the Official Gazette was 29 April 1989. The Covenant had been invoked on many occasions in Chilean courts; and in a recent judgement, the Supreme Court had held that the Covenant took precedence over the national constitution. International human rights treaties had been applied directly by the courts, as indicated in the report.

9. There had been various proposals for the establishment of a National Defender of Citizens' Rights, but they had not been implemented. Other proposals had sought to improve the justice system, and protect the rights of individuals. His Government was taking steps to establish a Public Prosecutor's Office and an Office of the Criminal Defender in the year 2000.

Right to effective remedy (article 2 of the Covenant)

10. The CHAIRPERSON read out the questions relating to article 2 of the Covenant: compatibility of the amnesty law with the obligation to provide an effective remedy; whether all cases against military personnel charged with human rights violations were tried in military courts, and details of decisions

in such cases; and which reforms recommended by the National Commission on Truth and Reconciliation had been put into effect.

11. Mr. TRONCOSO (Chile) said that the question referred to a decree-law on amnesty issued by the military Government. The decree-law covered the period from 11 September 1973 to 10 March 1978, but not the period from 11 March 1978 to 10 March 1990. The democratic Governments had never accepted the decree-law, but had not been able to have it annulled because of the absence of the required majority in the Senate. Another legal impediment was the principle of the non-retroactivity of criminal law. In those circumstances, the only way of investigating human rights violations covered by the amnesty was for the courts to make a legal interpretation in each individual case. The courts had held that such cases could not be dismissed until an exhaustive investigation was completed; that the amnesty could not be applied in cases of grave violations of human rights since that conflicted with Chile's international human rights obligations; and that, in cases such as forced disappearances, it was not possible to apply the amnesty until the fate of the missing person was known.

12. In 1991, President Aylwin had notified the Supreme Court that, in the Government's view, the amnesty could not be invoked to impede the conduct of full investigations to establish the truth about serious human rights violations and identify the culprits. That position had been supported by President Frei. In 1998, the criminal section of the Supreme Court had reopened the investigation of a case of a detainee who had disappeared, arguing that international human rights norms took precedence over national legislation.

13. According to the latest statistics, 186 cases relating to human rights violations during the period in question were in progress, and another 307 cases had been dismissed, but could be re-opened if new information emerged. On two occasions the Supreme Court had refused to instruct the lower courts to apply the amnesty, statutory limitations or the principle of res judicata. Thus, although the 1978 amnesty was an obstacle to the investigation of cases of human rights violations, it was not insuperable. Moreover, the democratic authorities had never put forward any legislative initiative which would accord impunity to human rights violations.

14. Not all cases against military personnel charged with human rights violations were tried in military courts. The democratic Governments had tried to confine the competence of military courts to military offences; however, proposals for reform had not succeeded in Parliament because of opposition by the appointed Senators in the Senate. In practice, many cases started out in ordinary civil courts, but if military personnel were involved, the military courts asked for the cases to be transferred to them. The Supreme Court then decided which court should try the case. Many cases had been referred to the military courts, although sometimes such cases were investigated by civilian judges. The judgements of military courts were subject to appeal in the Supreme Court. His Government was studying an initiative to reform the military courts in order to limit their jurisdiction.

15. The National Commission on Truth and Reconciliation had made a number of recommendations, all of which had been supported by the democratic Governments. It had recommended a number of symbolic gestures, such as an address by the

President of the Republic apologizing to the relatives of the victims, and the construction of memorials to the missing persons. It had made many other recommendations in the areas of social welfare, health and education. In 1992 the National Compensation and Reconciliation Corporation had been set up. The Commission had also recommended measures to bring domestic law into line with international human rights obligations, and to ensure that the judiciary effectively fulfilled its role of protecting the rights of individuals. In the area of criminal procedure, the most important change was a full-scale reform of the criminal prosecution system so as to guarantee the right of due process.

Right to life (article 6 of the Covenant)

16. The CHAIRPERSON read out the questions relating to article 6 of the Covenant: investigations of possible instances of excessive use of force by law enforcement officials; any plans to accede to the Second Optional Protocol; measures taken to investigate the disappearance of 300 Mapuche leaders during the military regime; information about death threats against human rights defenders attempting to uncover past violations; and measures to protect poorer women who were forced to have illegal abortions.

17. Ms. BERTONI (Chile) said that all the cases of deaths reported as possible instances of excessive use of force by law enforcement officials were exceptional in nature and had occurred during the public demonstrations which took place every year on 11 September. The cases had been speedily investigated; the case of Leopoldo Calderón Beltrami had been dismissed because it had not been possible to determine the identity of the culprits. In the case of Octavio Araya Ortíz, three policemen were being tried, one for homicide, and the other two for causing injuries. The only recent case of a death attributable to excessive use of force by law enforcement officials was that of Claudia López Benange, a university student who had been shot dead during demonstrations on 11 September 1998. The Government had initiated proceedings for homicide, but, as yet, no persons had been accused of the offence.

18. Mr. TRONCOSO (Chile) said that the democratic Governments had made clear their opposition to the death penalty. The first legislative initiative to abolish the death penalty had been submitted to Parliament on 11 March 1990; only half of the capital offences had been eliminated, however, the rest being mostly military offences. In 1997, the Government had supported a parliamentary motion to abolish the death penalty, but it had been rejected by the Senate. In all cases which had been referred to them for clemency, however, the two democratic Presidents had decided to commute the death penalty to life imprisonment. In that respect his Government was complying with the principles of the Second Optional Protocol.

19. Ms. BERTONI (Chile) said that, according to reports by the National Commission on Truth and Reconciliation and the National Compensation and Reconciliation Corporation, during the military regime 3,197 persons had been victims of violations of human rights and political violence. The Mapuche victims were not identified separately in those reports, since during the military regime the repression had been political, not racial, in nature. The democratic Governments and various individuals and organizations were seeking information about the Mapuche victims. The report of the National Commission on

Truth and Reconciliation cited a total of 90 persons of Mapuche origin who had died or disappeared; most of them were not Mapuche leaders.

20. Referring to the issue of death threats against human rights defenders, she said that, since March 1990, one of the Government's priorities had been to deal with the consequences of the human rights violations during the military regime. Accordingly, following new investigations by the National Commission on Truth and Reconciliation and the National Compensation and Reconciliation Corporation, cases that had not been adequately investigated in the past had been reopened and new cases had been initiated. Additionally, many cases against political prisoners that had been tried in the military courts had been transferred to the civil justice system, where an effort was being made to expedite procedures to release them. That had involved the active participation of national human rights' organizations, which had carried out their work in a threat-free environment.

21. Although some threats had been made against human rights activists, they had not led to serious incidents because those affected had had recourse to the courts to investigate the facts and the Government had provided the necessary police protection. A recent example was the case of threats received by families of victims of human rights violations and even members of Parliament following the arrest of General Augusto Pinochet in London.

22. Referring to abortions, she said that it was difficult to obtain reliable information as abortion was illegal in Chile and only those abortions that resulted in hospitalization were recorded. However, the health authorities recognized that the clandestine circumstances under which abortions were performed tended to have greatest impact on the least advantaged. The Government believed that family planning was the basic means to reduce the problem. The Health Ministry was aware that birth-control services and information needed to be improved and expanded and, among other measures, a programme to prevent teen-age pregnancies had been initiated.

Prohibition of torture, liberty and security of the person and treatment of prisoners and other detainees (articles 7, 9 and 10 of the Covenant)

23. The CHAIRPERSON read out the questions relating to articles 7, 9 and 10 of the Covenant: use of excessive force by the police in interrogations; instances of ill-treatment and torture by security forces; the system for training prison staff in human rights and monitoring and investigating their conduct; the status of the draft new Code of Criminal Procedure and details of prevailing law and practice regarding pre-trial detention; and steps taken to ensure that conditions consistent with article 10 existed in all prisons and that all inmates were treated equally.

24. Mr. AREVALO (Chile), referring to the procedures for supervising police conduct, said that in addition to any external control mechanisms, such as the submission of complaints to the competent courts, both the Police Department and the Carabineros (uniformed police) had a special section responsible for internal control measures. They also had codes of ethics and disciplinary regulations and received training on ethics, human rights and the treatment of prisoners.

25. Victims of police abuse had the constitutional remedies of amparo (habeas corpus) and protection or recourse to the corresponding criminal action. A special instruction had been circulated governing complaints submitted directly to police stations. Complaints could be presented by the victim or his family and investigated by the courts and by the internal control mechanisms previously mentioned.

26. Lastly, on July 1, 1998, Law No. 19,567 had been enacted, establishing the need to inform all detainees of their rights, abolishing detention on suspicion, defining the crime of torture in line with Chile's international commitments, increasing the punishment for torture, and decriminalizing vagrancy. According to the law, the police must inform those arrested of their rights; otherwise, any statements taken were considered invalid.

27. Mr. TRONCOSO (Chile), referring to instances of ill-treatment and torture by security forces, said that under a joint programme with the Chilean Commission on Human Rights, a human rights training manual had been published for prison service employees, and courses on human rights, ethics and humane treatment of prisoners were now included in training programmes for prison staff.

28. The State prison service was obliged to make an administrative investigation of all complaints of alleged abuse, ill-treatment and torture and submit the corresponding complaint to the courts. However, it was usually the victim or his family who went directly to the court. For the period 1995-1997, there had been 39 investigations, of which 35 had looked into the alleged responsibility of 59 prison officials in cases of torture and other inhumane treatment and had been concluded. Half of those officials had been punished by dismissal, fines or censure.

29. It was hoped that, by the year 2002, the reformed criminal procedure would be in effect throughout the country. It consisted of a series of laws which were under discussion in Parliament: the constitutional reform creating the Public Prosecutor's Office, the constitutional organic law of the Public Prosecutor's Office, the Code of Criminal Procedure, the organizational code for the courts; the Office of the Criminal Defender; and a draft law on rules to harmonize the different laws with the new criminal procedure system.

30. On the question of prevailing law and practice regarding pre-trial detention, he said that the judge could order the arrest of a person suspected of taking part in a crime and the police could arrest a person without a court order if he was caught in flagrante delicto. However, those arrested had to be brought before a judge at the first opportunity, and the judge had five days to decide whether the person should be released for lack of evidence or brought to trial. If the person was to be brought to trial, the judge had to decide whether to release him on bail or order that he should be held in pre-trial detention.

31. With regard to figures on the proportion of detained persons in pre-trial detention, he said that in January 1999 a total of 27,205 people had been in prison. Of that number, 12,538 had been convicted, 12,109 were being prosecuted

and 2,558 were detained. With the reform, it was hoped to increase the percentage of those convicted and reduce that of those awaiting trial.

32. With regard to prison conditions, prison policy provided for the possibility of segregating the prison population, so that persons being held for trial and convicted persons were separated. A 1994 law provided that minors should not be held in adult prisons, and an investment plan for the construction of centres exclusively for juvenile offenders had been initiated. Government policy in that area sought to establish a system aimed at promoting the social rehabilitation of prisoners, improving the prison infrastructure, and introducing paid work with the participation of the private sector and cultural and educational policies and programmes.

Fair trial (article 14 of the Covenant)

33. The CHAIRPERSON read out the questions relating to article 14 of the Covenant: details of the jurisdiction of military courts to try civilians and whether it was compatible with article 14.

34. Mr. TRONCOSO (Chile) said that military criminal law allowed the military courts to try offences committed by civilians involving the injury or death of military personnel or uniformed police on duty. Special laws on arms control and State security also granted jurisdiction to military courts to try civilians in certain cases. However, the Government was endeavouring to reduce the jurisdiction of military courts. Military justice clearly did not offer the independent and impartial conditions required by article 14 of the Covenant as it was administered by officials of the armed forces who were not assured of irremovability in their judicial functions. The situation was aggravated by the possibility that civilians could be tried by military courts in the previously mentioned cases. The democratic governments believed that the jurisdiction of military courts should be restricted to trying military offences committed by members of the armed forces that were exclusively in the military legal domain.

35. Decisions by military courts could be appealed before a military appeals court, composed of three members of the armed forces and two civilians, and also before the Supreme Court, with five Supreme Court magistrates and an army military assessor. A draft law was being considered to eliminate the need to include the assessor in such cases. Lastly, such cases could be investigated by a military appeals court civil magistrate, which would be compatible with article 14 of the Covenant.

36. Between 1990 and 1994, the Government had introduced three draft laws which provided that civilians could not be tried by military courts except in very specific cases. However, none of them had been adopted owing to the composition of the Senate. The Government had not introduced any new initiatives since 1994 as the composition of the Senate had not changed.

37. The CHAIRPERSON suggested that the Chilean delegation should suspend the presentation of their replies to the list of issues in order to give the Committee the opportunity to comment on the answers provided.

38. Mr. Bhagwati, Vice-Chairperson, took the Chair.

39. Mr. SOLARI YRIGOYEN said that according to paragraph 60 of the Vienna Declaration and Programme of Action, States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law. The Chilean Amnesty Decree Law constituted such legislation.

40. In light of the fact that the Supreme Court had closed the case of Carmelo Soria Espinosa, a United Nations staff member who had been kidnapped and murdered by the Chilean security forces in 1973, he wondered how the Government planned to meet its obligations under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, to which Chile was a party.

41. Mr. YALDEN noted that the delegation had mentioned proposals to establish an Office of the Ombudsman and asked whether the Government was also considering establishing an independent human rights commission with the authority to receive and investigate complaints. Many countries had established such institutions, which had been endorsed by the General Assembly in the Paris Principles.

42. The delegation had stated that allegations of excessive use of force by the police against detainees were referred to the courts only at the discretion of the internal investigative bodies. He asked whether there were any prospects for developing an independent system of investigation, which would promote greater public confidence in the findings. Lastly, he wondered whether efforts were being made to legalize abortion, at least under certain circumstances.

43. Ms. CHANET said that the fourth periodic report of Chile was extremely comprehensive; however, the delegation's replies to the list of issues (CCPR/C/65/Q/CHL/1) had been somewhat brief and it would have been helpful to have a core document for Chile. While she welcomed the work of the National Commission on Truth and Reconciliation, it was unfortunate that the Commission's mandate prohibited it from pronouncing on the possible responsibility of individuals for acts that it was investigating. She also welcomed the delegation's statement that the new Code of Criminal Procedure would bring about radical changes which would ensure better protection under article 14 of the Covenant.

44. It was clear that the Senate had prevented the Government from repealing the Amnesty Decree Law, changing the composition of the Supreme Court and limiting the powers of the military courts, particularly in cases involving civilians. Those issues were of great importance to Chile as a State party to the Covenant. She wondered whether the Constitution could not be amended to prevent a minority which dated from the time of the military regime and which had every interest in maintaining the status quo from paralysing the system as a whole.

45. The delegation had stated that the Supreme Court had recently declared the crime of abduction to be a continuing offence. However, paragraph 101 of the report (CCPR/C/95/Add.11) stated that the Supreme Court had refused to allow the

civil courts to prosecute violations of the right to life committed during the military regime, referring such cases to the military courts. That jurisprudence, which had not been reversed, could be attributed to the fact that, as the delegation had stated, the Supreme Court included a representative of the military. To her knowledge, there was no precedent for that in any other democratic country. She asked whether the Government hoped to change that situation and, if so, whether it had the means to do so.

46. Furthermore, according to the International Federation of Human Rights Leagues (FIDH), 57 people had been held in preventive detention for as long as seven years under the anti-terrorist legislation which had been in force during states of emergency and had not yet been brought to trial. She asked the delegation to provide an explanation.

47. Lastly, she noted that in an article published in Le Monde, President Frei had stated that, like any other citizen, Augusto Pinochet could be given a fair trial in Chile. Since former President Pinochet had been granted impunity under the Amnesty Decree Law, she asked how that was possible both legally and in practice and how the Supreme Court, whose President had spoken openly on behalf of Mr. Pinochet, could judge impartially in such a case.

48. Mr. KLEIN said that, while he agreed with Ms. Chanet that the report was extremely comprehensive, it was unfortunate that 10 years had passed since Chile had last reported to the Committee. He was aware of the difficulties that the current Government was facing and of the extremely poor human rights record of the former regime. However, the compromise reached in 1988 had involved the retention of certain constitutional provisions which were incompatible with international law and the Covenant. In particular, the Amnesty Decree Law and the legislation granting immunity to those with the greatest responsibility for human rights violations under the former regime were in clear contradiction to the State's obligation to provide an effective remedy to the victims.

49. Some of that legislation appeared even to violate the provisions of the Chilean Constitution and, in particular, article 5, paragraph 2, thereof. Paragraph 16 of the report stated that international human rights instruments had been given constitutional status; he wondered whether the Government could invoke the provisions of the Constitution to enforce those of the Covenant.

50. The Chilean legal system was weak, ambivalent and not conducive to the rule of law. Political obstacles to the repeal of the Amnesty Decree Law did not relieve the Government of its obligation in that regard under the Covenant. Neither could it be argued that article 15 of the Covenant impeded the repeal of that Law. Since that article did not apply to procedural mechanisms and, in any case, paragraph (2) of that article stated that "nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations". He asked the delegation to comment.

51. The legacy of the past placed a heavy burden on the country's future, and many kinds of ill-treatment and torture were still practised in Chile on a regular basis. Even more alarming, as Ms. Chanet had noted, was the situation

of the judiciary; in the civil as well as the military courts, judges did not seem truly independent, and public trust in the independence and impartiality of the judiciary was essential. He wondered whether the Constitution did not provide some remedy for that problem, which was a clear violation of the Covenant.

52. Lord COLVILLE said that, according to paragraph 127 of the report, more than half of the prison population was composed of persons in custody or awaiting trial, despite the fact that accused persons were presumed innocent until a final sentence had been handed down. The delegation had provided different statistics in its oral presentation. He asked whether the figures given in the report were correct and, if so, what the Government planned to do to remedy that situation. Paragraph 32 of the report stated that the new Code of Criminal Procedure would come into force progressively over a 10-year period, while the delegation had stated that it would be implemented throughout the country by the year 2002. Even in the latter case, however, there would be a three-year delay before the excessive number of prisoners in preventive detention could be reduced. He asked whether there was any way to speed up that process under the existing system or to bring the new Code into force more quickly.

53. Mr. WIERUSZEWSKI said that he agreed with Mr. Klein's comment regarding the repeal of the Amnesty Decree Law. Paragraph 101 of the report stated that civil court proceedings had been instituted by the relatives of victims of human rights violations committed by the military but that, although those investigations had been properly conducted, in most cases the culprits had not been brought to trial because of the way in which the courts interpreted the Amnesty Decree Law. He asked the delegation for an explanation of that apparent contradiction.

54. Paragraph 97 of the report stated that the whereabouts of 975 missing detainees and 159 persons who had been executed, but whose remains had not been handed over to their families, still had to be determined. He wondered whether there had been any change in that situation since the submission of the report and, if not, what was being done to solve the problem. Many countries emerging from communism were taking careful note of Chile's peaceful transition to democracy, which offered an encouraging example provided that all human rights standards were respected.

55. Ms. GAITAN de POMBO said that the Committee welcomed the fourth periodic report of Chile, which was that country's first report since the transition to democracy. Although the report stated that the Covenant had constitutional status, it was not clear whether its provisions took precedence over domestic law. She also wondered whether Chile had acceded to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and whether there was any possibility of organizing a referendum or plebiscite on the repeal of the Amnesty Decree Law, which had produced a vicious circle that prevented any real constitutional reform. In that regard, she also felt that the decisions of the National Commission on Truth and Reconciliation and the National Compensation and Reconciliation Corporation should be made binding as a means of overcoming the limitations imposed by the Amnesty Decree Law.

56. It was clear that the military courts were hindering the process of constitutional reform. She asked what those courts' jurisprudence had been in the handling of civil cases and whether the courts had dealt not only with offenses of a typically military nature, but also with crimes against humanity. She also hoped that the Government would become a party to the Second Optional Protocol to the Covenant if it had not yet done so.

57. Structural reform of the criminal justice system was an essential aspect of the consolidation of democracy. She asked whether the new criminal justice system would fall under the judicial or the executive branch, how independent it would be and whether the functions of the new Public Prosecutor's Office would include not only trials but also investigations. Lastly, she wondered how independent the office of the ombudsman would be.

58. Mr. POCAR paid tribute to the major efforts which the Government of Chile had made since it had submitted its previous report 10 years earlier. However, the current report confirmed his impression that the constitutional compromise posed a major obstacle to improvement in certain areas of human rights. The frank answers by the delegation, furthermore, showed that the Government was well aware of the deficiencies of the compromise.

59. It appeared that the Government was under a form of guardianship by such other bodies as the Senate and the Parliament, yet the composition of those bodies was not consistent with article 25 of the Covenant. Under international law, responsibility for implementation of the Covenant lay with the State party and not with the Government, as such. Thus, the fact that the Government was attempting to enact legislation to remedy the deficiencies was not an excuse for its failure to comply with article 2.

60. The Government was aware that military jurisdiction was a deficiency; it was imperative that it should be abolished. Military courts must be restricted to military crimes, no civilians could be tried by a military court, and members of the military brought to trial for human rights violations must come before ordinary courts. In any case, article 14 should be strictly observed. The delegation had reported that an act was under consideration in the legislature to abolish the provisions allowing members of the Supreme Court to be appointed by the military, but constitutional procedures could also be effective in that effort.

61. Turning to the Amnesty Decree Law, he asked why the democratic Government had chosen an approach that allowed investigations of violations to continue along with application of the Amnesty Decree Law, rather than the equally viable option of interpreting that law to lead to its non-application in human rights cases.

62. Mr. KRETZMER said that, while the Committee appreciated the domestic political constraints facing the Government of Chile, its job was to examine the observance of international obligations. He would like to hear more about the powers of the National Security Council, which appeared to function alongside the democratically elected Government. He wondered whether the 1999 ruling upholding the Constitutional Court was final. More information was needed on the practice of incommunicado detention (paragraph 104), including its legal

status and the reasons and extent of its use. He would also like to know the grounds for ordering pretrial detention, since the courts had discretion in that area.

63. Mr. ANDO said that he would like to hear the explanation for the late submission of the fourth periodic report. He would also like to know more about the Judicial Academy mentioned in paragraph 180 and why it was governed by the Labour Code.

64. Mr. LALLAH said that it was generally recognized that the pervasive institutional intrusion of the military in a democratic government was a violation of article 25 of the Covenant and the Universal Declaration of Human Rights. He would like to hear about the Government's plans to remedy the situation. Furthermore, the high numbers of individuals held in detention without trial was a clear violation of article 9, paragraph 3. The Committee's jurisprudence and views on that subject would be helpful in finding ways to rectify that situation. It was inconceivable that prisoners remained in pre-trial detention with their cases under investigation for years; the situation must be remedied without delay. If human rights treaties had precedence over domestic law, he could not understand how that recourse had not been used in order to bring such cases to trial.

65. The whole system of criminal trials as described in paragraphs 166 and 167 of the report was in violation of articles 2 and 14 of the Covenant. He wondered how such a system could have been accepted for over a century.

66. Mr. AMOR said that, from his reading of the report, he had gained a sense that the constitutional compromise was evolving, but had not yet reached the point where it could be reversed. He asked whether the authorities had studied public opinion on the matter and whether it influenced their actions. He would like to hear more about the relationship between military and civilian authority, and any efforts to curb military authority and protect the democratic order. The report gave the impression that military authority prevailed, even over the judiciary.

67. The delegation of Chile had indicated that the right to life prevailed over the right to freedom of religion in the case of Jehovah's Witnesses who had refused blood transfusions, and it would be interesting to know if any statistical information on that subject was available. He would also like to hear whether the prohibition of abortion was seen as a religious or social matter. More information was also needed on the rights of members of religious minorities to practise their religion in prison. Finally, he would like to learn if there were any special initiatives to improve judicial training.

The meeting rose at 1 p.m.